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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–35 of July 17, 1994

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $19,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the unexpected, urgent needs of refugees, returnees, and conflict victims from Rwanda and Burundi. These funds may be contributed to international, governmental, and non-governmental organizations, as appropriate.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 17, 1994.

[FR Doc. 94–18460
Filed 7–25–94; 2:54 pm]
Billing code 4710–10–M

Editorial note: For the President's remarks on further assistance to Rwandan refugees, see issue 29 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 838, 841, 842, and 890

RIN 3206–AG13

Federal Employees Retirement System—General Administration; Government Costs

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is updating the table of normal cost percentages that Federal agencies pay to finance the Federal Employees Retirement System (FERS). This regulation is necessary for the table to reflect the changes in the rates that are effective in October 1994.

EFFECTIVE DATE: August 26, 1994.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On September 21, 1993, OPM published in the **Federal Register** a notice changing the normal cost percentages effective in October 1994. Subpart D of Part 841 of Title 5, Code of Federal Regulations, contains the methodology that OPM uses to determine the rates that agencies must pay to fund the cost of the Federal Employees Retirement System (FERS) and the procedures that OPM must follow to change the rates. Under those procedures, OPM must publish a notice of changes in the rates at least 3 months before the beginning of the fiscal year in which the new rates become effective.

Appendix A to Subpart D of Part 841 contains a table of the normal cost percentages. This table has no regulatory effect. It merely provides information about the rates. This final rule amends that table to reflect the rates that will become effective in October 1994.

Under section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Notice of proposed rulemaking is unnecessary because this final rule merely provides information and has no regulatory effect.

Correction of Prior Notice of Final Rulemaking

On March 16, 1994, OPM published (59 FR 12143) a final rule concerning payment of survivor deposits by actuarial reduction. (FR Doc. 94–6046) This document adopted OPM's interim rule on that subject as final rules. In two places, reference to the page number for the interim rule was stated incorrectly. In both places, the incorrect reference to 58 FR 56877 is corrected to 58 FR 52877.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only provides information about the rate of payment by Federal agencies to OPM for the normal cost of their employees' FERS benefits.

List of Subjects in 5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending Part 841 of Title 5, Code of Federal Regulations, as follows.

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. The authority citation for Part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423,; § 841.504 also issued under 5 U.S.C. 8422; § 841.506 also issued under 5 U.S.C. 7701(b)(2); § 841.507 also issued under section 505 of Pub. L. 99–335; § 841.508 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469.

Subpart D—Government Costs

2. Appendix A to Subpart D of Part 841 is revised to read as follows:

APPENDIX A TO SUBPART D OF PART 841.—TABLE OF NORMAL COST PERCENTAGES

Category of employees	Government-wide normal cost percentages effective at the beginning of the first pay period commencing on or after—			
	January 1, 1987	October 1, 1987	October 1, 1991	October 1, 1994
Members	23.5	20.9	20.8	19.1
Congressional employees	23.8	20.2	20.1	18.2
Law enforcement officers, firefighters, and employees under section 302 of the Central Intelligence Agency Act of 1964 for Certain Employees	31.2	26.7	28.6	25.6
Air traffic controllers	33.3	28.4	26.2	23.2
Military reserve technicians	16.0	13.7	13.3	12.1
Employees under section 303 of the Central Intelligence Agency Act of 1964 for Certain Employees when serving abroad	22.8	19.0	19.1	17.1
All other employees	16.1	13.8	13.7	12.2

All normal cost percentages in the above table include employee contributions.

[FR Doc. 94–18263 Filed 7–26–94; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV94–928–3–IFR]

Papayas Grown in Hawaii; Suspension of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule suspends all grade requirements currently in effect under the marketing order for Hawaiian papayas. This rule also eliminates inspection requirements for papayas and is expected to help the papaya industry reduce expenses.

DATES: Effective July 1, 1994. Comments which are received by August 26, 1994 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; FAX: 202–720–5698. Comments should reference this docket number, and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331, or FAX: 202–720–5698; or Martin J. Engeler, Assistant Officer In Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: 209–487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 928 [7 CFR Part 928] regulating the handling of papayas grown in Hawaii, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 120 papaya handlers subject to regulation under the marketing order covering fresh papayas grown in Hawaii, and approximately 400 producers of papayas in Hawaii. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

This rule suspends for an indefinite period the minimum grade and the inspection requirements in effect under the order. This action was recommended by the Papaya Administrative Committee (committee) on April 22, 1994, by a vote of 8 in favor, 2 opposed, and 2 abstentions.

The committee meets prior to and during each season to review the rules and regulations effective on a continuous basis for papayas regulated under the order. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Section 928.52 of the order authorizes the establishment of grade, size, quality, maturity, pack and container regulations for fresh shipments of papayas. Section 928.53 allows for the modification, suspension or termination of such regulations when warranted. Section 928.55 provides that whenever papayas are regulated pursuant to § 928.52 or § 928.53, such papayas must be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation. The cost of inspection and certification is borne by handlers.

Section 928.313 of the rules and regulations currently in effect under the order establishes minimum grade requirements for fresh shipments of Hawaiian papayas. This rule suspends § 928.313, which requires that such papayas grade at least Hawaii No. 1, except that not more than 5 percent of the fruit may be immature, and that the weight requirements specified in the Hawaiian grade standards do not apply.

The current minimum grade requirement has been in effect since 1984. The objective of this requirement was to provide that only acceptable quality fruit enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to papaya producers.

While the industry continues to believe that quality is an important factor in maintaining sales, the committee recommended this suspension because it believes the cost of inspection and certification (mandated when the grade regulations are in effect) exceeds the benefits derived. The cost of papaya inspections on a per pound basis averages about $.006, which is nearly as much as the assessment rate established under the order to cover the order's administrative and promotion costs.

Committee members supporting the suspension stated that such action would be in the best interests of producers, because eliminating the cost of inspection will increase producer returns. Those members contend that the marketplace will dictate fruit quality, and competition among shippers will ensure shipments of good quality fruit.

In addition, the industry is pursuing alternative means of improving and ensuring quality, such as providing financial incentives to producers to deliver good quality fruit to handlers. Current industry practice is for producers to deliver their fruit to handlers for grading, packing and marketing. Producers are paid by handlers based, in part, on the quality of fruit they deliver. Producer prices are reduced to reflect the amount of fruit that is discarded during handling because it is of unacceptable quality. All producers delivering fruit to a particular handler are typically paid the same amount for their fruit, based on the average quality delivered by all producers. This practice causes producers delivering high quality fruit to be penalized by producers delivering poorer quality fruit. A newly formed producers' bargaining cooperative is attempting to change this practice by having low quality fruit attributed to individual producers. That is, an individual producer would be paid based upon the quality of fruit that individual delivered to the handler. Thus, producers would have a financial incentive to harvest and deliver high quality product. This should help improve and maintain the quality of papayas entering the fresh market.

Committee members opposed to the suspension stated that it would allow poor quality fruit on the market and have a negative impact on the market. Additionally, those members believe that such a suspension will be perceived negatively by the State of Hawaii Department of Agriculture. They are also concerned about the length of time necessary to reinstate the grade requirements, if it is determined that such action is needed in the future to ensure that only fruit of acceptable quality is shipped to fresh markets.

The majority of committee members acknowledge the possibility that fruit quality could decline as a result of this action, but do not believe that this is likely. They believe that the reduction in handling costs due to elimination of mandatory inspection will outweigh any declines in returns attributable to reduced quality. Further, the committee will monitor the impact this action has on the market, and will recommend reinstatement of quality standards if warranted.

This rule suspends grade and inspection requirements in effect for fresh papayas. Such suspension will enable handlers to ship papayas to the fresh market at a reduced cost, since handlers will no longer be required to have their fruit inspected and pay the resulting inspection costs. Suspending grade requirements for fresh papayas is expected to increase producer returns by reducing costs and maintaining the quality of fruit offered for sale. The industry is committed to instituting alternative means of quality assurance by providing incentives to producers to harvest and deliver only acceptable quality fruit. This activity should ensure that consumers continue to receive good quality fresh papayas. This rule is in the best interest of producers, handlers and consumers, and is expected to increase returns to papaya producers.

The Department's view is that this rule will have a beneficial impact on producers and handlers, since it will permit the industry to ship fruit without paying the cost of inspection, thus improving producers' returns, and is not expected to adversely impact the quality of fruit entering fresh markets.

Consistent with the suspension of § 928.313, this rule also suspends §§ 928.150 and 928.152 of the rules and regulations in effect under the order. Section 928.150 provides a means for handlers to receive waivers from the mandatory inspection requirement under certain circumstances, and § 928.152 authorizes exemptions from the current grade requirement relating to fruit maturity. Since this action suspends mandatory inspection and grade requirements, these rules authorizing exemptions from such requirements would no longer be needed.

A conforming change is also made in § 928.160, which requires handlers to file monthly utilization reports with the committee. Among the information required to be submitted are the inspection certificate numbers applicable to each fresh shipment of papayas. Since inspection will no longer be mandatory, the requirement that handlers submit inspection certificate numbers would no longer be needed. Thus, § 928.160 is revised to suspend such requirement.

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

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0102.

This rule should reduce the reporting burden on approximately 5 papaya handlers who have been completing PAC Form 7, Application to be an Approved Handler of Immature Papayas, and PAC Form 7(c), Immature Papaya Order Form. Form 7 is estimated to take 15 minutes to complete, and Form 7(c) about 10 minutes per form. No reduction in reporting burden is expected as a result of the revision in § 928.160 pertaining to monthly utilization reports. While handlers will no longer be required to provide inspection certificate numbers, the remaining information on the reports will continue to be collected. It is estimated that each report requires 1 hour to complete.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the suspension of these sections, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule suspends grade requirements for papayas grown in Hawaii; (2) Hawaiian papaya handlers are aware of this suspension, which was recommended by the committee at a public meeting, and they will need no additional time to comply with this suspension; (3) shipment of the 1994 season Hawaiian papaya crop is currently in progress; (4) this rule needs to be made effective by July 1, 1994, to be of maximum benefit to the Hawaiian papaya industry; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 928

Papayas, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR Part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§§ 928.150, 928.152, 928.313 [Suspended]

2. In Part 928, Subpart—Rules and Regulations, §§ 928.150, 928.152, and 928.313 are suspended in their entirety.

§ 928.160(a)(1) [Amended]

Section 928.160(a)(1) is amended by removing the following words: "and regulations", "inspection, certificate, number".

* * * * *

Dated: July 21, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18212 Filed 7–26–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 932 and 944

[Docket No. FV93–932–3IFR]

Olives Grown in California and Imported Olives; Revisions of Outgoing Inspection Requirements and Size Requirements for Whole Pitted Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends outgoing inspection regulations under the California olive marketing order to authorize handlers to use in-plant Quality Assurance Programs (QAPs) in lieu of continuous in-line inspection. This rule also permits handlers to size whole pitted olives by diameter as an alternative to the current requirement that such olives be sized by weight prior to pitting. Conforming changes are made to the size requirements for imported whole pitted olives so that the requirements for domestic and imported olives are applied similarly. The changes in the California olive requirements are designed to result in more efficient handling operations. The changes in import requirements are necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Effective on August 1, 1994. Comments which are received by August 26, 1994 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington DC 20090–6456; or by facsimile at 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721, telephone 209–487–5901; or Caroline Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC, 20090–64565, telephone (202) 720–5127.

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

This interim final rule is also issued pursuant to section 8e of the Act, which provides that whenever certain specified commodities, including olives, are subject to grade, size, quality, or maturity requirements under a Federal marketing order, the same or comparable requirements shall be applied to imports of those commodities.

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

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

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

There are 5 handlers of olives regulated under the order, and approximately 1,350 producers in the regulated area. In addition, there are approximately 25 importers of olives subject to the requirements of the olive import regulation. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms, which include olive handlers and importers, are defined as those whose annual receipts are less than $5,000,000. The majority of the olive producers and importers may be classified as small entities. None of the olive handlers may be so classified.

The California Olive Committee (committee), the agency responsible for local administration of the order, met on December 14, 1993, and unanimously recommended revising outgoing inspection procedures to permit handlers to establish a QAP in lieu of maintaining continuous in-line outgoing inspection of processed olives. Outgoing inspection is the assignment of a final grade to the product after processing is completed, according to the requirements of the U.S. Standards for

Grades of Canned Ripe Olives (Standards) [7 CFR 52.3751 to 52.3764]. The committee also recommended that handlers be allowed to size whole pitted olives by diameter after pitting, as an alternative to the current requirement that such olives be sized by weight prior to pitting.

Pursuant to § 932.52 of the order, and § 932.152 of the current regulations, handlers are required to maintain continuous in-line outgoing inspection for the handling of processed olives. Pursuant to § 932.53, such outgoing inspection is performed by the Processed Products Branch (PPB) of the Department. Continuous in-line outgoing inspection consists of inspection and grading services in an approved plant whereby one or more PPB inspector(s) are present at all times the plant is in operation to make in-process checks on the preparation, processing, packing, and warehousing of all products and to assure compliance with sanitary requirements. However, costs for continuous in-line outgoing inspection have increased in recent years. Thus, the PPB is prepared to develop QAP inspection procedures which will provide quality assurance certification for California olive handlers, thereby reducing handlers' inspection costs.

Currently, most handlers employ their own quality-control personnel. The PPB is prepared to establish QAPs with individual handlers as provided in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products" [7 CFR 52.2]. As established, handlers will be permitted to use a QAP inspection procedure rather than the currently-mandated continuous in-line outgoing inspection. Under a QAP, the PPB provides training for the handler's quality-control personnel. The handler's quality-control personnel will be trained in the same procedures currently used by the PPB inspectors. Once the handler's quality-control personnel are trained to properly perform the same duties and responsibilities as a PPB inspector, a period of evaluation of the reliability of the handler's quality control responsibilities begins. This is the reliability evaluation period. At such time as the handler's quality-control personnel successfully complete the reliability evaluation period, a QAP will begin operation with oversight provided by the PPB. The PPB inspectors will continue to issue certificates of inspection. Certificates of inspection will be based on outgoing inspection records maintained by the handler's QAP personnel. These will be verified through spot-checks and sample regrading by PPB inspectors. A QAP will continue to assure safe, wholesome, and uniformly high-quality processed products.

Under a QAP, each handler and the PPB will develop an individually written plan tailored to each handler's facility. A contract between the handler and the PPB will also be developed based upon the terms of the QAP. The contract will be signed at the beginning of the reliability evaluation. Once a handler's QAP is approved, the handler is notified in writing and the PPB begins verifying the work of the handler's QAP personnel. Such verification may include reviews of plant sanitation, quality and non-quality product analyses, procedures and/or techniques, case-stamping, checkloading, condition of container, or other types of procedures normally performed by the PPB. Inclusion of any or all of these verification procedures will be determined by the operating characteristics of each handler's facility or facilities.

In the event deviations from proper QAP procedures are detected by the PPB during the reliability verification process, the handler will be informed of the problem and corrective action required. If corrective action is taken, the QAP continues in operation. Continued deviations may result in suspension of QAP approval. The suspension may be permanent or temporary and may only be restored upon concurrence by the PPB. During any suspension, the handler would be required to use continuous in-line inspection.

Establishing a QAP inspection procedure meets marketing order inspection requirements, and provides handlers with an alternative to continuous in-line inspection (which requires the presence of a PPB inspector during final processing prior to the packaging of olives). To effectuate this change, paragraphs (a) and (b)(1) of § 932.152, Outgoing regulations, are revised to add authority for handlers to use either the QAP process or continuous in-line inspection.

Section 932.52 authorizes sizing of whole pitted olives based upon count-per-pound designations (the actual weight of individual fruit) or modifications recommended by the committee and approved by the Secretary. Section 932.152 currently specifies that all processed olives must be sized in accordance with the count-per-pound designations established for canned whole ripe olives, and further requires that such sizing be done prior to pitting. This interim final rule provides an alternative method for sizing whole pitted olives to provide handlers with more flexibility in their operations while ensuring that appropriate size standards are continued for whole pitted olives.

The Standards provide a method for sizing whole pitted fruit on the basis of illustrations and approximate diameter ranges (section 52.3754, Table I). For example, olives that are "Jumbo" in size are those that are approximately 22 to 24 millimeters in diameter and conform closely with the applicable illustration in Table I. The committee believes that this sizing method may be more appropriate for whole pitted olives, which now account for a substantial majority of the California olives packaged in the whole form. Thus, this rule authorizes the sizing of whole pitted olives after pitting in accordance with the illustrations and approximate diameter ranges provided in the Standards.

The Standards also provide allowances for size variances for whole pitted olives in § 52.3756. The requirements of U.S. Grade C (the minimum allowed under the order), provide that of the 60 percent, by count, of the olives that are most uniform in size, the diameter of the largest olive cannot exceed the diameter of the smallest olive by more than 4 millimeters. These variances will be applied to whole pitted olives when handlers choose to have their pitted olives sized by diameter, after pitting. The committee believes that these guidelines for sizing whole pitted olives are sufficient and that no additional specifications relating to size are needed at this time.

To provide for this change in whole pitted olive sizing requirements, paragraph (f) of § 932.152 is revised to add authority for sizing by diameter as provided in the Standards. In addition, paragraph (b)(1) of § 932.152 is revised by deleting the sentence which requires sizing prior to pitting. Also, paragraph (b)(2) is revised to reflect the elimination of the in-line inspection and sizing prior to pitting requirements.

The outgoing regulations contain a table pertaining to size certification of limited size olives for limited use styles at § 932.152(g)(1). In 1991, the committee recommended and the Secretary approved modifications in the sizes of limited use olives. While such modifications were reflected elsewhere in the regulations, a conforming change was not made in Table II of § 932.152(g)(1). This rule corrects the table, bringing it into conformance with the rules as they were modified in 1991.

In accordance with section 8e of the Act, olives imported into the United

States are subject to comparable size requirements as established for domestically grown olives under the order. Those requirements are found in Olive Regulation 1 [7 CFR 944.401].

Under the import regulation, canned pitted ripe olives are subject to minimum size requirements in terms of a minimum diameter and a specific tolerance for undersized fruit. The undersize tolerances set forth in the import regulation are based upon those established for canned whole olives under the California olive marketing order.

As previously explained, this interim final rule establishes size requirements for canned pitted olives under the order in terms of illustrations, approximate diameter ranges, and size variances which are set forth in the Standards. Thus, in accordance with section 8e of the Act, conforming changes are made in the minimum size requirements for imported canned pitted olives so that such requirements are applied in a manner similar to that under the order.

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

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this interim final rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements currently in effect; (2) this rule should be in effect as soon as possible because handlers are currently processing olives; (3) this rule was unanimously recommended by the committee at a public meeting; and (4) this rule provides a 30-day comment period, and any comments received will be considered prior to finalization of this rule.

Lists of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

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

For the reasons set forth in the preamble, 7 CFR Parts 932 and 944 are amended as follows:

1. The authority citation for both 7 CFR Parts 932 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 932—OLIVES GROWN IN CALIFORNIA

2. Section 932.152 is amended by revising paragraphs (a), (b), (f)(2), (f)(3), and Table II in paragraph (g)(1) to read as follows:

§ 932.152 Outgoing regulations.

(a) *Inspection stations.* Processed olives shall be sampled and graded only at an inspection station which shall be any olive processing plant having facilities for in-line inspection which are satisfactory to the Inspection Service and the committee, or at an olive processing plant which has an approved Quality Assurance Program in effect.

(b) *Inspection*—(1) *General.* Inspection of packaged olives for conformance with § 932.52 shall be by a Quality Assurance Program approved by the Processed Products Branch (PPB), USDA; or by in-line inspection. A PPB approved Quality Assurance Program shall be pursuant to a Quality Assurance contract as referred to in § 52.2. During in-line inspection, no handler shall perform the final processing operations which immediately precede the packaging of the olives unless an inspector is present when the olives are so processed.

(2) *Pitting operations.* If olives are sized prior to pitting and such olives meet the size requirements for packaging as canned whole ripe olives but are held in containers prior to final processing, such olives shall be identified to the satisfaction of the Inspection Service and be held separate and apart from other olives until such time as they are submitted for inspection prior to being packaged. If olives are sized prior to pitting and such olives do not meet the size requirements for packaging as canned whole ripe olives but meet the applicable size requirements specified in § 932.52 for halved, sliced, chopped, or minced styles of canned ripe olives, such olives shall be identified to the satisfaction of the Inspection Service and be held separate and apart from other olives until such time as they are submitted for inspection prior to being packaged.

* * * * *

(f) *Size designations* (1) * * *

(2) The size of the canned whole olives shall conform with the applicable count per pound range indicated in Table I of paragraph (f)(1) of this section. When the count per pound of whole olives falls between two count ranges, the size designation shall be that of the smaller size. The average count for canned whole ripe olives is determined from all containers in the sample and is calculated on the basis of the drained weight of the olives.

(3) Pitted olives must meet the size requirements for canned whole olives specified in paragraphs (f)(1) and (f)(2) of this section prior to pitting, or must meet the size designations specified in § 52.3754 of the U.S. Standards for Grades of Canned Ripe Olives subsequent to pitting, subject to the following minimum size requirements:

(i) Variety group 1 olives, except Ascolano, Barouni, and St. Agostino varieties, shall be at least "Extra Large;"

(ii) Variety group 1 olives of the Ascolano, Barouni, and St. Agostino varieties shall be at least "Large;"

(iii) Variety group 2 olives, except the Obliza variety, shall be at least "Small;"

(iv) Variety group 2 olives of the Obliza variety shall be at least "Medium."

(g) * * *

(1) * * *

TABLE II.—LIMITED USE SIZE OLIVES

Variety	Average count range (per pound)
Group 1, except Ascolano, Barouni, and St. Agostino	76–105, inclusive.
Group 1, Ascolano, Barouni, and St. Agostino	106–180, inclusive.
Group 2, except Obliza	141–205, inclusive.
Group 2, Obliza	128–180, inclusive.

* * * * *

PART 944—FRUITS, IMPORT REGULATIONS

3. Section 944.401 is amended by revising paragraphs (b)(7) through (b)(11) to read as follows:

§ 944.401 Olive Regulation 1.

(a) * * *

(b) * * *

(7) Canned pitted ripe olives of Variety Group 1, except the Ascolano, Barouni, and St. Agostino varieties, shall be at least "Extra Large" as defined in § 52.3754 of the U.S. Standards for Grades of Canned Ripe Olives.

(8) Canned pitted ripe Variety Group 1 olives of the Ascolano, Barouni, and St. Agostino varieties shall be at least "Large" as defined in § 52.3754 of the U.S. Standards for Grades of Canned Ripe Olives.

(9) Canned pitted ripe olives of Variety Group 2, except the Obliza variety, shall be at least "Small" as defined in § 52.3754 of the U.S. Standards for Grades of Canned Ripe Olives.

(10) Canned pitted ripe Variety Group 2 olives of the Obliza variety shall be at least "Medium" as defined in § 52.3754 of the U.S. Standards for Grades of Canned Ripe Olives.

(11) Canned pitted ripe olives not identifiable as to variety or variety group shall be at least "Small" as defined in § 52.3754 of the U.S. Standards for Grades of Canned Ripe Olives.

* * * * *

Dated: July 21, 1994.

Terry C. Long,

Acting Deputy Director Fruit and Vegetable Division.

[FR Doc. 94–18215 Filed 7–26–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 948 and 953

[Docket Nos. FV94–948–1FIR, FV94–953–1FIR]

Expenses and Assessment Rates for Specified Marketing Orders (Colorado Potatoes and Southeastern Potatoes)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of two interim final rules that authorized expenditures and established assessment rates under Marketing Orders 948 and 953 for the 1994–95 fiscal period. Authorization of these budgets enables the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) and the Southeastern Potato Committee (Committees) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: June 1, 1994, through May 31, 1995, for § 953.251 and July 1, 1994, through June 30, 1995, for § 948.211.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Dennis L. West, (M.O. 948), Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado; and Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina). The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Irish potatoes grown in Colorado and Virginia and North Carolina are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Irish potatoes handled during the 1994–95 fiscal period, which began June 1, 1994, and ends May 31, 1995, for Southeastern potatoes and began July 1, 1994, and ends June 30, 1995, for Colorado potatoes. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 85 producers of Colorado Area III potatoes under the marketing order and approximately 15 handlers. Also, there are approximately 150 producers of Southeastern potatoes under the marketing order and approximately 60 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of the producers and handlers covered under these orders may be classified as small entities.

The budgets of expenses for the 1994–95 fiscal period were prepared by the Committees, the agencies responsible for local administration of their respective orders, and submitted to the Department for approval. The members of these Committees are producers and handlers of Colorado Area III and Virginia and North Carolina potatoes. They are familiar with the Committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input into these processes.

The recommended assessment rates were derived by dividing anticipated Committee expenses by expected respective shipments of Colorado Area III and Virginia and North Carolina potatoes. Because these rates will be applied to actual shipments of potatoes,

the assessment rates must be established at levels that will provide sufficient income to pay the Committees' expenses.

The Colorado Potato Administrative Committee, Northern Colorado Office (Area III) met on April 14, 1994, and unanimously recommended a 1994–95 budget of $24,325, $7,474 more than the previous year. Increases in the Federal portion of the administrative budget include $200 for Committee meetings, $450 for Committee mileage, $50 for insurance and bond, $2,860 for the manager's salary, $620 for medical insurance, $1,750 for office equipment, $500 for office supplies, $219 for payroll taxes, $200 for telephone, $250 for miscellaneous, $125 for manager's expense, and $250 for Federal meetings.

The major expense item is $11,500 for the manager's salary. The actual salary will be $10,781.50, based on nine months full-time work and three months at three-quarter time. An additional $718.50 was budgeted to have available and will only be spent if the workload necessitates full-time work.

The Committee also unanimously recommended an assessment rate of $0.02 per hundredweight, the same as last season. This rate, when applied to anticipated potato shipments of 1,476,750 hundredweight, will yield $29,535 in assessment income, which is adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1994–95 fiscal period, estimated at $31,113, will be within the maximum permitted by the order of two fiscal periods' expenses.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Southeastern Potato Committee met April 20, 1994, and unanimously recommended a 1994–95 budget of $11,000, the same as last year. Major expense items include $6,800 for Committee staff salaries and $900 for travel expenses.

The Committee also recommended an assessment rate of $0.0075 per hundredweight, $0.0025 less than last season's rate. When the Committee met, planting for the 1994–95 crop season had not been completed. However, the manager estimated shipments would generate about $7,000 in assessment income. This, along with funds from the Committee's $15,000 reserve, will be adequate to cover the expenses incurred. Funds remaining at the end of the 1994–95 fiscal period should be about the maximum permitted by the order of approximately one fiscal period's expenses.

Interim final rules were published in the **Federal Register** on May 26, 1994, for 7 CFR part 948 (59 FR 27223) and 7 CFR part 953 (59 FR 27222). Those rules added § 948.211 and § 953.251 which authorized expenses, and established assessment rates for the Committees. Those rules provided that interested persons could file comments through June 27, 1994. No comments were received.

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

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

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1994–95 fiscal periods for the programs began on June 1, 1994, for Southeastern potatoes and July 1, 1994, for Colorado Area III potatoes. The marketing orders require that the rates of assessment for the fiscal periods apply to all assessable potatoes handled during the fiscal periods. In addition, handlers are aware of these actions which were recommended by the Committees at public meetings and published in the **Federal Register** as interim final rules.

List of Subjects in 7 CFR Parts 948 and 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 948 and 953 are amended as follows:

1. The authority citation for 7 CFR parts 948 and 953 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 948—IRISH POTATOES GROWN IN COLORADO

Accordingly, the interim rule adding § 948.211 which was published at 59 FR 27223 on May 26, 1994, is adopted as a final rule without change.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

Accordingly, the interim rule adding § 953.251 which was published at 59 FR 27222 on May 26, 1994, is adopted as a final rule without change.

Dated: July 21, 1994

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18210 Filed 7–26–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 967

[Docket No. FV–94–967–2IFR]

Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This action establishes the quantity of Florida celery which handlers may ship to fresh markets during the 1994–95 marketing season at 6,712,910 crates or 100 percent of producers' base quantities. The 1994–95 marketing season covers the period August 1, 1994, through July 31, 1995. This interim final rule is intended to lend stability to the industry, and, thus, help provide consumers with an adequate supply of the product. As in past marketing seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, because production and shipments are anticipated to be less than the marketable quantity. This action was unanimously recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

DATES: Effective July 27, 1994. Comments which are received by August 26, 1994 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to

the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference this docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (813) 299–4770; or Mark Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 967 [7 CFR Part 967], both as amended, regulating the handling of celery grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule establishes the quantity of Florida celery (at 6,712,910 crates or 100 percent of producers' base quantities) which handlers may ship to fresh markets during the 1994–95 marketing season which covers the period August 1, 1994, through July 31, 1995. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately seven producers of celery in the production area and seven handlers of celery grown in Florida subject to regulation under the celery marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of celery producers and handlers may be classified as small entities.

This rule is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 15, 1994, and unanimously recommended a marketable quantity of 6,712,910 crates of fresh celery for the 1994–95 marketing season beginning August 1, 1994. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer, registered pursuant to section 967.37(f) of the order, to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1994–95 supply and demand.

As required by section 967.37(d)(1) of the order, a reserve of 6 percent (402,775 crates) of the 1993–94 total base quantities was made available to new producers and for increases for existing producers. The deadline for requesting changes in base quantities was May 1, 1994. No applications for additional base quantities were received.

The interim final rule will limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1994–95 marketing season to 6,712,910 crates. This marketable quantity is the same as the 1993–94 marketable quantity, and is more than the average number of crates marketed fresh during the 1987–88 through 1992–93 seasons. It is expected that such quantity will be more than actual shipments for the 1994–95 season. Thus, the 6,712,910 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the interim final rule should lend stability to the industry, and, thus, help provide consumers with an adequate supply of the product.

Based on these considerations, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action was recommended at a public meeting and all interested persons had an opportunity to express their views and provide input; (2) it is desirable to have this action in place as soon as possible because celery planting begins in July and the beginning of the 1994–95 crop year is August 1, 1994; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. A new § 967.329 is added to read as follows:

(Note: The following will not be published in the Code of Federal Regulations.)

§ 967.329 Handling regulation, marketable quantity, and uniform percentage for the 1994–95 season beginning August 1, 1994.

(a) The marketable quantity established under section 967.36(a) is 6,712,910 crates of celery.

(b) As provided in section 967.38(a), the uniform percentage shall be 100 percent.

(c) Pursuant to section 967.36(b), no handler shall handle any harvested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by section 967.37(d)(1), a reserve of six percent of the total base quantities is hereby authorized for: (1) New producers and (2) increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: July 21, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18211 Filed 7–26–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 989

[Docket No. FV94–989–2FIR]

Raisins Produced From Grapes Grown in California; Reapportionment of Independent Handler Representation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which revised the administrative rules and regulations established under the Federal marketing order for raisins produced from grapes grown in California. The interim final rule reapportioned the representation established for independent and small cooperative marketing association handlers on the Raisin Administrative Committee (Committee), to provide more equitable representation. This rule is based on a unanimous recommendation of the Committee, which is responsible for local administration of the order.

EFFECTIVE DATE: August 26, 1994.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or FAX (209) 487–5906; or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, D.C. 20090–6456; Telephone: (202) 205–2829, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 [7 CFR Part 989], both as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, [7 U.S.C. 601–674], hereinafter referred to as the "Act."

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of entry of the ruling.

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

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

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This rule finalizes an interim final rule which revised Section 989.126 of Subpart—Administrative Rules and Regulations [7 CFR 989.102–989.176] and is based on a unanimous recommendation of the Committee and other available information.

The interim final rule, published in the **Federal Register** on May 26, 1994, [59 FR 27225], reapportioned the Committee representation established for independent and small cooperative marketing association handlers on the Committee. The interim rule provided for broader independent handler/small cooperative handler representation on the Committee to reflect the different handler segments in the raisin industry The change did not impose any additional regulatory, informational, or cost requirements on handlers or producers.

Section 989.26 of the order provides that the Committee shall consist of 47 members, of whom 35 shall represent producers, 10 shall represent handlers, 1 shall represent the cooperative bargaining association, and 1 shall be a public member. The 10 handler positions are allocated between: (1) Cooperative marketing associations, each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year (referred to as major cooperative handlers); and (2) independent handlers and small cooperative marketing associations; i.e., those who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year. Currently, there is one cooperative in group (1) engaged in handling raisins. That handler is

allocated three positions on the Committee. Group (2) handlers are allocated seven positions. The allocation of members between the two handler groups is based on the provisions specified in paragraph (d) of § 989.26.

Section 989.126(b) of the Administrative Rules and Regulations had previously provided for independent and small cooperative handler representation on the Committee as follows:

(1) Two members selected from and representing the four handler(s) other than major cooperative handler(s) who acquired the largest percentage of the total raisin acquisitions during the preceding crop year;

(2) Two members selected from and representing the six handlers other than major cooperative marketing association handler(s) who acquired the next largest percentage of the total raisin acquisitions during the preceding crop year; and

(3) The remaining member(s) selected from and representing all other handlers, including small cooperative marketing association handler(s) and all processors.

For the purposes of this final rule, category (1) is referred to as the "large-sized handler" group, category (2) is referred to as the "medium-sized handler" group, and category (3) is referred to as the "all other handler" group. The number of handlers in the "all other handler" group has decreased from 10 to 7 since the 1990–91 crop year. In addition, during the 1992–93 crop year, the "medium-sized handler" group acquired more than four times the tonnage acquired by the "all other handler" group.

Based on this information, the Committee met on March 9, 1994, and unanimously recommended to move one handler position from the "all other handler" group to the "medium-sized handler" group.

The interim final rule amended § 989.126(b) of the Administrative Rules and Regulations by changing the independent and small cooperative handler representation on the Committee as follows:

(1) Two members selected from and representing the four handler(s) other than major cooperative handler(s) who acquired the largest percentage of the total raisin acquisitions during the preceding crop year;

(2) Three members selected from and representing the six handlers other than major cooperative marketing association handler(s) who acquired the next largest percentage of the total raisin acquisitions during the preceding crop year; and

(3) The remaining member(s) selected from and representing all other handlers, including small cooperative marketing association handler(s) and all processors.

The previous and current independent handler/small cooperative handler representation are shown as follows:

Independent handler/ small cooperative handler category	Representation	
	Previous	Current
Largest 4 Handlers ...	2	2
Next Largest 6 Handlers	2	3
Remaining Handlers .	3	2

The shift in membership recognized the relative importance of the "large-sized handler," "medium-sized handler," and "all other handler groups," and provides an opportunity for the ten largest independent/small cooperative handlers to be represented on the Committee either as a member or as an alternate member. The "all other handler" group is eligible to nominate two members and two alternate members.

The interim final rule provided a 30-day comment period which ended June 27, 1994. No comments were received.

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

After consideration of all relevant information presented, including the Committee's unanimous recommendation and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** on May 26, 1994, [59 FR 27225], will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending § 989.126, which was published at 59 FR 27225 on May 26, 1994, is adopted as a final rule without change.

Dated: July 21, 1994.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18216 Filed 7–26–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 993 and 999

[Docket No. FV93–993–2FR]

Dried Prunes Produced in California and Dried Prunes Imported Into the United States; Final Rule Establishing a Separate Tolerance for Prunes Affected by Brown Rot

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a separate brown rot tolerance for dried prunes produced in California and for dried prunes imported into the United States. This rule specifies a separate tolerance of 3 percent for brown rot affected prunes, within the combined tolerance allowance of 5 percent. The separate tolerance should benefit producers, handlers, and consumers, and foster continued growth of the market for dried prunes. This rule is based on a unanimous recommendation of the Prune Marketing Committee (Committee), which is responsible for local administration of the order. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, a corresponding change is being made in the prune import regulation.

EFFECTIVE DATE: August 1, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie L. Emmer, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P. O. Box 96458, Room 2523–S., Washington, D. C. 20090–6456; telephone: (202) 205–2829, or FAX (202) 720–5698; or Richard P. Van Diest, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721, telephone: (209) 487–5901, OR FAX (202) 487–5906; or

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 993 [7 CFR Part 993], both as amended, hereinafter referred to as the "order", regulating the handling of dried prunes produced in California. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act

of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule, which also amends the prune import regulation (section 999.200), is also issued pursuant to section 8e of the Act. Section 8e provides that whenever certain specified commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. Marketing order No. 993, as amended [7 CFR Part 993] prescribes grade and size requirements for dried prunes produced in California.

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

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

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

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, they also have small entity orientation, and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 20 handlers of dried prunes produced in California subject to regulation under the marketing order, and approximately 1,360 producers in the regulated area. In addition, at least two importers of dried prunes are subject to import regulations and will be affected by this action. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of handlers and producers of California dried prunes may be classified as small entities. The majority of the importers of dried prunes may also be classified as small entities.

This rule revises § 993.601 of Subpart—Grade Regulations and is based on a unanimous recommendation of the Committee and other available information.

Paragraphs (a) and (b) of § 993.49 of the marketing order provide the Secretary the authority to modify the minimum standards for natural condition prunes received from producers and dehydrators (inbound inspection). Likewise, paragraphs (a) and (b) of § 993.50 provide the Secretary authority for the modification of the minimum standards for prunes that are shipped or otherwise disposed of by a handler (outbound inspection). Whenever a regulation is established that increases grade requirements, it normally applies to both natural condition (unprocessed) prunes and processed (cleaned or treated with water or steam) prunes. Minimum grade standards are specified under § 993.97 and have been modified in the rules and regulations under §§ 993.149 and 993.150.

Under current procedures for handling and scoring (inspecting) prunes, clusters of brown rot affected prunes are removed from inbound samples during the initial grading process and are not scored against the lot. However, single prunes affected with brown rot are often not removed during initial grading and are subsequently scored as defective during inspection. For both incoming and outgoing prune inspections, the combined defect allowance, which includes mold, imbedded dirt, insect infestation and decay, cannot exceed 5 percent.

There has been a high incidence of brown rot infection in the 1992 and 1993 California prune crops. Brown rot is caused by two closely related fungi in the blossoms and fruit of prunes and other stone fruits. Success of treatment varies, making control of brown rot very difficult. Previously infected orchards are more susceptible to re-infection, and, thus, a reoccurrence of brown rot in the 1994 prune crop is expected.

Harvested prunes affected by brown rot cannot be marketed as prunes and, thus, have no value to handlers, since even blending them with good prunes for the manufacture of prune products, such as prune juice and concentrate, yields an unacceptable flavor.

Because of the expected high incidence of prunes affected by brown rot in the 1994 crop, the Committee met on December 8, 1993, and unanimously recommended establishing a separate defect tolerance of 3 percent for brown rot to be included in the current 5 percent combined defects tolerance for mold, imbedded dirt, insect infestation and decay. Finally, the Committee recommended that the new tolerance be applied to both inbound and outbound inspections. This rule will have the effect of lowering the brown rot tolerance from the current maximum of 5 percent (assuming no other defects) to a maximum of 3 percent.

The Committee believes the addition of specific brown rot tolerances will encourage growers to improve their cultural practices to reduce the incidence of brown rot in their 1994 crops. In addition, notification of the new requirements early in the growing season would provide growers with sufficient time to implement cultural practices that should reduce the incidence of brown rot in their prunes. The California prune industry will benefit through increased sales, which is expected to improve growers' returns. Handlers will benefit by paying for fewer prunes that have no value and by lowering their sorting costs. Finally, this rule will result in a consistently higher quality product being shipped, which will benefit consumers.

This tolerance also applies to imported prunes. Section 8e of the Act requires that whenever grade, size, quality or maturity requirements are in effect for dried prunes under a domestic

marketing order, imported dried prunes must meet the same or comparable requirements. Because this final rule establishes an additional tolerance for dried prunes under the domestic handling regulation, a corresponding change to the import prune regulation [7 CFR part 999.200] is also included in this rule.

The Committee recommended that this rule become effective by early July 1994, to ensure that implementation be in place by the beginning of the 1994–95 crop year, which begins August 1, 1994.

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

The proposed rule concerning this action was published in the **Federal Register** on May 18, 1994, [59 FR 25841]. Comments on the proposed rule were invited from interested persons until June 17, 1994. No comments were received.

After consideration of all available information, it is found that the action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action was unanimously recommended by the Committee; (2) the 1994–95 crop year begins August 1, 1994, and this rule should be effective promptly to cover as many of the 1994–95 season prunes as possible; and (3) the proposed rule provided a 30-day comment period and no comments were received.

List of Subjects

7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements

7 CFR Part 999

Import regulations, Dates, Filberts, Prunes, Raisins, Walnuts.

For the reasons set forth in the preamble, 7 CFR parts 993 and 999 are amended as follows:

1. The authority citation for 7 CFR parts 993 and 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

2. Paragraph (a) of § 993.601 is revised to read as follows:

§ 993.601 More restrictive grade regulation.

(a) *Incoming and outgoing regulation.* Whenever the estimated season average price to producers for prunes does not exceed the parity level specified in section 2(1) of the act, the minimum standards which handlers' receipts of natural condition prunes are required to meet pursuant to § 993.49(a) shall be the standards specified in § 993.49(a) and § 993.97(I), and the minimum standards which handlers' shipments or other final dispositions of prunes are required to meet pursuant to § 993.50(a) shall be the applicable standards set forth in § 993.97 *Exhibit A; minimum standards,* except that the following revised tolerance allowances shall apply in lieu of the tolerance allowances prescribed in paragraphs I C(2), II C(3), I C(5) and II C(6) of § 993.97 as follows:

(1) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed fifteen percent (15%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(2) The combined tolerance allowance for mold, brown rot, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%), and, within such tolerance, brown rot shall not exceed three percent (3%).

* * * * *

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

3. Section 999.200 is amended by revising paragraph C.(3) of Exhibit A—Grade Requirements to read as follows:

§ 999.200 Regulation governing the importation of prunes.

* * * * *

Exhibit A

Grade Requirements

* * * * *

C. * * *

(3) The combined tolerance allowance for mold, brown rot, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%), and, within such tolerance, brown rot shall not exceed three percent (3%).

* * * * *

Dated: July 21, 1994.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18214 Filed 7–26–94; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Waiver of the Nonmanufacturer Rule for television receiving sets and compact disc players.

SUMMARY: The Small Business Administration (SBA) is establishing a waiver of the Nonmanufacturer Rule for television receiving sets and compact disc players. The basis for a waiver for these classes of products is that there are no small business manufacturers or processors available to supply them to the Federal Government. The effect of these waivers is to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program for television receiving sets or compact disc players.

EFFECTIVE DATE: July 27, 1994. This class waiver applies to all solicitations dated on or after July 27, 1994.

FOR FURTHER INFORMATION CONTACT: James Parker, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 205–6465.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or the SBA 8(a) Program must provide the products of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations which implement this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 8(a)(17)(B)(iv)(II), 15 U.S.C. 637(a)(17)(B)(iv)(II), provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal procurement market. To be considered available to participate in the Federal procurement market on

these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual, and the second is the Product and Service Code established by the Federal Procurement Data System.

The SBA was originally asked to process 15 class waivers of these Nonmanufacturer Rule, and sources were found for all but these remaining two classes: (1) Television receiving sets and (2) compact disc players.

Regarding television receiving sets, the SBA sought small business sources by contacting the General Services Administration's Federal Supply Service in Fort Worth, Texas. The SBA also researched its Procurement Automated Source System (PASS) and the Thomas Register. In addition, SBA published a notice seeking potential sources in the May 6, 1994, Commerce Business Daily and an intent to grant a class waiver in the April 22, 1994, **Federal Register**, 59 FR 19150. After a 15-day comment period, two comments were received received.

Both comments regarded the existence of a small business manufacturer of health care televisions. These televisions are wall- or ceiling-mounted and are normally used in hospitals, nursing homes and dialysis facilities. Although health care televisions may be purchased and used by individuals in their homes, these televisions are not normally used in households for home entertainment. Two marketing firms for these televisions confirmed that these televisions are not considered household items and are not marketed to individuals for home entertainment. After reviewing the marketing information for health care televisions, it has become apparent that they are in a different category from household television receiving sets.

Based on the absence of small business manufacturers, SBA is establishing a class waiver for television receiving sets (SIC code 3651, PSC code 7730) pursuant to Section 8(a)(17)(B)(iv)(ii) of the Small Business Act, 15 U.S.C. 637(a)(17)(B)(iv)(II). The effect of this class waiver is to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program for household television receiving. This waiver will be in effect indefinitely, but is subject to review by SBA.

Regarding compact disc players, the SBA sought small business sources by contacting the General Services Administration's Federal Supply Service in Fort Worth, Texas. The SBA also researched the PASS and the Thomas Register. In addition, SBA published a notice seeking potential sources in the May 9, 1994, Commerce Business Daily and an intent to grant a class waiver in the April 22, 1994, **Federal Register**, 59 FR 19150. After a 15-day comment period, no comments were received.

Based on the absence of small business manufacturers, SBA is establishing a class waiver for compact disc players (SIC code 3651, PSC code 7730) pursuant to the statutory authority cited above. The effect of this class waiver is to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program for compact disc players. This waiver will be in effect indefinitely, but is subject to review by SBA.

Dated: July 19, 1994.

Thomas A. Dumaresq,

Associate Administrator for Government Contracting.

[FR Doc. 94–18066 Filed 7–26–94; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Waiver of the Nonmanufacturer Rule for office copiers.

SUMMARY: The Small Business Administration (SBA) is establishing a waiver of the Nonmanufacturer Rule for office copiers. The basis for a waiver for office copiers is that there are no small business manufacturers or processors available to supply them to the Federal Government. The effect of this waiver is to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program for office copiers.

EFFECTIVE DATES: July 27, 1994. This class waiver applies to all solicitations dated on or after July 27, 1994.

FOR FURTHER INFORMATION CONTACT: James Parker, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, Tel: (202) 205–6465.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or the SBA 8(a) Program must provide the products of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations which implement this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 8(a)(17)(B)(vi)(II) of the Small Business Act, 15 U.S.C. 637(a)(17)(B)(iv)(II), provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal procurement market. To be considered available to participate in the Federal procurement market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual, and the second is the Product and Service Code established by the Federal Procurement Data System.

The SBA was originally asked to process a request for a class waiver of the Nonmanufacturer Rule for copiers. After discussions with the General Services Administration's Office of Scientific Equipment Commodity Center, this was modified to be copiers/duplicating equipment. The SBA then searched the Procurement Automated Source System (PASS) and Thomas Register and published a notice seeking potential sources in the Commerce Business Daily. In addition, SBA published a notice of intent to grant a class waiver of the Nonmanufacturer Rule in the March 15, 1994, **Federal Register**, 59 FR 11938 (1994). After a 15-day comment period, two comments were received. Both comments regarded the existence of a small business manufacturer of duplicators.

The comment from a Federal agency informed SBA of the existence of a small business which manufactures office duplicators. The second comment was from a small business manufacturer of spirit duplicators and stencil/mimeograph duplicators, which they routinely provide to the Federal Government. Their duplicators use liquid ink and spirit fluid to produce

duplicates, and when compared with office copiers, their duplicators are slow and labor intensive. Due to their speed and labor intensive nature, these duplicators tend to be marketed primarily to churches and schools, and are intended for relatively low volume work. The firm's marketing representative informed SBA that these duplicators are not in direct competition with office copiers.

After reviewing the marketing information for these duplicators, it became apparent that these products are in a different category than office copiers. For these reasons, the class of products which is being waived from the Nonmanufacturer Rule is more narrowly defined to include only office copiers. All types of duplicating equipment are excluded from this class waiver.

Based on the above information, SBA is establishing a waiver for office copiers (SIC code 3579, PSC code 3610) pursuant to Section 8(a)(17)(B)(iv)(II) of the Small Business Act, 15 U.S.C. 636(a)(17)(B)(iv)(II). The effect of this class waiver is to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program for office copiers. This waiver will be in effect indefinitely, but is subject to periodic review by the SBA.

Dated: July 19, 1994.

Thomas A. Dumaresq,

Associate Administrator for Government Contracting.

[FR Doc. 94–18068 Filed 7–26–94; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 121

Small Business Size Standards; Termination of Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Termination of waivers of the Nonmanufacturer Rule for two classes of metal products and the retention of waivers for five classes of metal products.

SUMMARY: The first purpose of this document is to announce that the Small Business Administration (SBA) is terminating the waiver of the Nonmanufacturer Rule for: (1) Bars and rods, high nickel alloy, aluminum, nickel-copper, nickel-copper-aluminum, copper, copper-nickel, aluminum-bronze, and naval brass; and (2) Structural shapes, angles, channels, tees and zees, aluminum and high nickel alloy. The decision to terminate these waivers of the Nonmanufacturer Rule is based on evidence provided to the SBA that there is a small business which manufactures items within these classes of products. This small business is available to provide items within each class to the Federal government. Terminating these waivers will require recipients of contracts set aside for small or 8(a) businesses to provide the products of domestic small business manufacturers or processors where these classes of products are required.

The second purpose of this document is to announce that SBA is retaining class waivers for: (1) Bars and rods, high nickel alloy; (2) plate sheet, strip and foil, stainless steel and high nickel alloy; (3) wire, nonelectrical, high nickel alloy; (4) plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper; and (5) sheet and plate aluminum products. The effect of retaining these class waivers is that small businesses which receive either small business set-aside or SBA 8(a) Program contracts for these products awards may provide the products of any domestic manufacturer or processor.

EFFECTIVE DATE: July 27, 1994. The terminations effectuated by this notice apply to all solicitations dated on or after October 25, 1994.

FOR FURTHER INFORMATION CONTACT: James Parker, Procurement Analyst, phone (202) 205–6465.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing requirement that recipients of Federal contracts set aside for small businesses or the SBA 8(a) Program must provide the products of small business manufacturers or processors. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b).

Section 210 of Public Law 101–574 further amended the Small Business Act to allow for waivers for classes of products for which there are no small business manufacturers or processors "available to participate in the Federal procurement market," 15 U.S.C. 637(a)(17)(B)(iv)(II).

Decision to terminate two class waivers:

1. SBA announced its decision to grant a class waiver for bars and rods, high nickel alloy, aluminum, nickel-copper, nickel-copper-aluminum, copper, copper-nickel, aluminum-bronze, and naval brass in the **Federal Register** on May 15, 1991, 56 FR 22306. Recently, the Defense Logistics Agency's (DLA) Defense Industrial Supply Center (DISC) brought to SBA's attention the existence of a small business manufacturer for items within this class of products. Based on this information, a notice of the Agency's intent to terminate this waiver and waivers for six other classes of products was published in the **Federal Register** on January 10, 1994, 59 FR 1360. The notice allowed thirty days for a comment period.

The comments received from the small businesses and DLA were similar to each other. They agreed that a small business exists which manufactures items in this class of products. However, they believed they may not be able to supply all of their potential procurement requirements with items manufactured by the small business.

According to the SBA's published regulations, 58 FR 48954 (1993), "(u)pon receipt by the SBA of evidence that a small business manufacturer or processor exists in the Federal market for a waived class of products, the waiver shall be terminated by the Associate Administrator for (Government Contracting)." Based on this regulation, the SBA is required to terminate the class waiver for this class of products.

Therefore, the waiver previously granted for bars and rods, high nickel alloy, aluminum, nickel-copper, nickel-copper-aluminum, copper, copper-nickel, aluminum-bronze, and naval brass (Product and Service Code (PSC) 9530, Standard Industrial Classification Code (SIC) 3356) is terminated, effective ninety days from the date of this notice. Small business set-aside or SBA 8(a) Program contracts for this class of products may rely on this waiver where the solicitation is dated before the ninetieth day after the date of the **Federal Register** publication of this termination.

2. SBA announced its decision to grant the waiver for structural shapes, angles, channels, tees and zees, aluminum and high nickel alloy in the **Federal Register** on May 15, 1991, 56 FR 22306. The DISC brought to SBA's attention the existence of a small business manufacturer for items within this class of products. Based on this information, a notice of the Agency's intent to terminate this waiver was published in the **Federal Register** on January 10, 1994, 59 FR 1360. The notice allowed thirty days for a comment period.

The comments received from the small businesses and DLA were similar to each other. They agreed that a small business exists which manufactures items in this class of products. However, they believed they may not be able to

supply all of their potential procurement requirements with items manufactured by the small business.

According to the SBA's published regulations, 58 FR 48954 (1993), "(u)pon receipt by the SBA of evidence that a small business manufacturer or processor exists in the Federal market for a waived class of products, the waiver shall be terminated by the Associate Administrator for (Government Contracting)." Based on this regulation, the SBA is required to terminate the class waiver for this class of products.

Therefore, the waiver previously granted for structural shapes, angles, channels, tees and zees, aluminum and high nickel alloy (PSC 9540, SIC 3354) is terminated, effective ninety days from the date of this notice. Small business set-aside or SBA 8(a) Program contracts for this class of products may rely on this waiver where the solicitation is dated before the ninetieth day after the date of the **Federal Register** publication of this termination.

Retention of five class waivers:

The second part of this announcement addresses the decision to retain waivers for five classes of products which were proposed for termination in the **Federal Register** on January 10, 1994, 59 FR 1360. Those five classes are: (1) Bars and rods, high nickel alloy (PSC 9510, SIC 3312); (2) Plate, sheet, strip and foil, stainless steel and high nickel alloy (PSC 9515, SIC 3312); (3) Wire, nonelectrical, high nickel alloy (PSC 9525, SIC 3356); (4) Plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper (PSC 9535, SIC 3353); and (5) Sheet and plate aluminum products (PSC 9535, SIC 3353).

The SBA originally announced its decision to grant class waivers of the Nonmanufacturer Rule for these five classes of products in the **Federal Register** on May 15, 1991, 56 FR 22306. While researching SBA's Procurement Automated Source System (PASS) on a related issue, SBA became aware of the possible existence of small business manufacturers for items within each of these classes of products. After the **Federal Register** announcement on January 10, 1994, of an intent to terminate these classes of products, the SBA received comments from several small businesses and DLA regarding this matter. All parties urged that SBA not terminate waivers for these five classes of products on the basis that doing so would adversely affect both the Federal procurement process for these items and the existing suppliers for those products. Also, we learned that the production capabilities of the small business manufacturers of these products is severely limited in quantity and product type. Based on these comments, the SBA will retain the class waivers for these classes of products.

Dated: July 19, 1994.

Thomas A. Dumaresq,

Associate Administrator for Government Contracting.

[FR Doc. 94–18069 Filed 7–26–94; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 121

Small Business Size Standards; Surety Bond Guaranty Assistance Program

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: SBA is correcting the numbering of its final rule identifying a new size standard for the Surety Bond Guaranty Program, which was published in the **Federal Register** on June 1, 1994 (59 FR 28231).

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Assistant Administrator for Size Standards, Tel: (202) 205–6618.

SUPPLEMENTARY INFORMATION: On June 1, 1994, SBA promulgated a final rule amending the size standard in 13 CFR 121.802 for its Surety Bond Guaranty Program (59 FR 28231). The amended regulatory text was designated a paragraph (a)(3) of § 121.802. However, in a previous amendment of § 121.802, which contains size standards for SBA financial assistance, SBA had promulgated a new size standard for Small Business Investment Company assistance by dividing the text of paragraph (a)(2) into two separate paragraphs, paragraph (a)(2) for development company assistance and paragraph (a)(3) for SBIC assistance, and redesignating paragraph (a)(3), containing the size standard for surety bond guaranty assistance, as paragraph (a)(4). When promulgating its final rule amending the surety bond guaranty size standard, however, SBA inadvertently identified the amended regulatory text as paragraph (a)(3).

This correction properly designates the amended regulatory text concerning surety bond guarantees as paragraph (a)(4).

Correction of Publication

§ 121.80 [Corrected]

In the second column on page 28234 of the June 1, 1994 **Federal Register**, the amendatory instruction #2 is amended by correcting the reference to "paragraph (a)(3)" to read "paragraph (a)(4)" and the amended regulatory text incorrectly designated as paragraph (a)(3) is redesignated as paragraph (a)(4).

Dated: July 20, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–18158 Filed 7–26–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–99–AD; Amendment 39–8981; AD 94–15–10]

Airworthiness Directives; Aerospatiale Model ATR 42–300 and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–300 and –320 series airplanes. This action requires an inspection to verify that the cables supplying power to the aileron trim are adequately protected and to detect any damage to these cables. This amendment also requires installation of protective sleeves on unprotected cables, and replacement of damaged cables. This amendment is prompted by reports of a short circuit of these cables due to worn protective sleeves. The actions specified in this AD are intended to prevent short circuiting of the cables that supply power to the aileron trim, which could lead to loss of aileron trim control.

DATES: Effective August 11, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 11, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 26, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–300 and –320 series airplanes. The DGAC advises that the cables that supply power to the aileron trim short-circuited on an in-service airplane. Investigation revealed that the protective sleeve on these cables was worn. Short circuiting of the cables that supply power to the aileron trim, if not corrected, could result in loss of aileron trim control.

Avions de Transport Regional has issued Service Bulletin ATR42–27–0070, dated December 20, 1993, which describes procedures for visually inspecting to verify that the protective sleeve on the cables that supply power to the aileron trim adequately protect the cables, and to detect damaged cables. This service bulletin also contains instructions for replacing damaged cables with cables that have been modified in accordance with Avions de Transport Regional Service Bulletin ATR42–27–0014, Revision 2, dated December 20, 1993. This latter service bulletin describes procedures for installation of protective sleeves (Modification A0014) on cables that are not adequately protected. The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directive 94–004–054(B), dated January 5, 1994, in order to assure the continued airworthiness of these airplanes in France.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of aileron trim control due to a short circuit in the cables that supply power to the aileron trim. This AD requires visually inspecting to verify that the cables that supply power to the aileron trim are adequately protected, and to detect damaged cables; replacing damaged cables with cables that have been previously modified; and installing protective sleeves on unprotected cables. The actions are required to be accomplished in accordance with the service bulletins described previously.

This AD applies only to airplanes having manufacturer's serial numbers 003 through 072. For airplanes having manufacturer's serial numbers 073 and subsequent, a glass fabric adhesive tape has been applied to the cables prior to delivery of the airplane; therefore, these airplanes are not subject to the unsafe condition addressed by this AD action.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–99–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–15–10 AEROSPATIALE: Amendment 39–8981. Docket 94–NM–99–AD.

Applicability: Model ATR42–300 and –320 series airplanes having manufacturer's serial numbers 003 through 072, inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of aileron trim control due to short circuiting of the cables that supply power to the aileron trim, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a visual inspection to verify that the cables, which supply power to the aileron trim, are adequately protected, in accordance with Avions de Transport Regional Service Bulletin ATR42–27–0070, dated December 20, 1993.

(b) If the cables are adequately protected, no further action is required by this AD.

(c) If any cable is not adequately protected, prior to further flight, perform a visual inspection to detect damage to the unprotected cable, in accordance with Avions de Transport Regional Service Bulletin ATR42–27–0070, dated December 20, 1993.

(1) For any undamaged cable: Within 90 days after the effective date of this AD, install protective sleeves (Modification A0014) on the undamaged, unprotected cable, in accordance with Avions de Transport Regional Service Bulletin ATR42–27–0014, Revision 2, dated December 20, 1993.

(2) For any damaged cable: Prior to further flight, replace the damaged cable in accordance with Avions de Transport Regional Service Bulletin ATR42–27–0070, dated December 20, 1993, with cabling that has been previously modified (Modification A0014) in accordance with Avions de Transport Regional Service Bulletin ATR42–27–0014, Revision 2, dated December 20, 1993.

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

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

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

(f) The inspection and replacement shall be done in accordance with Avions de Transport Regional Service Bulletin ATR42–27–0070, dated December 20, 1993. The installation shall be done in accordance with Avions de Transport Regional Service Bulletin ATR42–27–0014, Revision 2, dated December 20, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 11, 1994.

Issued in Renton, Washington, on July 18, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17856 Filed 7–26–94; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Risk Disclosure by Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators and Commodity Trading Advisors to Customers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending Appendix A of CFTC rule 1.55(c) adopted by the Commission on June 28, 1994, to identify the United Kingdom and Ireland as additional jurisdictions whose relevant regulatory authorities have adopted the generic risk disclosure statement for specified products. This order is issued pursuant to the Commission's recent rulemaking amending, among other provisions, CFTC rule 1.55(c), 59 FR 34376 (July 5, 1994), to permit registrants to deliver to customers a two-page generic risk disclosure statement that may be used to satisfy the CFTC's risk disclosure requirements applicable to domestic and foreign commodity futures and commodity options, and which also is intended to satisfy the risk disclosure requirements of certain foreign jurisdictions. The Commission noted that it would on a periodic basis, update the listing of those jurisdictions that accept the generic risk disclosure document as meeting specified disclosure requirements.

EFFECTIVE DATE: July 27, 1994.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20581; telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1994 the Commission amended rules 1.55(c), 33.7(a) and 190.10(c) to permit registrants to deliver to customers a generic risk disclosure statement contained in new Appendix A of CFTC rule 1.55(c), which satisfies risk disclosure statement requirements contained in CFTC rules 1.55(b), 33.7(b) and 190.10(c) as well as the special disclosure requirement related to futures-style margining of the options premium permitted on certain foreign exchanges. As the generic statement was developed in cooperation with various international regulators and is intended to satisfy the risk disclosure requirements of certain foreign jurisdictions who have implemented the language of this risk disclosure statement in their jurisdictions in accordance with their domestic law, Appendix A specifies those jurisdictions that permit the use of the generic risk disclosure statement and the products for which the statement may be used. The CFTC noted that it would amend Appendix A on a periodic basis to provide updated information in this regard.

Subsequent to the publication of the generic risk disclosure statement in the **Federal Register**, the United Kingdom Securities and Futures Authority ("SFA") and the Central Bank of Ireland ("CBI") on July 11, 1994 confirmed the conclusion of applicable national procedures to permit the statement to be used to satisfy relevant risk disclosure obligations within their jurisdictions. The generic risk disclosure statement addresses, in the case of members of the United Kingdom SFA, commodity futures, options on commodity futures, options on commodities and options on securities, and in the case of members of exchanges whose rules have been approved by the CBI, financial futures and options on financial futures. Accordingly, the CFTC is amending Appendix A to reflect the addition of the United Kingdom and Republic of Ireland as jurisdictions in which the generic risk disclosure statement may be used to satisfy relevant risk disclosure requirements for the products specified.

Finally, the Commission is clarifying the entry for the United States in Appendix A to conform the text in the

entry to the text of the **Federal Register** preamble.

List of Subjects in 17 CFR Part 1

Commodity futures, Domestic exchange-traded commodity option transactions.

Accordingly, 17 CFR Part 1 is amended as set forth below:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

2. Appendix A to § 1.55(c) is amended by revising the entry for the "United States" which follows the text of the generic risk disclosure statement to read as set forth below, and by adding the following entries, after the "United States" entry:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

* * * * *

(c) * * *

Appendix A to CFTC Rule 1.55(c)—Generic Risk Disclosure Statement

Risk Disclosure Statement for Futures and Options.

* * * * *

United States: commodity futures, options on commodity futures and options on commodities subject to the Commodity Exchange Act.

United Kingdom: futures, options on futures, options on commodities and options on equities traded by members of the United Kingdom Securities and Futures Authority pursuant to the Financial Services Act, 1986.

Ireland: financial futures and options on financial futures traded by members of futures exchanges on exchanges whose rules have been approved by the Central Bank of Ireland under Chapter VIII of the Central Bank Act, 1989.

* * * * *

Issued in Washington, D.C. on July 20, 1994 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–18159 Filed 7–26–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from SmithKline Beecham Animal Health, to Walco International, Inc.

EFFECTIVE DATE: July 27, 1994.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: SmithKline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19380, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA 065–488 to Walco International, Inc., 15 West Putnam, Porterville, CA 93257. In addition, Walco has not previously been listed in 21 CFR 510.600(c)(1) as a sponsor of an approved NADA. That section is amended to add entries for the firm. Furthermore, in the **Federal Register** of October 8, 1991, FDA published a document to reflect a change of sponsor from Beecham Animal Health (Drug labeler code 000029) to SmithKline Beecham Animal Health (Drug labeler code 053571). The current 21 CFR 522.1696a(b)(1) and (b)(2) does not reflect that change. This document removes the entry for Beecham in 21 CFR 522.1696a(b) and adds in its place the entry for Walco International, Inc., the new sponsor. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) and 21 CFR 522.1696a(b)(1) and (b)(2) to reflect those changes.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR 522

Animal Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Walco International, Inc." and in the table in paragraph (c)(2) by numerically adding a new entry for "049185" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Walco International, Inc., 15 West Putnam, Porterville, CA 93257.	049185
* * * * *	

(2) * * *

Drug labeler code	Firm Name and address
* * * * *	
049185	Walco International, Inc., 15 West Putnam, Porterville, CA 93257.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.1696a [Amended]

4. Section 522.1696a *Penicillin G benzathine and penicillin G procaine sterile suspension* is amended in paragraph (b)(1) and (b)(2) by removing "000029" and adding in its place "049185".

Dated: July 20, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–18309 Filed 7–26–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8557]

RIN 1545–AM64

Place for Filing Lien on Personal Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the place for filing a notice of tax lien against personal property. Sections 1015(s)(1) (A) and (B) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), amended section 6323 of the Internal Revenue Code to provide that a state conforming to or reenacting a federal law establishing a national filing system is not considered to have designated a second office for filing a notice of tax lien. TAMRA also amended section 6323 to provide that the filing of a notice of federal tax lien is governed solely by the Internal Revenue Code and is not subject to any other federal law that establishes a national filing system.

EFFECTIVE DATE: These final regulations are effective April 21, 1993.

FOR FURTHER INFORMATION CONTACT: Robert A. Walker, 202–622–3209 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

These final regulations amend the Procedure and Administration Regulations (26 CFR part 301) under section 6323 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 6323 by sections 1015(s)(1) (A) and (B) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, 102 Stat. 3573) (TAMRA).

The IRS published a notice of proposed rulemaking in the **Federal Register** on April 22, 1993, (58 FR 21550) providing proposed rules under section 6323 of the Code. No public comments were received and accordingly, the final regulations are substantially identical to the proposed regulations. Certain minor stylistic changes have been made.

Explanation of Provisions

Sections 1015(s)(1) (A) and (B) of TAMRA amended section 6323(f) of the Code by clarifying that a state's conformance to or reenactment of a federal law establishing a national filing system for personal property does not constitute a second office for filing in that state. The existing regulations provide that if a state has designated more than one office for filing liens, the IRS must file the notice of tax lien with the clerk of the appropriate United States district court. TAMRA also clarified that the filing of notices of liens by the IRS is to be governed solely by the Code and is not subject to any other federal law establishing a national filing system.

TAMRA's amendments to the Code were in response to *United States* v. *Air Florida, Inc.*, 56 B.R. 732 (S.D. Fla. 1985). In that case, the IRS filed its Notice of Federal Tax Lien with the clerk of the county circuit court, but the court held that under section 6323(f)(1) the IRS was instead required to file its Notice of Federal Tax Lien in the office of the clerk of the United States district court. The court found that the State of Florida had designated not one, but two offices for the filing of Federal tax liens against personal property: The office of the clerk of the circuit court of the county in which the personal property was located and, because the state had adopted the U.S. government's national filing system for civil aircraft, the F.A.A.'s offices in Oklahoma City, Oklahoma. The final regulations revise § 301.6323(f)–1 by providing that state law that conforms to or reenacts a federal law establishing a national filing system does not constitute a second office for filing; by providing that the filing of liens is not subject to federal laws (other than the Code) establishing a national filing system for liens; and by adding two examples, one of which resembles the fact pattern of the *Air Florida* case.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these proposed regulations is Robert A. Walker, Office of the Assistant Chief Counsel (General Litigation), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6323(f)–1 is amended as follows:

1. Two sentences are added at the end of paragraph (a)(2).
2. Paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively.
3. A new paragraph (c) is added.
4. Newly designated paragraph (e) is amended by adding *Example 5* and *Example 6*.
5. The additions and revisions read as follows:

§ 301.6323(f)–1 Place for filing notice; form.

(a) * * *

(2) * * *

A state law that conforms to or reenacts a federal law establishing a national filing system does not constitute a designation by state law of an office for filing liens against personal property. Thus, if state law provides that a notice of lien affecting personal property must be filed in the office of the county clerk for the county in which the taxpayer resides and also adopts a federal law that requires a notice of lien to be filed in another location in order to attach to a specific type of property, the state is considered to have designated only one office for the filing of the notice of lien, and to protect its lien the Internal Revenue Service need only file its notice in the office of the county clerk for the county in which the taxpayer resides.

* * * * *

(c) *National filing system.* The filing of federal tax liens is to be governed solely by the Internal Revenue Code and is not subject to any other federal law that may establish a national system for filing liens and encumbrances against a particular type of personal property. Thus, for example, the Service is not subject to the requirements established by the Federal Aviation Agency for

filing liens against civil aircraft in Oklahoma City, Oklahoma.

* * * * *

(e) * * *

Example 5. The law of State F provides that notices of lien affecting personal property are to be filed with the clerk of the circuit court in the county in which the personal property is located. State F has conformed state law to federal law to provide that all instruments affecting title to an interest in any civil aircraft of the United States must be recorded in the Office of the Federal Aviation Administrator (FAA) in Oklahoma City, Oklahoma. On July 1, 1990, a tax lien arises against ABC airline, which owns aircraft situated in State F. The Internal Revenue Service files a Notice of Federal Tax Lien with the clerk of the circuit court in the county in which the aircraft is located but does not file the notice with the FAA in Oklahoma City, Oklahoma. Because the FAA system adopted by State F does not constitute a second place of filing pursuant to section 6323(f), the federal tax lien is validly filed.

Example 6. Assume the same facts as *Example 5* except that State F did not reenact or conform state law to the FAA requirements. The result is the same because the filing of federal tax liens is governed solely by the Internal Revenue Code, and is not subject to any other national filing system.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 10, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–18193 Filed 7–26–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

28 CFR Part 0

Redelegation of Functions; Delegation of Authority to Drug Enforcement Administration Official

AGENCY: Department of Justice.

ACTION: Notice of clarification of final rule.

SUMMARY: This document clarifies the Final Rule published May 6, 1994 (59 FR 23637), regarding the redelegation of certain functions and authority which were vested in the Attorney General by the Controlled Substances Act and subsequently delegated to the Administrator of the Drug Enforcement Administration. In that Final Rule, the Administrator redelegated to the Deputy Administrator the authority to exercise all necessary functions under 21 CFR Part 1300 which have not already been redelegated in subpart R of 28 CFR 0.104. This notice will serve to clarify that all functions under 21 CFR Parts 1300–1316 were delegated to the Deputy Administrator by the Final Rule published May 6, 1994.

EFFECTIVE DATE: May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Julie C. Gallagher, Associate Chief Counsel, Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537. Telephone number: (202) 307–8010.

List of Subjects in 28 CFR Part 0

Authority delegations (Government Agencies), Organization and functions (Government Agencies).

For the reasons set forth above, and pursuant to the authority vested in the Administrator of the Drug Enforcement Administration by 28 CFR 0.100 and 0.104, and 21 U.S.C. 871, Title 28 of the Code of Federal Regulations, part 0, Appendix to subpart R, Redelegation of Functions, is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. The Appendix to subpart R is amended as follows:

a. Sec. 12 is revised to read as follows:

Appendix to Subpart R—Redelegation of Functions

* * * * *

Sec. 12. *All other functions.* The Deputy Administrator is authorized to exercise all necessary functions under 21 CFR Parts 1300 through 1316, except those functions otherwise delegated within this subpart. This will include functions which may be vested in the Administrator in subsequent amendments to 21 CFR Parts 1300 through 1316 and not otherwise specifically assigned or reserved by him.

Dated: July 12, 1994.

Thomas A. Constantine,

Administrator.

[FR Doc. 94–17416 Filed 7–26–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Indiana's Surface Coal Mining and Reclamation Statutes concerning an exemption for operations conducted under IC 13–4.1 (Indiana SMCRA) from the need for a "construction in a floodway" permit issued by the Indiana Department of Natural Resources (IDNR), Division of Water. The amendment is intended to consolidate and streamline Indiana's permit system by implementing statutory changes contained in the 1993 Senate Enrolled ACT (SEA) 179.

EFFECTIVE DATE: July 27, 1994.

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

SUPPLEMENTARY INFORMATION:

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

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated October 1, 1993 (Administrative Record Number IND–1325), the IDNR submitted a proposed amendment to the Indiana program concerning statutes enacted by Indiana under SEA 179 from the 1993 Indiana Legislative Session. SEA 179 contains numerous amendments to the Indiana statutes, but only those which pertain to the Indiana program are discussed below.

OSM announced receipt of the proposed amendment in the May 5, 1994, **Federal Register** (59 FR 23176), and, in the same notice, opened the public comment period and provided

opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on June 6, 1994. On May 26, 1994 (59 FR 27251), OSM corrected a typographical error in the May 5, 1994, proposed rule announcement.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

IC 13–4.1–4 Permit Approval or Denial

Indiana has amended subsection IC 13–4.1–4–3(a) concerning the findings required to be made by the director of the IDNR prior to issuing a permit. New subdivision 3(a)(10) is added to provide as follows:

(10) if any part of the operation would take place in a floodway (as defined in IC 13–2–22–3), the operation will not:

(A) result in unreasonably detrimental effects upon the fish, wildlife, or botanical resources;

(B) adversely affect the efficiency; or

(C) unduly restrict the capacity of the floodway.

In its submittal of this amendment, Indiana explained that the proposed language quoted above is being added to the Indiana program as a consequence of an amendment to IC 13–2–22–13. New subdivision 13(e)(3) is added to IC 13–2–22–13 to provide that operations conducted under IC 13–4.1 (Indiana SMCRA) are exempted from the need for a "construction in a floodway" permit issued by the IDNR, Division of Water. Instead, any activity in a floodway which is to be conducted as part of an operation regulated under IC 13–4.1 must be identified in the permit application to the Division of Reclamation. A determination must then be made by the Division of Reclamation that the environmental standards identified in the proposed language are met. This determination will then become part of the "Findings Document" which accompanies each of the Division's final permit recommendations.

There is no direct Federal counterpart in SMCRA or the Federal regulations to the proposed amendment. As explained by Indiana in its submittal of this amendment, the purpose of this legislative change is to consolidate and streamline the permit system as well as strengthen the technical review of the floodway permit work. Indiana further explained that any disturbance on a mine site is part of a much larger effort already being reviewed by the Division of Reclamation. Further, Indiana asserts that this change allows for a more thorough evaluation of the work when taken in context with the overall plan of operation.

The Director finds that the proposed amendments are not inconsistent with SMCRA and the Federal regulations. None of the existing Indiana program provisions are rendered less effective by the inclusion of the proposed provisions in the Indiana program. On the contrary, all of the approved provisions of the Indiana program remain in full effect. Further, the proposed provisions are not inconsistent with SMCRA sections 503 concerning State programs, and 505 concerning State laws. Therefore, the Director is approving the amendment.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 3 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Fish and Wildlife Service (FWS) commented on the amendment (Administrative Record Number IND–1378). The FWS stated that if the review of impacts to "fish, wildlife, and botanical resources" continues to be administered by the IDNR's Division of Fish and Wildlife, or other trained fish and wildlife biologists, the FWS assumes that the level of protection of fish and wildlife resources would not be changed from the current situation. As discussed above in the Director's Findings, Indiana explained in its submittal that the proposed amendment should strengthen the technical review of the floodway permit work since the review will become part of a much larger effort already being conducted by the Division of Reclamation. The change, Indiana asserts, will allow for a more thorough evaluation of the construction on a floodway. In his review of this amendment, the Director has concluded that none of the existing Indiana program provisions are rendered less effective by the inclusion of the proposed provisions in the Indiana program.

The FWS further stated that the FWS does not anticipate any impacts to Federally endangered/threatened species as a result of the proposed revision. The Director concurs.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the May 5, 1994, **Federal Register** (59 FR 23176). The comment period closed on June 6, 1994. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. No public comments were received in response to this amendment.

Environmental Protection Agency (EPA)

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

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IND–1221). EPA did not respond to OSM's request.

V. Director's Decision

Based on the findings above, the Director is approving Indiana's program amendment concerning construction in a floodway as submitted by Indiana on October 1, 1993. The Federal regulations at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments

submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 20, 1994.

Patricia P. Acker,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

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

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

2. In Section 914.15, paragraph (bbb) is added to read as follows:

§ 914.15 Approval of regulatory program amendments

* * * * *

(bbb) The following amendment to the Indiana program concerning construction in a floodway as submitted to OSM on October 1, 1993, is approved effective July 27, 1994: 310 IAC 13–4.1–4–3(a)(10) concerning required findings on construction in a floodway.

[FR Doc. 94–18200 Filed 7–26–94; 8:45 am]

BILLING CODE 4310–05–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving proposed Program Amendment Number 67 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations concerning postmining land uses. Specifically, the amendment proposes to clearly identify postmining land use categories, to clarify the comparison of premining and postmining land uses, to clarify that "undeveloped land" may be the designated postmining land use only if the premining land use is undeveloped land, to clarify that "forestland" and "fish and wildlife habitat" are distinct postmining land uses, and to eliminate redundant provisions more stringent than the Federal regulations for notice and approval of alternative postmining land uses by other reviewing agencies and for the design of postmining land use plans by an engineer.

EFFECTIVE DATE: July 27, 1994.

FOR FURTHER INFORMATION CONTACT: Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232. Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of the Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated May 17, 1994 (Administrative Record No. OH–2017), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Program Amendment Number 67. In this amendment, Ohio proposed to revise one rule at Ohio Administrative Code (OAC) 1501:13–9–17 to make the Ohio program as effective as corresponding Federal regulations concerning postmining land uses. OSM announced receipt of proposed Program Amendment Number 67 in the May 26, 1994, **Federal Register** (59 FR 27255), and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 27, 1994.

III. Director's Findings

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

1. *OAC 1501:13–9–17(C) (1) through (11), Postmining land use categories.* Ohio is revising paragraphs (C) (1) through (11) to clarify the titles of the eleven approved postmining land use categories. Since these are nonsubstantive changes, the Director finds that the revised State rules are no less effective than their Federal counterparts at 30 CFR 701.5.

2. *OAC 1501:13–9–17(B)(1), Mining prior to April 10, 1972.* Ohio is revising paragraph (B)(1) to clarify that the postmining land use for land that was mined pursuant to a license issued prior to April 10, 1972, shall be judged on the basis of the highest and best use that can be achieved which is compatible with

surrounding areas and does not require the disturbance of areas previously unaffected by mining. The State's proposed language is consistent with the counterpart Federal regulations at 30 CFR 816/817/133(b). The Director, therefore, finds that the revised State rule is no less effective than its Federal counterpart.

3. *OAC 1501:13–9–17(B)(2), Comparison of postmining and premining land uses.* Ohio is deleting the existing requirement in paragraph (B)(2) that, if the premining land use was changed within five years of the beginning of mining, the postmining land use shall be compared to the historic use of the land as well as its use immediately before mining. There are no Federal counterparts at 30 CFR 816/817.133. However, the State rule at 1501:13–4–04(I)(1)(a) requires information on historical land use in permit applications if the land use changed within five years before mining. This corresponds to the Federal regulations at 30 CFR 780.23(a)(1) and 784.15(a)(1). Since the State rule at OAC 1501:13–9–17(B) states that "[t]he premining uses of land to which the postmining land uses are compared shall be those which the land previously supported * * *" this would include historical land uses if the land use changed within five years before mining. Therefore, the Director finds that the deletion of former paragraph (B)(2) will not render the Ohio program less effective than the Federal regulations.

4. *OAC 1501:13–9–17(B)(2), Undeveloped land use.* Ohio is adding a new requirement in paragraph (B)(2) that land may be returned to the undeveloped postmining land use category only if the land was categorized as undeveloped prior to mining. Ohio's proposed rule clarifies that undeveloped land may be the designated postmining land use only if the premining land use is undeveloped land. The Director finds that the proposed rule is not inconsistent with and is no less effective than the Federal regulations at 30 CFR 816/817.133(b) and 30 CFR 701.5.

5. *OAC 1501:13–9–17(C), Undeveloped land use.* Ohio is revising paragraph (C) to require that all proposed changes of land use, including changes from undeveloped land to forestland or fish and wildlife habitat, shall be considered an alternative land use change subject to approval by the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief). The Director finds that Ohio's proposed rule is not inconsistent with and is not less effective than the Federal regulations at 30 CFR 816/817.133 and the Federal definition of "land use" at 30 CFR 701.5.

6. *OAC 1501:13–9–17(D)(8), Undeveloped land use.* Ohio is deleting the existing requirement in paragraph (D)(8) that plans to change the postmining land use to undeveloped land from some other land use category must treat the land as if the postmining land use were in the forestland/fish and wildlife habitat category. The proposed deletion of this paragraph is consistent with revised paragraphs (B)(2) and (C) which clarify that undeveloped land may be the designated postmining land use only if the premining land use is undeveloped land. Therefore, the Director finds that the proposed deletion of paragraph (D)(8) will not render the Ohio rule less effective than the Federal regulations.

7. *OAC 1501:13–9–17(C) (9) and (10), Forestland and Fish and Wildlife Habitat.* Ohio is revising paragraphs (C)(9) and (C)(10) to clarify that "forestland" and "fish and wildlife habitat" are distinct postmining land uses. The "forest" category includes land used for commercial or noncommercial production of wood or wood products. The Director finds that the revised rules are no less effective than the Federal regulations at 30 CFR 816/817.133 and the corresponding Federal definitions at 30 CFR 701.5.

8. *OAC 1501:13–9–17(D)(1), Agency review of postmining land uses.* Ohio is deleting the existing requirement in paragraph (D)(1) that requests for alternative postmining land use must contain a written statement of views from the authorities having statutory responsibilities for land use policies and plans. Ohio is also deleting the requirement in paragraph (D)(1) that the operator must obtain any required approval of the final land use from local, State, or Federal land management agencies, including any necessary zoning or other required changes. The counterpart Federal regulations at 30 CFR 816/817.133(c) impose no similar requirements. Therefore, the Director finds that the deletion of these requirements will not render the Ohio program less effective than the Federal regulations.

9. *OAC 1501:13–9–17(D)(6), Agency review of postmining land uses.* Ohio is revising paragraph (D)(6) to clarify that, for approval by the Chief, proposed alternative postmining land uses must identify measures to prevent or mitigate adverse effects on fish and wild not render the Ohio program less effective than the Federal regulations.

9. *OAC 1501:13–9–17(D)(6), Agency review of postmining land uses.* Ohio is revising paragraph (D)(6) to clarify that, for approval by the Chief, proposed alternative postmining land uses must identify measures to prevent or mitigate adverse effects on fish and wildlife and on threatened or endangered plants or animals or their critical habitats and must demonstrate that an opportunity to comment has been provided in accordance with OAC section 1501:13–9–11 to appropriate State and Federal fish and wildlife management agencies. There are no Federal counterparts at 30–CFR 816/817.133. Therefore, the Director finds that the revisions do not render the Ohio program less effective than the Federal regulations.

10. *OAC 1501:13–9–17(D)(9), Agency review of postmining land use.* Ohio is deleting the existing requirement in paragraph (D)(9) that alternative postmining land use plans must demonstrate that the operator has provided written notice of the proposed land use to appropriate State and Federal agencies with instructions for those agencies to provide any comments on the proposed land use to the Chief. The Federal requirements at 30 CFR 816/817.133 do not impose a similar requirement. Therefore, the Director finds that the deletion of this requirement will not render the Ohio program less effective than the Federal regulations.

11. *OAC 1501:13–9–17(D)(2), Design of postmining land use plans by an engineer.* Ohio is deleting the existing requirement at paragraph (D)(2) that postmining land use plans must be designed under the general supervision of a registered engineer or other appropriate professional. There are no similar Federal requirements at 30 CFR 816/817.133. The Director, therefore, finds that the deletion of paragraph (D)(2) will not render the Ohio program less effective that the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program.

The U.S. Department of Agriculture, Soil Conservation Service, stated that it does not recommend that any forestland be grazed as indicated in paragraph (C)(3) of OAC 1501:13–9–17. The only change proposed by Ohio at paragraph (C)(3) was to clarify the title of the approved postmining land use. Therefore, the Director will not address this comment.

No other comments were received.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Air Act (42 U.S.C. 7401 *et seq.*) or the Clean Water Act (33 U.S.C. 1251 *et seq.*). None of the revisions that Ohio proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. OH–1993). The EPA responded on June 20, 1994 (Administrative Record No. OH–2030), that it reviewed the proposed amendment but had no comments.

V. Director's Decision

Based on the above findings, the Director approves the proposed program amendment as submitted by Ohio on May 17, 1994.

The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order No. 12866

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

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 20, 1994.

Patricia P. Acker,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

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

2. Section 935.15 is amended by adding paragraph (rrr) to read as follows:

§ 935.15 Approval of regulatory program amendment.

* * * * *

(rrr) The following rules, as submitted to OSM on May 17, 1994, are approved effective July 27, 1994: Program Amendment Number 67 which consists of revisions to the Ohio Administrative Code (OAC) at 1501:13–9–17 concerning postmining use of land.

[FR Doc. 94–18201 Filed 7–26–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300338A; FRL–4900–5]

RIN 2070–AB78

Diethylene Glycol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends the current exemption from the requirement of a tolerance for residues of diethylene glycol by expanding its use as an inert ingredient, to read "deactivator, adjuvant for formulations used before crop emerges from the soil." Texaco Chemical Co. requested this regulation.

EFFECTIVE DATE: July 27, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300338A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request

to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 10, 1994 (59 FR 24100), EPA issued a proposed rule that gave notice that Texaco Chemical Co., P.O. Box 27707, Houston, TX 77227-7707, had submitted pesticide petition (PP) 2E4191 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by amending the current exemption from the requirement of a tolerance for residues of diethylene glycol by expanding its use as an inert ingredient, to read "deactivator, adjuvant for formulations used before crop emerges from the soil."

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the amended tolerance exemption will protect the public health. Therefore, the amended tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 14, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Diethylene glycol		Deactivator, adjuvant for formulations used before crop emerges from soil.
*		

Inert ingredients	Limits	Uses
* *	* * *	* *

* * * * *

[FR Doc. 94–18042 Filed 7–26–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 93–153; FCC 94–177]

Conflict of Interest

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules to implement the provisions of the Telecommunications Authorizations Act of 1992, which created a new section 4(g)(3) of the Communications Act that authorizes the Commission to accept unconditional gifts, donations and bequests in furtherance of its functions. The Commission has ensured that its rules are consistent with the directive in section 4(g)(3) to promulgate implementing regulations that "include provisions to preclude the acceptance of any gift, bequest or donation that would create a conflict of interest or the appearance of a conflict of interest." These regulations will promote the performance of the Commission's regulatory functions.

EFFECTIVE DATE: August 26, 1994.

FOR FURTHER INFORMATION CONTACT: Sharon Kelley, Office of General Counsel, Federal Communications Commission, (202) 418–1720.

SUPPLEMENTARY INFORMATION: 1. This is a summary of the Report and Order (R&O) in GC Docket 93–153, adopted June 24, 1994 and released July 22, 1994. The full text of this document is available for inspection and copying Monday through Friday, 9 a.m. to 4:30 p.m. in the FCC Dockets Reference Room (Room 239), 1919 M Street NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor International Transcription Services, Inc. (ITS, Inc.), 2100 M Street NW., Suite 140, Washington, DC 20037.

2. The purpose of this R&O is to implement the conflict of interest restrictions in section 4(g)(3) of the Communications Act, which authorizes the Commission to accept unconditional gifts, donations and bequests. In order to develop implementing regulations, the Commission looked for guidance to the policies of other agencies that have statutory gift acceptance authority, the provisions of the new Office of Government Ethics (OGE) government-wide standards of employee conduct, and General Services Administration (GSA) regulations implementing agency acceptance of travel reimbursement. The Commission requested commenters to submit alternative proposals. None of the parties who filed comments in this proceeding endorsed an absolute ban on the acceptance of gifts from Commission regulatees. As discussed in the Notice of Proposed Rulemaking (NPRM), 58 FR 34405 (1994), and as also pointed out by commenters, we continue to believe that imposing such an absolute ban would exclude a vast number of potential donors, and those who may be the most likely donors of equipment or other services that would be useful to the Commission in achieving more efficient performance of its regulatory functions. In addition, as discussed in our NPRM, gifts to agencies do not necessarily involve the same type or degree of conflicts or appearance concerns as those of personal gifts made to employees with decisionmaking responsibility—the focus of most traditional conflict of interest regulations, such as the OGE government-wide standards of employee conduct. In the NPRM, we concluded that, in the context of agency gift acceptance, more flexible approaches could be used. Commenters agreed with the conclusion reached in our NPRM that less restrictive policies can be formulated which adequately address conflict of interest concerns. Accordingly, the Commission has decided to reject an absolute ban on gifts from regulated entities and to construe section 4(g)(3) in a flexible manner that will better achieve its statutory objective and promote the performance of the Commission's regulatory functions.

3. Section 4(g)(3), unlike some agency gift acceptance statutes, expressly limits the Commission's gift acceptance authority to gifts that are "unconditional." This statutory restriction effectively precludes gifts that are made contingent on official action. To guard against any potential that official action could be influenced by gifts, we have determined that it is critical to ensure that the section 4(g)(3) prohibition on conditional gifts is carefully and scrupulously observed. The regulations adopted in this Order contain certain structural safeguards and absolute prohibitions designed to avoid both conflict of interest concerns and appearance concerns. In addition, the regulations impose mandatory factors that authorized agency ethics officials must consider in determining whether conflicts or appearance problems exist. Finally, the regulations contain public disclosure and reporting requirements that are intended to minimize or eliminate appearance problems. We believe that these mechanisms work together effectively to eliminate the conflicts of interest and appearance concerns. In order to insulate agency officials with programmatic responsibilities, insofar as possible, from involvement in determinations regarding gift acceptance or discussions with potential donors regarding gifts, we are requiring potential donors and Commission employees who receive gift overtures to refer such matters to the Commission's designated agency ethics official. We also are imposing an absolute bar on agency solicitation of gifts from regulated entities and others identified as prohibited sources under the new OGE standards of conduct. We are requiring that all monetary gifts be made by check rather than in cash. Further, because we think that conflicts of interest and appearance problems may be greatest when the gifts made to the agency appear to enure more to the personal benefit of employees, we have decided that certain types of gifts should be prohibited altogether, e.g., food and drink which would continue to be governed by the OGE standards of conduct or other independent authority.

4. We have also decided not to accept under section 4(g)(3) gifts of travel expenses for attendance at meetings that are governed by the regulations implementing 31 U.S.C. 1353, the government-wide travel reimbursement statute. The GSA rules implementing section 1353 prohibit agencies from using general gift acceptance statutes to accept travel reimbursement for attendance at meetings that are covered by that section. As we noted in the NPRM, however, GSA's rules implementing 1353 do not govern the acceptance of travel and related expenses for attendance at, or

participation in, meetings or events that are required to carry out an agency's statutory or regulatory functions. We agree with commenters that there are substantial public interest benefits to be gained by employees' attendance at, or participation in, certain government sponsored meetings or events (such as international coordination meetings provided for by treaty). Thus, to the extent that attendance at, or participation in, government sponsored meetings or events are deemed outside the scope of 1353 coverage (because the meetings are required in order to carry out statutory or regulatory functions) we will permit the acceptance of travel reimbursement for them under section 4(g)(3).

5. The Commission has established the imposition of mandatory factors that Commission officials must consider in determining whether conflicts or appearance problems may exist. Where gifts are offered by a regulated entity, we will require officials making conflict of interest determinations to evaluate at the outset the extent to which benefits of the gift might accrue to individual employees. If the gift does benefit an individual employee, agency officials shall consider whether that employee is responsible for matters affecting the potential donor that are currently pending before the agency and the significance of the employee's role in such matters. Whether or not the proposed gift benefits employees personally, we will consider: the nature and sensitivity of any matters pending at the Commission affecting the regulated source and the timing of the gift; the market value of the gift; and the frequency of gifts made by a particular donor. Finally, we have adopted public disclosure and reporting requirements that are intended to minimize or eliminate appearance problems. The Commission will keep a detailed record of all gifts accepted from prohibited sources and make the following information publicly available concerning gifts that are accepted: the identity of the prohibited source; a description of the gift; market value of the gift; documentation concerning the prohibited source's reason for the gift; a verification from the prohibited source that the gift is unconditional (not contingent on any promise or expectation that the Commission's receipt of the gift will benefit the donor in any regulatory matter); and the date the gift is accepted by the Commission. The Commission shall file a semi-annual report to Congress listing the gift, donor, and value of all gifts accepted from any donor under section 4(g)(3) authority.

Conclusion

6. We believe that, as mandated by section 4(g)(3) of the Communications Act, the regulations adopted here will preclude real and apparent conflicts of interest when the Commission exercises its new gift acceptance authority. In order to ensure the integrity of our process, we have, as discussed above, adopted numerous safeguards which will require careful consideration of conflicts of interest issues by impartial agency ethics officials. Our rules will also ensure that our actions implementing this authority are exposed to the fullest possible public and congressional scrutiny.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303: Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. A new subpart R consisting of sections 1.3000 through 1.3004 is added to part 1 to read as follows:

Subpart R—Implementation of Section 4(g)(3) of the Communications Act: Procedures Governing Acceptance of Unconditional Gifts, Donations and Bequests

Sec.
1.3000 Purpose and scope.
1.3001 Definitions.
1.3002 Structural rules and prohibitions.
1.3003 Mandatory factors for evaluating conflicts of interest.
1.3004 Public disclosure and reporting requirements.

Subpart R—Implementation of Section 4(g)(3) of the Communications Act: Procedures Governing Acceptance of Unconditional Gifts, Donations and Bequests

§ 1.3000 Purpose and scope.

The purpose of this subpart is to implement the Telecommunications Authorization Act of 1992 which amended the Communications Act by creating section 4(g)(3), 47 U.S.C. 154(g)(3). The provisions of this subpart shall apply to gifts, donations and bequests made to the Commission itself. Travel reimbursement for attendance at, or participation in, government-sponsored meetings or events required to carry out the Commission's statutory or regulatory functions may also be accepted under this subpart. The acceptance of gifts by Commission employees, most notably gifts of food, drink and entertainment, is governed by the government-wide standards of employee conduct established at 5 CFR part 2635. Travel, subsistence and related expenses for non-government-sponsored meetings or events will continue to be accepted pursuant to the Government Employees Training Act, 41 U.S.C. 4111 or 31 U.S.C. 1353, and its General Services Administration's implementing regulations, 41 CFR 304–1.8, as applicable.

§ 1.3001 Definitions.

For purposes of this subpart:

(a) The term *agency* means the Federal Communications Commission.

(b) The term *gift* means any unconditional gift, donation or bequest of real, personal and other property (including voluntary and uncompensated services as authorized under 5 U.S.C. 3109).

(c) The terms *agency ethics official, designated agency ethics official, employee, market value, person,* and *prohibited source,* have the same meaning as found in 5 CFR 2635.102, 2635.203.

§ 1.3002 Structural rules and prohibitions.

(a) *General prohibitions.* An employee shall not:

(1) Directly or indirectly, solicit or coerce the offering of a gift, donation or bequest to the Commission from a regulated entity or other prohibited source; or

(2) Accept gifts of cash pursuant to this subpart.

(b) *Referral of offers to designated agency ethics official.* Any person who seeks to offer any gift to the Commission under the provisions of this subpart shall make such offer to the Commission's designated agency ethics official. In addition, any Commission employee who is contacted by a potential donor or the representative thereof for the purpose of discussing the possibility of making a gift, donation or bequest to the Commission shall immediately refer such person or persons to the Commission's designated agency ethics official. The designated agency ethics official shall, in consultation with other agency ethics

officials, make a determination concerning whether acceptance of such offers would create a conflict of interest or the appearance of a conflict of interest. Agency ethics officials may also advise potential donors and their representatives of the types of equipment, property or services that may be of use to the Commission and the procedures for effectuating gifts set forth in this subpart. The Commission may, in its discretion, afford public notice before accepting any gift under authority of this subpart.

§ 1.3003 Mandatory factors for evaluating conflicts of interest.

No gift shall be accepted under this subpart unless a determination is made that its acceptance would not create a conflict of interest or the appearance of a conflict of interest. In making conflict of interest determinations, designated agency ethics officials shall consider the following factors:

(a) Whether the benefits of the intended gift will accrue to an individual employee and, if so—

(1) Whether the employee is responsible for matters affecting the potential donor that are currently before the agency; and

(2) The significance of the employee's role in any such matters;

(b) The nature and sensitivity of any matters pending at the Commission affecting the intended donor;

(c) The timing of the intended gift;

(d) The market value of the intended gift;

(e) The frequency of other gifts made by the same donor; and

(f) The reason underlying the intended gift given in a written statement from the proposed donor.

§ 1.3004 Public disclosure and reporting requirements.

(a) *Public disclosure of gifts accepted from prohibited sources.* The Commission's Security Operations Office, Office of the Managing Director, shall maintain a written record of gifts accepted from prohibited sources by the Commission pursuant to section 4(g)(3) authority, which will include:

(1) The identity of the prohibited source;

(2) A description of the gift;

(3) The market value of the gift;

(4) Documentation concerning the prohibited source's reason for the gift as required in § 1.3003(f);

(5) A signed statement of verification from the prohibited source that the gift is unconditional and is not contingent on any promise or expectation that the Commission's receipt of the gift will benefit the proposed donor in any regulatory matter; and

(6) The date the gift is accepted by the Commission.

(b) *Reporting Requirements for all gifts.* The Commission shall file a semi-annual report to Congress listing the gift, donor and value of all gifts accepted from any donor under this subpart.

[FR Doc. 94–18197 Filed 7–26–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, amends the Table of FM Allotments to specify the correct classes of channels allotted to various communities. These amendments are necessary to reflect changes that have been authorized in response to applications filed by licensees and permittees operating on these channels. This action constitutes an editorial change in the Table of Allotments. Therefore, a public notice and comment proceeding is unnecessary. See 5 U.S.C. 553(b) (A) and (B). With this action, this proceeding is terminated.

EFFECTIVE DATE: August 26, 1994.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, adopted, 1994 and released, 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 document may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 293C2 and adding Channel 293C3 at Demopolis, by removing Channel 293C2 and adding Channel 293C3 at Sheffield, and by removing Channel 288C3 and adding Channel 288A at Tuscaloosa.

3. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by removing Channel 267C and adding Channel 267C2 Anchorage, and by removing Channel 298C and adding Channel 298C1 at Anchorage.

4. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 266C and adding Channel 266C3 at Lake Havasu City.

5. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 226C and adding Channel 226C1 at Batesville, and by removing Channel 271C2 and adding Channel 271C3 at Mena.

6. Section 73.202, the Table of FM Allotments under California, is amended by removing Channel 257A and adding Channel 257B1 at Bakersfield, by removing Channel 279C2 and adding Channel 279C1 at Carnelian Bay, by removing Channel 262C2 and adding Channel 262C3 at Fortuna, and by removing Channel 294B1 and adding 294B at Orland.

7. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 283C1 and adding Channel 283C2 at Pueblo, and by removing Channel 223C and adding Channel 223C1 at Trinidad.

8. Section 73.202(b) the Table of FM Allotments for Florida, is amended by removing Channel 300A and adding Channel 300C2 at Coral Cove, by removing Channel 251C1 and adding Channel 251C2 at Live Oak, and by removing Channel 264C1 and adding Channel 264C at Tampa.

9. Section 73.202(b), the Table of FM Allotments for Hawaii, is amended by removing Channel 288C and adding Channel 288A at Haliimaile.

10. Section 73.202(b), the Table of FM Allotments for Idaho, is amended by removing Channel 244A and adding Channel 244C1 at Preston.

11. Section 73.202(b), the Table of FM Allotments for Iowa, is amended by removing Channel 258C3 and adding Channel 258A at Winterset.

12. Section 73.202(b), the Table of FM Allotments for Kentucky, is amended by removing Channel 228C2 and adding Channel 228C3 at Greenville.

13. Section 73.202(b), the Table of FM Allotments for Louisiana, is amended by removing Channel 258C and adding Channel 258C1 at Lake Charles, and by

removing Channel 262C1 and adding Channel 262C2 at Larose.

14. Section 73.202(b), the Table of FM Allotments for Maine, is amended by removing Channel 265A and adding Channel 265B1 at Westbrook.

15. Section 73.202(b), the Table of FM Allotments for Minnesota, is amended by removing Channel 234A and adding Channel 234C3 at Staples, by removing Channel 286C3 and adding Channel 286C2 at Tracy, and by removing Channel 266A and adding Channel 266C3 at Winona.

16. Section 73.202(b), the Table of FM Allotments for Mississippi, is amended by removing Channel 253C and adding Channel 253C1 at Tupelo.

17. Section 73.202(b), the Table of FM Allotments for Missouri, is amended by removing Channel 247C and adding Channel 247C1 at Springfield, and by removing Channel 286C and adding Channel 286C1 at St. Joseph.

18. Section 73.202(b), the Table of FM Allotments for Montana, is amended by removing Channel 224A and adding Channel 223C1 at Butte, by removing Channel 281C and adding Channel 281C1 at East Helena, and by removing Channel 269C3 and adding Channel 269A at Libby.

19. Section 73.202(b), the Table of FM Allotments for Nevada, is amended by removing Channel 269A and adding Channel 269C3 at Reno.

20. Section 73.202(b), the Table of FM Allotments for New York, is amended by removing Channel 286A and adding Channel 286C3 at Plattsburgh.

21. Section 73.202(b), the Table of FM Allotments for North Carolina, is amended by removing Channel 289C and adding Channel 289C1 at Columbia, by removing Channel 221B1 and adding Channel 221C3 at Moyock, and by removing Channel 247C and adding Channel 247C1 at Wilmington.

22. Section 73.202(b), the Table of FM Allotments for North Dakota, is amended by removing Channel 270C and adding Channel 270C1 at Fargo.

23. Section 73.202(b), the Table of FM Allotments for Oregon, is amended by removing Channel 268C and adding Channel 268C2 at Corvallis.

24. Section 73.202(b), the Table of FM Allotments for South Carolina, is amended by removing Channel 278C and adding Channel 278C1 at Charleston, and by removing Channel 269C2 and adding Channel 269C3 at Ravenel.

25. Section 72.202(b), the Table of FM Allotments for Tennessee, is amended by removing Channel 242C and adding Channel 242C1 at Murfreesboro.

26. Section 73.202(b), the Table of FM Allotments for Texas, is amended by removing Channel 236C and adding Channel 236C1 at Beaumont, by removing Channel 300C and adding Channel 300C1 at Canyon, by removing Channel 253A and adding Channel 253C3 at Clarksville, by removing Channel 250C and adding Channel 250C1 at Odessa, and by removing Channel 256C and adding Channel 256C1 at Odessa.

27. Section 73.202(b), the Table of FM Allotments for Utah, is amended by removing Channel 280C and adding Channel 280C1 at Nephi.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–18245 Filed 7–26–94; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1819

Revision to NASA FAR Supplement Coverage on Set-Asides for Small Business

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: NASA has revised the NASA FAR Supplement to address the action NASA centers must take when the Small Business Administration (SBA) appeals a decision not to set aside a procurement for small businesses.

DATES: *Effective Date:* This interim rule is effective July 27, 1994.

Comments: Comments are due no later than September 26, 1994.

ADDRESSES: Submit comments to Ms. Deborah O'Neill, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah O'Neill, (202) 358–0440.

SUPPLEMENTARY INFORMATION:

Background

Current policy contained in NASA FAR Supplement § 1819.505 (c), (d), and (e) addresses situations in which a small business set-aside is not initiated or pursued. In NFS § 1819.505(c), if the contracting officer disapproves the Small Business Specialist's set-aside recommendation, the contracting officer shall promptly refer the case to the SBA representative (if one is assigned and available) for review. In NFS § 1819.505(d), cases involving the non-initiation of a set-aside require referral to the SBA representative (if one is assigned and available) for review. NFS § 1819.505(e) addresses the situation when an SBA representative is not assigned or available, and the contracting officer disagrees with the Small Business Specialist's recommendation on a small business set-aside, or withdrawal or modification of a set-aside determination. The Small Business Specialist may make a written appeal to the center procurement officer whose decision may overrule the Small Business Specialist's recommendation. Upon later review of this action, SBA may disagree with the procurement officer's decision not to set aside a procurement for small business and may appeal the decision. If SBA does pursue an appeal in the situations described in NFS § 1819.505 (c), (d), or (e), the Office of Procurement at NASA Headquarters wants the NASA center to notify them in writing as soon as SBA appeals the procurement officer's decision.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–033–00000–1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

This rule does not impose any information collection subject ot 44 U.S.C. chapter 35.

List of Subjects in 48 CFR Part 1819

Government procurement.

Thomas S. Leudtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1819 is amended as follows:

1. The authority citation for 48 CFR part 1819 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 1819.505–70 is added to read as follows:

1819.505–70 Notification of SBA appeals.

The SBA representatives may appeal the contracting officer's decision as described in 1819.505 (c) or (d) to the procurement officer, who may support the contracting officer's decision. Upon later review of the procurement officer's decision approving the contracting officer's determination described in 1819.505(e), SBA may disagree with the procurement officer's decision not to set aside a procurement for small business. If the SBA appeals the procurement officer's decision, Code H should be notified in writing as soon as SBA appeals this decision. This notification should include a history of the center and SBA discussions on the procurement as well as any actions the center has taken.

[FR Doc. 94–17489 Filed 7–26–94; 8:45 am]

BILLING CODE 7510–01–M

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48 CFR Parts 1842 and 1853

Corrections and Clarification to NASA FAR Supplement Coverage on Disallowance of Costs

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule clarifies who the responsible NASA contracting officer is when more than one contract is affected. This action is necessary to assure compliance with the Federal Acquisition Regulation, ensure that NASA coordinates internally disallowance of costs and to make the NFS more understandable. The effect of this action will be better coordination within NASA.

EFFECTIVE DATE: July 27, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Le Cren, Code HC, (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

NASA FAR Supplement (NFS) 1842.801(a) requires the contracting officer to take action after receipt of a NASA Form 456, Notice of Contract Costs Suspended or Disapproved, or a DCAA Form 1, Notice of Costs Suspended and/or Disapproved under Cost Reimbursement Contracts. However, when more than one contract is cited on the notice, the NFS does not specify which contracting officer has responsibility for the action. NFS 1842.801 is changed to clarify that the contracting officer with the most dollars affected is responsible for coordination with the other affected contracting officers, including those of other federal agencies. The cross-reference at 1842.801(b) is also revised to identify the correct cite. In addition, 1853.242–72 is revised to include the correct prescription cite. Other minor changes have also been made for efficiency or clarification.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any information collection subject to 44 U.S.C. chapter 35.

List of Subjects in 48 CFR Parts 1842 and 1853

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1842 and 1853 are amended as follows:

PART 1842—[AMENDED]

1. The authority citation for part 1842 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. Section 1842.801 is revised to read as follows:

1842.801 Disallowance of costs.

(a) Following a prompt and careful review of the facts and circumstances leading the auditor to initiate the NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved, and after coordination with other NASA and federal agency contracting officers administering contracts with the same contractor under which a NASA Form 456 or a DCAA Form 1 has been issued for the same items of cost, the NASA contracting officer shall take one of the following actions:

(1) Countersign the NASA Form 456 disapproving the costs.

(2) Countersign the NASA Form 456 suspending the costs.

(3) Issue a new NASA Form 456 suspending the costs rather than disapproving them pending resolution of the issues.

(4) Have the contractor issue a new voucher removing the costs in question from its claim and return the NASA Form 456 to the auditor unsigned.

(5) Return the unsigned NASA Form 456 to the auditor with a detailed explanation of why the suspension or disapproval is not being countersigned, and process the contractor's claim for payment.

(b) When more than one NASA contract is affected by a notice, the NASA contracting officer with the largest amount of contract dollars affected is responsible for coordination on the NASA Form 456 with the other affected contracting officers, including those of other federal agencies, listed in the notice.

(c) The NASA contracting officer, when in agreement with the NASA Form 456 initiated by the auditor, shall assign a notice number and shall countersign the form. An original and three copies (which includes two acknowledgement copies, one each for return to the contracting officer and the auditor) of the form shall be sent to the contractor by certified mail, return receipt requested; one copy shall be attached to the Standard Form 1034 and each copy of the Standard Form 1034A (see 1842.7101(c)) on which the deduction for the suspension/disapproval is made, and one copy shall be sent to the auditor.

(d) The total amount suspended or disapproved, as shown on the NASA Form 456, shall be inserted in the Differences block of the Standard Form 1034 and 1034A, citing the applicable NASA Form 456.

(e)(1) If the amount of the deduction is more than the amount of the public voucher, the installment method of deduction shall be applied to the current and subsequent public vouchers until the amount is fully liquidated. The deductions on any voucher may not exceed the voucher amount to avoid processing of a voucher in a credit amount. Public voucher(s) with zero amounts must be forwarded to the fiscal or financial management office for appropriate action.

(2) If deductions are in excess of contractor claims, recovery may be made through a direct refund from the contractor, in the form of a check payable to NASA, or by a set-off deduction from the voucher(s) submitted by the contractor under any other contract, unless those contracts contain a "no set-off" provision. If a set-off is affected, the voucher(s) from which the deduction is made should be annotated to identify the contract and appropriation affected and the applicable NASA Form 456.

PART 1853—[AMENDED]

3. The authority citation for part 1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

4. Section 1853.242–72 is revised to read as follows:

1853.242–72 Notifications (NASA Form 456).

NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. NASA Form 456, prescribed at 1842.801, will be used to notify the contractor of any suspended/disallowed contract costs.

[FR Doc. 94–17490 Filed 7–26–94; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 940413–4199; I.D. 032394C]

RIN 0648–AG59

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Final rule; final 1994 specification of Pacific halibut bycatch allowances.

SUMMARY: NMFS implements regulations for several management measures to prevent certain Gulf of Alaska (GOA) trawl fisheries from taking an unnecessarily large share of the GOA halibut bycatch limit; amend the directed fishing standards to prohibit using retained amounts of arrowtooth flounder, or groundfish species that are closed to directed fishing, as a basis for calculating retainable amounts of other, more valuable groundfish species that are closed to directed fishing; change the opening date of the yellowfin sole and "other flatfish" fisheries in the Bering Sea and Aleutian Islands management area (BSAI) from May 1 to January 1; and implement changes pertaining to the annual specification and management of GOA halibut prohibited species catch (PSC) limits. This action is necessary to reduce the likelihood that one sector of the Alaska trawl fleet will preempt others for a share of the Pacific halibut bycatch limit established for vessels using trawl gear in the GOA, and provide greater opportunity to harvest available groundfish under halibut bycatch restrictions in both the GOA and BSAI fisheries. This action is intended to further the objectives of the fishery management plans for the groundfish fisheries off Alaska.

EFFECTIVE DATE: August 9, 1994.

ADDRESSES: Individual copies of the environmental assessment/regulatory impact review (EA/RIR) prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by the Secretary of Commerce in accordance with the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations authorized under the FMP that pertain to the U.S. groundfish fisheries appear at 50 CFR parts 672 and 675.

Existing regulations provide a framework process for the annual specification of GOA halibut PSC limits for trawl and fixed gear fisheries and for apportioning these limits by season. Although these regulations limit the bycatch of Pacific halibut in the GOA groundfish trawl fisheries, they have resulted in conflict among and preemption of groundfish trawling operations in the GOA as different trawl fishery components compete for shares of the available halibut PSC limit. This results in the attainment of the halibut bycatch cap before some groundfish Total Allowable Catch (TAC) limits have been taken, causing a closure of trawling operations in the GOA, even though the full groundfish harvest amount has not been taken in some fisheries.

This rule implements the following three measures to address the preemption of one trawl fishery sector by another.

1. Establish two GOA trawl fishery categories for the purpose of apportioning the GOA halibut bycatch limit already established for the trawl gear fisheries (§ 672.20 (f)). These two categories are the following: (1) The shallow-water fishery complex (pollock, Pacific cod, Atka mackerel, shallow-water flatfish, flathead sole, and "other species"); and (2) the deep-water fishery complex (the deep-water flatfish, rex sole, arrowtooth flounder, sablefish, and rockfish).

2. Revise the method for calculating retainable amounts of groundfish species under directed fishing standards (§ 672.20(h) and § 675.20(i)). Revised methods prohibit using retained amounts of arrowtooth flounder, or groundfish species that are closed to directed fishing, as a basis for calculating retainable amounts of other, more valuable groundfish species that are closed to directed fishing.

3. Adjust the opening date for the BSAI yellowfin sole and "other flatfish" fisheries from May 1 to January 1. As a result of this season adjustment, directed fishing standards governing retainable amounts of flatfish species at § 675.20(h)(2) also are revised.

This final rule also implements editorial changes to regulatory language pertaining to the annual specification and management of GOA halibut PSC limits. In addition, NMFS apportions the 1994 GOA halibut trawl PSC limit among fisheries and seasons as set out below:

APPORTIONMENT OF THE 2,000 METRIC TON (MT) HALIBUT BYCATCH MORTALITY LIMIT ESTABLISHED FOR THE 1994 GOA TRAWL FISHERIES AMONG THE SHALLOW- AND DEEP-WATER TRAWL FISHERY COMPLEXES AND SEASONS

[Seasons open and close at 12 noon, Alaska local time (A.l.t.), except that the last season ends at 12 midnight, A.l.t., December 31.]

Season	Shallow complex	Deep complex	Total
Jan. 20–Mar. 31	500	100	600
Mar. 31–Jun. 30	100	300	400
Jun. 30–Sep. 30	200	400	600

APPORTIONMENT OF THE 2,000 METRIC TON (MT) HALIBUT BYCATCH MORTALITY LIMIT ESTABLISHED FOR THE 1994 GOA TRAWL FISHERIES AMONG THE SHALLOW- AND DEEP-WATER TRAWL FISHERY COMPLEXES AND SEASONS—Continued

[Seasons open and close at 12 noon, Alaska local time (A.l.t.), except that the last season ends at 12 midnight, A.l.t., December 31.]

Season	Shallow complex	Deep complex	Total
Sep. 30–Dec. 31	(1)	(1)	400

[1] No apportionment.

An emergency rule implementing these measures was published on February 10, 1994 (59 FR 6222), under section 305(c) of the Magnuson Act. At its April 1994 meeting the Council voted to extend the emergency rule for another 90 days (59 FR 24965, May 13, 1994). A proposed rule to implement these measures was published in the **Federal Register** on May 4, 1994 (59 FR 23044). A complete description of, and justification for, the management measures, including editorial changes to regulations addressing GOA halibut bycatch amounts, was discussed in the preamble to the proposed rule. Additional information also is available in the EA/RIR (see **ADDRESSES**).

Public comment on the proposed rule was invited through May 31, 1994. One letter of comments was received within the comment period and is summarized and responded to below in the **Response to Comments** section.

Response to Comments

Comment 1: Splitting the halibut bycatch limit between the shallow-water fishery complex and the deep-water fishery complex splits the limit between a well-observed fleet with 100-percent observer coverage (mainly in the deep-water fisheries) and a poorly observed fleet with 30-percent observer coverage (mainly in the shallow-water fisheries). Because the 30-percent boats have greater latitude to take an observer, the bycatch data collected for the shallow-water fisheries would be biased and, therefore, less accurate than the data collected for the deep-water fisheries, thus jeopardizing the management of the halibut bycatch limits. This action would degrade the scientific basis for halibut bycatch management and is contrary to national standard 2.

Response: Consistent with national standard 2, NMFS continues to monitor the groundfish fishery using the best information available. Opportunities do exist in the 30-percent observer coverage fleet for vessel operators to manipulate observer coverage to reduce or increase coverage in different fisheries. However, NMFS has taken measures to increase observer coverage in the groundfish fleet to improve the accuracy of catch monitoring. A recent amendment to the Observer Plan (59 FR 22133, April 29, 1994) changed observer coverage requirements for vessels required to obtain 30-percent observer coverage. The amendment to the Observer Plan limits the manipulation of observer coverage by requiring vessels to carry an observer during at least 30 percent of their fishing days in each calendar quarter in which the vessels participate for more than 3 fishing days in a directed fishery for groundfish. These vessels are also required to have an observer on board the vessel during one trip in each fishery, as defined in the Observer Plan amendment, in which they participate. These measures should reduce the potential for manipulation of observer coverage and increase the amount of observer data available for the management of the specific fisheries.

Comment 2: Processors are not required to report harvests such that NMFS can reasonably attribute shoreside catch to a given target with its appropriate bycatch. Currently, one target species is assigned per week, even though vessels delivering to a plant may have targeted several different species. This system cannot be used to monitor scientifically a separate shallow-water fisheries halibut bycatch limit and is inconsistent with national standard 2.

Response: For purposes of attributing halibut bycatch, NMFS assigns a target fishery based on maximum retained amounts (except midwater pollock, for which pollock must comprise 95 percent or more of the total catch) and estimates halibut bycatch for each unique combination of processor, gear type, and reporting area, on a weekly basis. Halibut bycatch is attributed to one of the two fishery categories for which a trawl halibut bycatch allowance is made. Bycatch from the bottom pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, or "other species" fisheries is attributed to the shallow-water species complex. Bycatch from the sablefish, rockfish, deep-water flatfish, and arrowtooth flounder fisheries is attributed to the deep-water species complex. NMFS does not have the ability to assign target fisheries based on vessel hauls or individual vessel deliveries. Given this procedure, NMFS does monitor bycatch consistent with the intent of the regulations and based on the best available scientific information.

Comment 3: The NMFS Alaska Fisheries Science Center should review this rule and concur that it will provide the best available scientific data to monitor the halibut bycatch limit.

Response: Regulations that are drafted by the NMFS Alaska Regional Office are developed in consultation with the Alaska Fisheries Science Center.

Changes in the Final Rule From the Proposed Rule

This final rule includes one editorial change in § 672.20(f)(3)(i) to clarify an inconsistency with respect to paragraph (f)(1)(iv) of the same section. Section (f)(1)(iv) provides the authority to establish a separate halibut PSC allowance by regulatory area and district; however, § 672.20(f)(3)(i) does not provide the authority for closures based on regulatory area or district once an allowance is reached. Language has been added to paragraph § 672.20(f)(3)(i) to indicate that, upon attainment of a bycatch allowance for the entire Gulf of Alaska or the applicable regulatory area or district, a closure would be made.

Upon reviewing the reasons for, and the comments on, this action, NMFS has determined that this rule is necessary for fishery conservation and management.

Classification

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasons were published in the preamble to the proposed rule (59 FR 24965, May 5, 1994). As a result, a regulatory flexibility analysis was not prepared. NMFS prepared an analysis of the economic impact on small entities as part of the EA/RIR. A copy of the EA/

RIR is available from NMFS (see **ADDRESSES**).

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

NMFS has determined that delaying the effectiveness of this final rule for the entire 30 days under the Administrative Procedure Act, 5 U.S.C. 552(d), is contrary to the public interest in orderly conduct of the fisheries in the EEZ. This rule supersedes the original emergency rule implementing these measures which expires August 9, 1994. The fishery has been operating under the emergency rule with a benefit to the fishery. To avoid an interruption in the fishery as it is currently being conducted under the emergency rule, NMFS is waiving a portion of the 30-day delayed effectiveness period for this rule to correspond with the expiration of the emergency rule.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: July 21, 1994.

Henry R. Beasley,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH FISHERY OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In § 672.20, paragraphs (f) and (h)(1) are revised to read as follows:

§ 672.20 General limitations.

* * * * *

(f) *Halibut PSC limits.* (1) *Notification of proposed halibut PSC limits.* NMFS will publish annually in the **Federal Register** proposed and final halibut PSC limits and apportionments thereof authorized under this paragraph (f), in the notification required under paragraph (c) of this section. Public comment will be accepted by NMFS on the proposed halibut PSC limits, and apportionments thereof, for a period of 30 days after publication in the **Federal Register**. NMFS will consider comments received on proposed halibut limits and, after consultation with the Council, will publish notification in the **Federal Register** specifying the final halibut PSC limits and apportionments thereof.

(i) *Trawl gear fisheries.* (A) After consultation with the Council, NMFS will publish notification in the **Federal Register** specifying the proposed halibut PSC limit for vessels using trawl gear. The halibut PSC limit specified for vessels using trawl gear may be further apportioned as bycatch allowances to the fishery categories listed in paragraph (f)(1)(i)(B) of this section, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all bycatch allowances will equal the halibut PSC limit established under this paragraph (f)(1)(i).

(B) For purposes of apportioning the trawl halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species for which a TAC has been specified under paragraphs (a) and (c) of this section:

(*1*) *Shallow-water species fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate catch of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species" that is greater than the retained aggregate amount of other groundfish species or species group.

(*2*) *Deep-water species fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained catch of groundfish and is not a shallow-water species fishery as defined under paragraph (f)(1)(i)(B)(*1*) of this section.

(ii) *Hook-and-line and pot gear fisheries.* After consultation with the Council, NMFS will publish notification in the **Federal Register** specifying the proposed halibut PSC limits for the hook-and-line gear fisheries. The notification also may specify a halibut PSC limit for the pot gear fisheries. The proposed halibut PSC limit for hook-and-line gear fisheries may be further apportioned, as bycatch allowances, to the directed fishery for demersal shelf rockfish in the Southeast Outside District of the Eastern Regulatory Area and to all other hook-and-line gear fisheries.

(iii) *Seasonal apportionments.* (A) NMFS, after consultation with the Council, may apportion each halibut PSC limit or bycatch allowance specified under this paragraph (f) on a seasonal basis. NMFS will base any seasonal apportionment of a halibut PSC limit or bycatch allowance on the following types of information:

(*1*) Seasonal distribution of halibut;

(*2*) Seasonal distribution of target groundfish species relative to halibut distribution;

(*3*) Expected halibut bycatch needs, on a seasonal basis, relative to changes in halibut biomass and expected catches of target groundfish species;

(*4*) Expected variations in bycatch rates throughout the fishing year;

(*5*) Expected changes in directed groundfish fishing seasons;

(*6*) Expected start of fishing effort; and

(*7*) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

(B) Unused seasonal apportionments of halibut PSC limits specified for trawl, hook-and-line, or pot gear will be added to the respective seasonal apportionment for the next season during a current fishing year.

(C) If a seasonal apportionment of a halibut PSC limit specified for trawl, hook-and-line, or pot gear is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year.

(iv) *Apportionment among regulatory areas and districts.* Each halibut PSC limit specified under this paragraph (f) also may be apportioned among the regulatory areas and districts of the Gulf of Alaska.

(2) NMFS, by notification in the **Federal Register**, may change the halibut PSC limits during the year for which they were specified, based on new information of the types set forth in paragraph (f)(1) of this section.

(3) *Attainment of a halibut PSC limit or bycatch allowance.*

(i) *Trawl gear fisheries.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in either of the trawl fishery categories listed in paragraph (f)(1)(i)(B) of this section will catch the Pacific halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (f)(1) of this section, NMFS will publish notification in the **Federal Register** closing the entire Gulf of Alaska or the applicable regulatory area or district to directed fishing with trawl gear for each species and/or species group that comprises that fishing category; provided, however, that when the halibut bycatch allowance, or seasonal apportionment thereof, specified for the shallow-water species fishery is reached, fishing for pollock by vessels using pelagic trawl gear may continue, consistent with other provisions of this part.

(ii) *Hook-and-line fisheries.* (A) *Groundfish other than demersal shelf rockfish in the Southeast Outside District.* If, during the year, the Regional Director determines that the catch of

halibut by operators of vessels using hook-and-line gear in groundfish fisheries other than the directed fishery for demersal shelf rockfish in the Southeast Outside District will reach the halibut bycatch allowance, or seasonal apportionment thereof, specified for hook-and-line gear under paragraph (f)(1) of this section, NMFS will publish notification in the **Federal Register** prohibiting directed fishing for groundfish, other than demersal shelf rockfish in the Southeast Outside District, by vessels using hook-and-line gear for the remainder of the season to which the halibut bycatch allowance or seasonal apportionment thereof applies.

(B) *Demersal shelf rockfish in the Southeast Outside District.* If, during the year, the Regional Director determines that the catch of halibut by operators of vessels using hook-and-line gear in the directed fishery for demersal shelf rockfish in the Southeast Outside District will reach the halibut bycatch allowance, or seasonal apportionment thereof, specified for this fishery under paragraph (f)(1) of this section, NMFS will publish notification in the **Federal Register** prohibiting directed fishing for demersal shelf rockfish in the Southeast Outside District by vessels using hook-and-line gear for the remainder of the season to which the halibut bycatch allowance or seasonal apportionment thereof applies.

(iii) *Pot gear fisheries.* If, during the fishing year, the Regional Director determines that the catch of halibut by operators of vessels using pot gear to participate in a directed fishery for groundfish will reach the halibut PSC limit, or seasonal apportionment thereof, provided for under paragraph (f)(1) of this section, NMFS will publish notification in the **Federal Register** prohibiting directed fishing for groundfish by vessels using pot gear for the remainder of the season to which the halibut PSC limit or seasonal apportionment applies.

(4) When the vessels to which a halibut PSC limit applies have caught an amount of halibut equal to that PSC, the Regional Director may, by notification in the **Federal Register**, allow some or all of those vessels to continue to fish for groundfish using nonpelagic trawl gear under specified conditions, subject to the other provisions of this part. In authorizing and conditioning such continued fishing with bottom-trawl gear, the Regional Director will take into account the following considerations, and issue relevant findings:

(i) The risk of biological harm to halibut stocks and of socio-economic harm to authorized halibut users posed by continued bottom trawling by these vessels;

(ii) The extent to which these vessels have avoided incidental halibut catches up to that point in the year;

(iii) The confidence of the Regional Director in the accuracy of the estimates of incidental halibut catches by these vessels up to that point in the year;

(iv) Whether observer coverage of these vessels is sufficient to assure adherence to the prescribed conditions and to alert the Regional Director to increases in their incidental halibut catches; and

(v) The enforcement record of owners and operators of these vessels, and the confidence of the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources.

* * * * *

(h) * * *

(1) *Calculations.* (i) In making any determination concerning directed fishing under paragraph (g) of this section, the amount or percentage of any species, species group, or any fish or fish products will be calculated in round-weight equivalents.

(ii) Arrowtooth flounder, or any groundfish species for which directed fishing is closed, may not be used to calculate retainable amounts of other groundfish species under paragraph (g) of this section.

* * * * *

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

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

4. In § 675.20, paragraphs (h)(2) and (i)(1) are revised to read as follows:

§ 675.20 General limitations.

* * * * *

(h) * * *

(2) *Yellowfin sole, rock sole, arrowtooth flounder, or "other flatfish."* The operator of a vessel is engaged in directed fishing for yellowfin sole, rock sole, arrowtooth flounder, or "other flatfish" if he or she retains, at any time during a trip, an amount of one of these species equal to or greater than 35 percent of the amount of the other respective species retained at the same time on the vessel during the same trip, plus 20 percent of any groundfish species other than yellowfin sole, rock sole, or "other flatfish" retained at the same time on the vessel during the same trip.

* * * * *

(i) * * *

(1) *Calculations.* (i) In making any determination concerning directed fishing under paragraph (h) of this section, the amount or percentage of any species, species group, or any fish or fish products will be calculated in round-weight equivalents.

(ii) Arrowtooth flounder, or any groundfish species for which directed fishing is closed, may not be used to calculate retainable amounts of other groundfish species under paragraph (h) of this section.

* * * * *

5. In § 675.23, paragraph (c) is revised to read as follows:

§ 675.23 Seasons.

* * * * *

(c) Directed fishing for arrowtooth flounder and Greenland turbot is authorized from 12:00 noon Alaska local time, May 1, through 12:00 midnight, Alaska local time, December 31, subject to the other provisions of this part.

* * * * *

[FR Doc. 94–18229 Filed 7–26–94; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 59, No. 143
Wednesday, July 27, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-93-18]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service (General Specifications). The proposed changes would revise the requirements for anhydrous milkfat to allow butter to be used as an ingredient and would revise the requirements for butteroil to allow the addition of safe and suitable antioxidants. The proposal to allow the use of butter was initiated at the request of the American Butter Institute.

DATES: Comments should be filed by September 26, 1994.

ADDRESSES: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2968-S, P.O. Box 96456, Washington, DC 20090-6456. They will be made available for public inspection at the Dairy Division in Room 2750-S during regular business hours.

FOR FURTHER INFORMATION CONTACT: Duane R. Spomer, Chief, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750-S, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-7473.

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

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because participation in the USDA-approved plant program is voluntary and the amendments would not increase the costs to those utilizing the program.

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

The General Specifications, established in 1975, do not provide for butter to be used in making anhydrous milkfat in USDA-approved dairy plants. This is inconsistent with international standards that allow butter to be used in anhydrous milkfat. The General Specifications also do not provide for the addition of antioxidants to butteroil, which also is permitted in international standards. These restrictions have placed the domestic manufacturer at a disadvantage when competing in the world market.

To permit domestic manufacturers of anhydrous milkfat and butteroil to compete on equal terms with manufacturers from other exporting countries, and to amend the General Specifications to more closely align U.S. requirements with international standards, USDA is proposing changes to Part 58, subpart B, of the grading and inspection regulations concerning dairy products, as follows:

1. *Amend Ingredient Requirements to Permit Butter To Be Used as an Ingredient in Anhydrous Milkfat*

The General Specifications were established in 1975 and permit only cream to be used as an ingredient in anhydrous milkfat. The International Dairy Federation and the Codex Alimentarius Commission have both developed internationally recognized standards that allow the use of butter in making anhydrous milkfat. Revision of the General Specifications is being proposed to align USDA requirements with internationally recognized standards and allow butter as an ingredient in anhydrous milkfat.

2. *Allow the Addition of Antioxidants to Butteroil*

The General Specifications do not provide for the addition of antioxidants to butteroil. International dairy standards permit the addition of antioxidants to assist in preserving the flavor characteristics of this product. Revision of the General Specifications is being proposed to align USDA requirements with international standards and to allow the addition of antioxidants to butteroil, provided the antioxidant used is permitted by standards developed by the Codex Alimentarius Commission and authorized for use by the Food and Drug Administration (FDA). The Standards developed by the Commission may be found in the "Standard A-2 for Milkfat Products."[1] Antioxidants which are permitted by the Commission and which may be added to butteroil and the maximum levels allowed are as follows:

Antioxidant	Maximum level
Propyl gallate	100 mg/kg.
Butylated hydroxytoluene (BHT)*.	75 mg/kg.
Butylated hydroxyanisole (BHA).	200 mg/kg.
Any combination of propyl gallate, BHA, or BHT*.	200 mg/kg, but individual limits above not to be exceeded.
Natural and synthetic tocopherols.	500 mg/kg.
Ascorbyl palmitate	500 mg/kg individually or in combination.
Ascorbyl stearate	
Dilauryl thiodipropionate	200 mg/kg.
Antioxidant synergists:	
Citric acid	Limit by Good Manufacturing Practice (GMP).
Sodium citrate	Limit by GMP.
Isopropyl citrate mixture	100 mg/kg individually or in combination.
Phosphoric acid	

[1] "Standards A-2 for Milkfat Products", Joint FAO/WHO Food Standards Program, Codex Committee on Milk and Milk Products. Copies of the Standard may be obtained from the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456.

Antioxidant	Maximum level
Monoglyceride citrate	

*Temporarily endorsed by the Codex Alimentarius Commission.

FDA provisions relevant to those antioxidants permitted by the Commission are found in 21 CFR Parts 172, 182 or 184. The antioxidants permitted by FDA would be the ones proposed to be allowed by these regulations. The antioxidants and levels permitted by FDA are as follows:

Antioxidant	Maximum level
Propyl gallate	0.02% of fat.
Butylated hydroxytoluene (BHT).	0.02% of fat.
Butylated hydroxyanisole (BHA).	0.02% of fat.
Tocopherols	Limit by GMP.
Ascorbyl palmitate	Limit by GMP.
Dilauryl thiodipropionate	0.02% of fat.
Antioxidant synergists:	
Citric acid	Limit by GMP.
Sodium citrate	Limit by GMP.
Isopropyl citrate	0.02% of food.
Phosphoric acid	Limit by GMP.
Monoglyceride citrate	200 ppm of fat.

3. *Reduce the Amount of Moisture Permitted in Anhydrous Milkfat*

The General Specifications allow a maximum moisture content of 0.15 percent in anhydrous milkfat. International standards developed by the International Dairy Federation and the Codex Alimentarius Commission allow a maximum moisture content of 0.1 percent. Revision of the General Specifications is being proposed to align USDA requirements with international standards by reducing the maximum allowable moisture content to 0.1 percent.

4. *Provide for the Pasteurization of Oil (Highly Concentrated Milkfat) in the Manufacture of Anhydrous Milkfat*

Pasteurization of dairy products ensures the destruction of pathogenic organisms. The General Specifications require cream to be pasteurized in the production of anhydrous milkfat. In some segments of the dairy industry, this pasteurization step occurs when the milkfat in the cream has been concentrated to a level where it is considered to be "oil" rather than cream. Changes in the General Specifications are being proposed to provide for this industry practice.

5. *Restrict the Amount of Other Butter Constituents in Anhydrous Milkfat When Butter is used as an Ingredient*

When butter is used in anhydrous milkfat, the majority of the non-milkfat constituents normally found in butter are removed during the manufacture of the product. The non-milkfat constituents which are removed include protein, ash, and salt. Changes are being proposed to restrict the amount of these non-milkfat constituents that would be permitted to remain in anhydrous milkfat.

Anhydrous milkfat specifications established by USDA are voluntary specifications that are developed to facilitate the orderly marketing process. Dairy plants are free to choose whether or not to use the specifications. When manufactured or processed dairy products are graded or inspected, the USDA regulations governing the grading or inspection of dairy products are used.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and record keeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58, Subpart B, be amended to read as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR Part 58, Subpart B, continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In § 58.305, paragraphs (b) and (c) are revised to read as follows:

§ 58.305 Meaning of words.

* * * * *

(b) Butteroil. The food product resulting from the removal of practically all of the moisture and solids-not-fat from butter. It contains not less than 99.6 percent fat and not more than 0.3 percent moisture and not more than 0.1 percent other butter constituents, of which the salt shall be not more than 0.05 percent. Antioxidants permitted to be used are as follows:

Antioxidant	Maximum level
Propyl gallate	0.02% of fat.
Butylated hydroxytoluene (BHT).	0.02% of fat.
Butylated hydroxyanisole (BHA).	0.02% of fat.
Tocopherols	Limit by GMP.
Ascorbyl palmitate	Limit by GMP.
Dilauryl thiodipropionate	0.02% of fat.
Antioxidant synergists:	
Citric acid	Limit by GMP.
Sodium citrate	Limit by GMP.
Isopropyl citrate	0.02% of food.
Phosphoric acid	Limit by GMP.
Monoglyceride citrate	200 ppm of fat.

An inert gas may be used to flush air tight containers before, during, and after filling. Carbon dioxide may not be used for this purpose.

(c) Anhydrous milkfat. The food product resulting from the removal of practically all of the moisture and solids-not-fat from pasteurized cream or butter. It contains not less than 99.8 percent fat and not more than 0.1 percent moisture and, when produced from butter, not more than 0.1 percent other butter constituents, of which the salt shall be not more than 0.05 percent. An inert gas may be used to flush air tight containers before, during, and after filling. Carbon dioxide may not be used for this purpose.

* * * * *

3. Section 58.325 is revised to read as follows:

§ 58.325 Anhydrous milkfat

If cream is used in the production of anhydrous milkfat that is eligible for official certification, the anhydrous milkfat shall be made by a continuous separation process directly from milk or cream. The cream used shall be comparable to the flavor quality specified above for U.S. Grade AA or U.S. Grade A butter. The milkfat from cream may then be further concentrated into oil. The cream or oil shall be pasteurized in accordance with the procedures for cream for buttermaking (§ 58.334a). If butter is used in the production of anhydrous milkfat that is eligible for official certification, the butter used shall conform to the flavor requirements of U.S. Grade AA or U.S. Grade A butter, and shall have been manufactured in an approved plant. The appearance of anhydrous milkfat should be fairly smooth and uniform in consistency.

4. Section 58.347 is revised to read as follows:

§ 58.347 Butteroil or anhydrous milkfat

The flavor shall be bland and free from rancid, oxidized, or other objectionable flavors.

(a) In addition, the finished products shall meet the following specifications when sampled and tested in accordance with §§ 58.336 and 58.337.

	Butteroil	Anhydrous milkfat
Milkfat	Not less than 99.6 percent	Not less than 99.8 percent.
Moisture	Not more than 0.3 percent	Not more than 0.1 percent.
Other butter constituents including salt	Not more than 0.1 percent	Not more than 0.1 percent.
Salt	Not more than 0.05 percent	Not more than 0.05 percent.
Antioxidants	Those permitted by standards of the Codex Alimentarius Commission and authorized for use by the Food and Drug Administration.	Those permitted by standards of the Codex Alimentarius Commission and authorized for use by the Food and Drug Administration.
Free fatty acids	Not more than 0.5 percent (calculated as oleic acid).	Not more than 0.3 percent (calculated as oleic acid).
Peroxide value	Not more than 0.1 milliequivalent per kilogram of fat.	Not more than 0.1 milliequivalent per kilogram of fat.
Copper content	Not more than 0.10 ppm	Not more than 0.10 ppm.

Dated: July 22, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–18247 Filed 7–26–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 906

[Docket No. FV94–906–2PR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Revision of Special Purpose Exemption Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revising the administrative rules and regulations in effect under the Texas citrus marketing order. The revision would eliminate the provision which exempts fruit handled for home use from the order's grade, size, pack, container, inspection and assessment requirements. This proposed rule would help prevent unauthorized shipments of uninspected citrus from being shipped out of the production area. Individuals would continue to be able to handle up to 400 pounds of citrus per day exempt from order requirements which should be sufficient for fruit purchased for home use.

DATES: Comments must be received by August 26, 1994.

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

FOR FURTHER INFORMATION CONTACT: Belinda Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 690–3670.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 906 [7 CFR Part 906] regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 15 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 750 orange and grapefruit producers in south Texas. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

Section 906.40 of the order authorizes the establishment of grade, size, quality, maturity, pack and container requirements for fresh shipments of Texas oranges and grapefruit. Whenever such requirements are in effect, oranges and grapefruit are required to be inspected and certified as meeting applicable standards in accordance with § 906.45 of the order. The program is financed through handler assessments, established pursuant to § 906.34.

The order provides, in § 906.42, that regulations issued under §§ 906.34, 906.40, and 906.45 may be modified, suspended or terminated to facilitate the handling of citrus fruit for certain

purposes. Under this authority, § 906.120 of the order's rules and regulations provides that oranges and grapefruit may be handled for relief, charity or home use exempt from order requirements. Handlers desiring to utilize this exemption are required to apply to the Texas Valley Citrus Committee (committee), the agency established to administer the order locally. In making an application, the handler is required to submit information such as the quantity of fruit to be handled under the exemption and its intended destination. Based on the information provided, the committee determines whether to approve the application and issue the handler a certificate of privilege.

The committee met on May 10, 1994, and unanimously recommended revising paragraph (c)(1) of § 906.120 by deleting "home use" from the provision which allows fruit to be handled exempt from regulation. Current regulations allow for an unlimited amount of fruit to be shipped for home use (not for resale) exempt from all marketing order requirements. The committee recommended this amendment to reduce the potential for abuse of the home use exemption. The committee has had difficulty in verifing the final disposition of exempted fruit.

The committee expressed concern that bulk loads of uninspected fruit may enter fresh, commercial markets and prove detrimental to producer returns if the exemption is not removed. Section 906.120(c)(1) is proposed to be amended by deleting the phrase "home use".

Other exemptions from order requirements would remain unchanged. Under paragraph (a) of § 906.120, individuals would continue to be able to handle up to 400 pounds of citrus per day exempt from order requirements. The committee believes that this minimum quantity exemption is sufficient to cover fruit purchased for home use and not for resale. Thus, it is not expected that this action would adversely impact those persons who purchase Texas oranges and grapefruit directly from handlers for their own use.

Based on the above the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB number 0581–0068 for oranges and grapefruit.

This rule would reduce the reporting burden on approximately 6 handlers of oranges and grapefruit who have been completing the Special Purpose Shipments Form (Application for fundraiser-specialty pack), taking about 5 minutes to complete each report.

Interested persons are invited to submit their views and comments on this proposal. All comments timely received will be considered prior to issuance of any final rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is proposed to be amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.120 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 906.120 Fruit exempt from regulation.

(a) * * *

(b) * * *

(c) Special purpose shipments and safeguards. (1) Fruit may be handled for relief or charity exempt from the requirements of §§ 906.34, 906.40, and 906.45 and the regulations issued thereunder: *Provided*, That the fruit shall not be offered for resale, and the handler submits, prior to any such handling, an application to the committee on forms provided by the committee. * * *

* * * * *

Dated: July 21, 1994.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18213 Filed 7–26–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–83–AD]

Airworthiness Directives; Aerospatiale Model ATR72–101, –102, –201, and –202 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes. This proposal would require an inspection to determine the model and orientation of certain flight control rods, and replacement with modified rods, if necessary. This proposal is prompted by reports of corrosion found on the pitch and rudder trim and rudder travel limiter fail-safe rods. The actions specified by the proposed AD are intended to prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items.

DATES: Comments must be received by September 6, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–83–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–83–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–83–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Général de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72 series airplanes. The DGAC advises that corrosion has been detected on the pitch and rudder trim fail-safe rods and the rudder travel limiter fail-safe rods installed on these airplanes. (This corrosion was found during inspections that were conducted as a part of a sampling program carried out by the manufacturer.) In some cases, corrosion apparently was caused by water accumulating in the lower part of the rods and freezing; the rods in these cases were installed with their open end oriented upwards (rather than downwards), which allowed water to accumulate between the internal and external tubes of the rod. Some cracking was associated with corrosion in these cases. Such corrosion could compromise the required strength of these flight control rods.

Aerospatiale has issued the following service bulletins which address the identified problems:

a. Service Bulletin ATR72–27–1033, dated February 23, 1994, describes procedures for inspecting the elevator trim, rudder trim, and rudder travel limitation rods to determine the orientation of the open rod end. It also describes procedures for replacing rods having open ends that are oriented upwards with rods on which the open end of the rod is oriented downwards. A downward-oriented rod end will prevent the accumulation of water between the internal and external tubes of the rod. The DGAC classified the material contained in this service bulletin as mandatory and issued French Airworthiness Directive 94–001–018(B), dated January 5, 1994, in order to assure the continued airworthiness of these airplanes in France.

b. Service Bulletin ATR72–27–1012, Revision 3, dated October 7, 1991, describes procedures for replacing the currently installed fail-safe control rods with rods that have been modified by the addition of a drain hole in the non-open end of the rod and the application of a protective treatment. The DGAC has classified this service bulletin as "recommended."

c. Service Bulletin ATR72–27–1010, Revision 4, dated February 23, 1994, describes procedures for reversing the installation of the ends of the elevator tab rod and rudder tab rod so that the open end of the rods is oriented downwards. The DGAC has classified this service bulletin as "recommended."

d. Service Bulletin ATR72–27–1027, dated July 28, 1993, describes procedures for determining the installation direction of the fail-safe rod of the rudder travel limitation unit (TLU), and replacing the rod if it is installed with its open end oriented upwards. The DGAC has classified this service bulletin as "recommended."

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an inspection to determine the orientation of the end of the pitch and rudder trim fail-safe rods and the rudder travel limiter fail-safe rods, and replacement of those rods having downwards-oriented ends. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Airplanes on which Aerospatiale Modification 02723 and Modification 03110 have been installed are not affected by the requirements of this proposed AD. The subject flight control rods on those airplanes have been modified prior to airplane delivery.

The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed inspection actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,240, or $330 per airplane. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should replacement of any of the flight control rods be necessary, the number of work hours and the cost of required parts would vary according to the type of replacement accomplished. In a "worst case scenario" (all subject rods needing replacement), the cost of parts would be approximately $8,200 per airplane. Labor necessary to accomplish replacement of a rod(s) would vary from 2 work hours to 10 work hours, at an average labor rate of $55 per work hour.

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket 94–NM–83–AD.

Applicability: Model ATR72–101, –102, –201, and –202 series airplanes; as listed in Aerospatiale Service Bulletin ATR72–27–1033, dated February 23, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items, accomplish the following:

Note 1: Rods replaced and installed in accordance with the instructions of any version of Aerospatiale Service Bulletin ATR72–27–1010 prior to the effective date of this AD are not affected by the requirements of this AD.

(a) For airplanes having Manufacturer's Serial Numbers (MSN) 126 through 183, inclusive: Within 18 months after the effective date of this AD, visually inspect the elevator trim fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Part A of Aerospatiale Service Bulletin ATR72–27–1033, dated February 23, 1994.

(1) If a SARMA-type rod is installed, prior to further flight, replace that rod with a modified rod, in accordance with Aerospatiale Service Bulletin ATR72–27–1012, Revision 3, dated October 7, 1991.

(2) If a TAC-type rod is installed, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, accomplish the reverse installation procedures specified in Aerospatiale Service Bulletin ATR72–27–1010, Revision 4, dated February 23, 1994.

(b) For airplanes having MSN's 126 through 198, inclusive, 204, and 207: Within 18 months after the effective date of this AD, visually inspect the rudder trim fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Part B of Aerospatiale Service Bulletin ATR72–27–1033, dated February 23, 1994.

(1) If a SARMA-type rod is installed, prior to further flight, replace that rod with a modified rod, in accordance with Aerospatiale Service Bulletin ATR72–27–1012, Revision 3, dated October 7, 1991.

(2) If a TAC-type rod is installed, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, accomplish the reverse installation procedures specified in Aerospatiale Service Bulletin ATR72–27–1010, Revision 4, dated February 23, 1994.

(c) For airplanes having MSN's 198, and 126 through 237, inclusive: Within 18 months after the effective date of this AD, visually inspect the rudder travel limitation unit fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Part C of Aerospatiale Service Bulletin ATR72–27–1033, dated February 23, 1994.

(1) If a SARMA-type rod is installed, prior to further flight, replace that rod with a new rod in accordance with Aerospatiale Service Bulletin ATR72–27–1027, dated July 28, 1993.

(2) If a TAC-type rod is installed at the rudder travel limitation rod location, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, inspect that rod in accordance with Aerospatiale Service Bulletin ATR72–27–1027, dated July 28, 1993.

(i) If no crack(s), deformation, or corrosion of the rod is found, prior to further flight, reinstall the rod so that the open end is oriented downwards, in accordance with the service bulletin.

(ii) If any crack(s), deformation, or corrosion of the rod is found, prior to further flight, replace the rod with a modified rod in accordance with the service bulletin.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on July 20, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–18194 Filed 7–26–4; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket Number 94–NM–70–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. This proposal would require modification of the fuel crossfeed dump shutoff system. This proposal is prompted by an FAA determination that, in the event of a failure of the number 2 bus tie relay and the subsequent loss of electrical power source of the number 2 engine, an all-engine flameout event could occur due to fuel starvation during or shortly after a fuel dumping operation. The actions specified by the proposed AD are intended to prevent loss of the fuel crossfeed dump shutoff system due to a failure of the number 2 DC bus electrical relay and the subsequent loss of electrical power source of the number 2 engine.

DATES: Comments must be received by September 19, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket Number 94–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425.

FOR FURTHER INFORMATION CONTACT: Ray Vakili, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East

Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–70–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket Number 94–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 1, 1992, the FAA issued AD 92–22–06, amendment 39–8392, (57 FR 47570, October 19, 1992), applicable to all McDonnell Douglas Model MD–11 airplanes, Model DC–10 series airplanes, and Model KC–10A (military) airplanes. That AD requires revising the Airplane Flight Manual (AFM) to include information to specify that electrical malfunctions may render the automatic fuel dump termination feature inoperative. That action was prompted by an incident in which the automatic fuel crossfeed dump shutoff system became inoperative, and fuel was dumped below the minimum allowable level. Dumping fuel below the minimum allowable level could lead to an all-engine-out condition.

Since issuance of that AD, an in-depth review has revealed that the fuel dump shutoff system on Model DC–10 series airplanes and Model KC–10A airplanes is such that, in the event of a failure of the number 2 bus tie relay and the subsequent loss of electrical power source of the number 2 engine, an all-engine flameout event could occur due to fuel starvation during or shortly after fuel dumping operations. This condition, if not corrected, could render the fuel crossfeed dump shutoff system inoperable due to a failure of the number 2 DC bus electrical relay and the subsequent loss of the number 2 electrical power source.

The FAA has reviewed and approved McDonnell Douglas DC–10 Service Bulletin 28–208, dated April 14, 1994, that describes procedures for modification of the fuel crossfeed dump shutoff system. This modification provides isolation of the engine fuel system, which entails installation of new fuel relays and, for certain airplanes, relocation of existing relays. Further, this modification also revises the electrical wiring for the fuel crossfeed dump shutoff system to provide redundant electrical power sources, which minimizes the possibility of system loss in the event of a number 2 engine shutdown.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the fuel crossfeed dump shutoff system. The actions would be required to be accomplished in accordance with the service bulletin described previously. Accomplishment of this modification will terminate the requirement imposed by paragraph (b) of AD 92–22–06 to revise the FAA-approved AFM, which cautioned that electrical malfunctions may render the automatic fuel dump termination feature inoperative.

[Note: On March 23, 1994, the FAA issued AD 94–07–07, amendment 39–8865 (59 FR 15853, April 5, 1994), applicable to certain Model MD–11 and MD–11F airplanes, to require a similar modification to terminate the requirement imposed by paragraph (a) of AD 92–22–06.]

There are approximately 425 Model DC–10 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 221 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 9 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,560 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $454,155, or $2,055 per airplane.

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

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 94–NM–70–AD.

Applicability: All Model DC–10 series airplanes and KC–10A (military) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the fuel dump system shutoff due to a failure of the number 2 DC bus electrical relay and the subsequent loss of electrical power source of the number 2 engine, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the fuel crossfeed dump shutoff system in accordance with McDonnell Douglas DC–10 Service Bulletin 28–208, dated April 14, 1994. Accomplishment of the modification constitutes terminating action for the revisions to the Airplane Flight Manual (AFM) required by paragraph (b) of AD 92–22–06, amendment 39–8392.

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

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

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

Issued in Renton, Washington, on July 20, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–18195 Filed 7–26–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–74–AD]

Airworthiness Directives; Raytheon Corporate Jets Model BH/HS 125–600A and –700A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Raytheon Corporate Jets Model BH/HS 125–600A and –700A series airplanes. This proposal would require installation of two new circuit breakers in the 6 volt output circuits of the flight deck lighting transformers on electrical Panel 'RY,' below the right pilot's seat. This proposal is prompted by a report of smoke in the flight deck due to a lighting transformer 6 volt output circuit short circuiting to ground. The actions specified by the proposed AD are intended to prevent smoke or fire in the flight deck due to inadequate circuit protection for 6 volt circuits of the flight deck lighting transformer.

DATES: Comments must be received by September 19, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Corporate Jets, Inc., 3 Bishops Square, St. Albans Road West, Hatfield, Hertfordshire, AL109NE, United Kingdom. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–74–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Raytheon Corporate Jets Model BH/HS 125–600A and -700A series airplanes. The CAA advises that an incident occurred on a Model HS 125–700B series airplane when a 6 volt output circuit from the flight deck lighting transformer on Panel 'RY' overheated and short-circuited to ground. This resulted in a release of acrid smoke in the flight deck. Investigation revealed that the 6 volt output circuit was not protected by a fuse or circuit breaker. This condition, if not corrected, could result in smoke and fire in the flight deck during flight.

Since Model BH/HS 125–600A and 125–700A series airplanes are similar in type design to Model BH/HS 125–700B series airplanes, the FAA has determined that the addressed unsafe condition is likely to exist or develop on Model BH/HS 125–600A and 125–700A series airplanes.

Raytheon Corporate Jets has issued Service Bulletin SB.24–310–3544A&B, dated February 14, 1994, which describes procedures for installing circuit breakers in the 6 volt output circuits of two flight deck lighting transformers. The purpose of the circuit breakers is to provide circuit protection for the 6-volt output wires and to prevent overheating and short circuiting. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA,

reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of two new circuit breakers in the 6 volt output circuits of the flight deck lighting transformers on electrical Panel 'RY.' The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 202 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $212,100, or $1,050 per airplane.

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

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Corporate Jets (Formerly British Aerospace PLC, Hawker Siddley): Docket 94–NM–74–AD.

Applicability: All Model BH/HS 125–600A and –700A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke or fire in the flight deck due to short circuiting of the flight deck lighting transformers 6V output circuits, accomplish the following:

(a) Within six months after the effective date of this AD, install circuit breakers in two 6 volt output circuits of the flight deck lighting transformers in accordance with Raytheon Corporate Jets Service Bulletin SB.24–310–3544A&B, dated February 14, 1994.

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

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

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

Issued in Renton, Washington, on July 20, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–18196 Filed 7–26–94; 8:45am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–65–AD]

Airworthiness Directives; McDonnell Douglas Model DC–8–70 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–8–70 series airplanes, that currently requires replacement of all attachment screws at the exhaust nozzle plug splice, and a check of nut plates for running torque and replacement of nut plates, if necessary. This action would require modification of the engine exhaust plug assemblies; when accomplished, this modification would terminate the need for the currently required replacement and check. This proposal is prompted by reports of loose or missing attachments at the splice joint of the engine forward and aft exhaust plugs, and loss of the rear exhaust plug following an engine bird strike. The actions specified by the proposed AD are intended to prevent reduced integrity of the engine exhaust plug installation, which may lead to separation of exhaust plugs from the airplane, and create a hazard to persons and property on the ground.

DATES: Comments must be received by September 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This

information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988–5245; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–65–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 17, 1983, the FAA issued AD 83–02–05, amendment 39–4544 (48 FR 5539, February 7, 1983), applicable to all McDonnell Douglas Model DC–8–70 series airplanes, to require replacement of all attachment screws at the exhaust nozzle plug splice. That AD also requires a check of nut plates for running torque and replacement of nut plates not meeting the minimum run down torque of five inch-pounds. That action was prompted by reports of loose or missing attachment screws at the plug splice joint. In one reported incident, the exhaust plug nozzle separated from one engine while the airplane was in flight. The requirements of that AD are intended to prevent separation of the exhaust nozzle plug from the engine.

Since the issuance of that AD, three operators have reported four incidents of loose or missing attachments at the splice joint of the engine forward and aft exhaust plugs. These discrepancies were found on airplanes subsequent to the accomplishment of AD 83–02–05. One operator reported loss of the rear exhaust plug on one airplane after the engine sustained a bird strike. Investigation revealed that the cause of these loose or missing splice joint attachments was attributed to higher temperatures and vibration effects of the engine exhaust.

Operators also reported loose nuts at the forward plug-to-engine turbine flange attachments. The cause of these loose nuts has been attributed to high temperature and incompatibility of the nut threads with associated threaded studs.

These conditions, if not corrected, could result in reduced integrity of the engine exhaust plug installation, which may lead to separation of exhaust plugs from the airplane, and create a hazard to persons and property on the ground.

The FAA has reviewed and approved McDonnell Douglas DC–8–70 Service Bulletin 78–112, Revision 2, dated March 8, 1994, that describes procedures for modification of the engine exhaust plug assemblies. The modification entails replacement of existing fasteners with permanent fasteners having larger diameters; this will serve to strengthen the splice installation and minimize the possibility of loose splice joint fasteners. Further, this modification entails replacement of existing nuts with nuts that are less susceptible to the effects of higher temperatures and have compatible thread pitch, which minimizes the possibility of forward plug-to-engine turbine attachments becoming loose.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 83–02–05 to require modification of the engine exhaust plug assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously. Accomplishment of this modification would constitute terminating action for the currently required replacement and check.

There are approximately 110 Model DC–8–70 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 78 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 46 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $55 per work hour. Required parts would cost approximately $21,400 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,866,540, or $23,930 per airplane.

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

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4544 (48 FR 5539, February 7, 1983), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 94–NM–65–AD. Supersedes AD 83–02–05, Amendment 39–4544.

Applicability: All Model DC–8–70 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced integrity of the engine exhaust plug installation, which may lead to separation of exhaust plugs from the airplane, and create a hazard to persons and property on the ground, accomplish the following:

(a) Within 300 flight hours after February 7, 1983 (the effective date of AD 83–02–05, amendment 39–4544), accomplish the procedures specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with McDonnell Douglas DC–8–70 Alert Service Bulletin A78–107, dated November 30, 1982; McDonnell Douglas DC–8–70 Service Bulletin 78–107, dated January 16, 1984; or McDonnell Douglas DC–8–70 Service Bulletin 78–107, Revision 1, dated June 12, 1984.

(1) Replace all NAS560XK4–5 screws with NAS560XK4–4 screws at the exhaust nozzle plug splice.

(2) Check nut plates for running torque and replace all nut plates not meeting the minimum run down torque of five inch-pounds.

(b) Within 24 months after the effective date of this AD, modify the engine exhaust plug assemblies in accordance with McDonnell Douglas DC–8–70 Service Bulletin 78–112, Revision 2, dated March 8, 1994. Accomplishment of this modification constitutes terminating action for the replacement and check requirements of paragraph (a) of this AD.

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

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

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

Issued in Renton, Washington, on July 20, 1994.

Darrell M. Pederson, Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–18226 Filed 7–26–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–78–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. This proposal would require modification of the power transfer unit (PTU). This proposal is prompted by reports of fatigue cracks found in the drain port housings of the PTU's on several airplanes. The actions specified by the proposed AD are intended to prevent failure of the PTU housing due to fatigue cracking, which could result in the loss of both hydraulic systems (until the PTU is shut off).

DATES: Comments must be received by September 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: business Unit Manager, Technical Administrative support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles ACO, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5336; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–78–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of cracked drain port housings found on the power transfer units (PTU) installed on five McDonnell Douglas Model DC–9–80 series airplanes. In one incident, failure of the housing resulted in the loss of both hydraulic systems, which caused the airplane to depart from the runway during taxi due to the loss of braking and nose landing gear steering.

Investigation has revealed that the cause of the cracking is attributed to fatigue. Further analysis of the hardware

has indicated that the center housing and drain port housing can crack before the design life of the PTU has been reached. This condition, if not corrected, could lead to the failure of the housings associated with the PTU, which in turn could result in the loss of both hydraulic systems (until the PTU is shut off).

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 29–53, Revision 1, dated April 21, 1994, that describes procedures for modification of the center housing and drain port housing of the PTU. This modification entails replacing the currently installed cast aluminum housings with wrought aluminum housings, and reidentifying the part number of the PTU. Such modification will ensure that the housings meet the PTU design life requirements.

(**Note:** This service bulletin references Allied Signal Service Bulletin 4100310–29–0031, Revision 3, dated April 8, 1994, for detailed modification instructions.)

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the center housing and drain port housing of the PTU. The actions would be required to be accomplished in accordance with the McDonnell Douglas service bulletin described previously.

This proposed AD would not be applicable to airplanes that are equipped with Vickers PV3–160 engine driven pumps. The FAA finds that this type of pump provides a pressurized flow of 21 gallons per minute and, in the event of a PTU crack or failure, that rate of flow would be adequate to continue pressurizing the affected hydraulic system.

There are approximately 1,074 Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 578 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,912 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,746,716, or $3,022 per airplane.

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

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 94–NM–78–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–84 (MD–84), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas Service Bulletin 29–53, Revision 1, dated April 21, 1994; excluding airplanes equipped with Vickers PV3–160 Engine Driven Pumps; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of both hydraulic systems due to the failure of the housings of the power transfer unit (PTU), accomplish the following:

(a) Prior to or upon the accumulation of 14,300 flight cycles on the PTU, or within 9 months after the effective date of this AD, whichever occurs later, modify the PTU assembly, part number 4100310, in accordance with McDonnell Douglas Service Bulletin 29–53, Revision 1, dated April 21, 1994.

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

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

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

Issued in Renton, Washington, on July 20, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–18279 Filed 7–26–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–87–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model DC–9–80 series airplanes and Model MD–88 airplanes. This proposal would require modification of the engine nose cowl. This proposal is prompted by several in-flight incidents in which the engine nose cowl separated or nearly separated from the airplane. The actions specified by the proposed AD are intended to prevent separation of the engine nose cowl from the airplane during severe vibration of the engine.

DATES: Comments must be received by September 12, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–87–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5245; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–87–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–87–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of several in-flight incidents that have occurred on McDonnell Douglas Model DC–9–80 series airplanes in which the engine nose cowl separated or nearly separated from these airplanes. Investigation revealed that these separations occurred following severe vibration of the engine due to failures of the first stage fan blade. The cause of these separations has been attributed to loose or missing attachment bolts of the engine nose cowl. This condition, if not corrected, could result in separation of the engine nose cowl from the airplane during severe vibration of the engine.

The FAA has reviewed and approved McDonnell Douglas MD–80 Alert Service Bulletin A71–61, dated May 18, 1994, which describes procedures for modification of the left and right engine nose cowls. This modification entails removal of attachment bolts and nutplates, replacement of nutplates with self-locking nuts and washers on the engine "A" flange, and reversal of attachment bolt direction (bolthead facing forward). This modification will ensure the integrity of the nose cowl attachment assembly so as to minimize the possibility of separation of the engine nose cowl from the airplane during severe vibration of the engine.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the left and right engine nose cowls. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

There are approximately 1,062 McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 540 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $232,200, or $430 per airplane.

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

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 94–NM–87–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes and

Model MD–88 airplanes; as listed in McDonnell Douglas MD–80 Alert Service Bulletin A71–61, dated May 18, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the engine nose cowl separating from the airplane during severe engine vibration, accomplish the following:

(a) Within 8 months after the effective date of this AD, modify the left and right engine nose cowls in accordance with McDonnell Douglas MD–80 Alert Service Bulletin A71–61, dated May 18, 1994.

Note 1: Modification in accordance with either Figure 1, Figure 2, or Figure 3 of the alert service bulletin is acceptable for compliance with this paragraph.

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

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

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

Issued in Renton, Washington, on July 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–18284 Filed 7–26–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Management of Grazing Use Within Rangeland Ecosystems, and Range Management; Grazing Fees

AGENCY: Forest Service, USDA.

ACTION: Proposed rules; extension of comment period.

SUMMARY: On April 28, 1994, at 59 FR 22074 and 22094, in Part VI of the **Federal Register**, the Forest Service published two proposed rules to revise grazing and livestock management regulations at 36 CFR part 222, Subpart A and grazing fee regulations at Subpart C. The public comment period is scheduled to expire on July 28, 1994. The Department of the Interior, Bureau of Land Management, has also published a proposed rule for grazing administration for which the public comment period is also scheduled to expire on July 28, 1994. The Bureau of Land Management is extending the comment period for their proposed rule from July 28, 1994 to September 9, 1994. In order to coincide with the public comment period of the Bureau of Land Management, the Forest Service is extending the public comment period on the proposed rules until September 9, 1994.

DATES: Comments must be received in writing by September 9, 1994.

ADDRESSES: Send written comments to Rangeland Reform '94, P.O. Box 66300, Washington, DC 20035–6300.

FOR FURTHER INFORMATION CONTACT: David M. Stewart, Range Management Staff, (202) 205–1746.

Dated: July 21, 1994.

David G. Unger,

Associate Chief.

[FR Doc. 94–18308 Filed 7–26–94; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E4310/P585; FRL–4898–5]

RIN 2070–AC18

Watermelon Mosaic Virus-2 Coat Protein, Zucchini Yellow Mosaic Virus Coat Protein and the Genetic Material Necessary for Production of These Proteins in Transgenic Squash Plants; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes establishing an exemption from the requirement for a tolerance under the Federal Food, Drug, and Cosmetic Act for residues of the plant-pesticides watermelon mosaic virus-2 (WMV2) coat protein and zucchini yellow mosaic virus (ZYMV) coat protein, as expressed in Asgrow line ZW20 of *Cucurbita pepo* L. and the genetic material necessary for the production of these proteins. This exemption was requested by Asgrow Seed Co.

DATES: Written comments, identified by the document control number [PP 4E4310/P585], must be received on or before August 26, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Steve Robbins, Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6900.

SUPPLEMENTARY INFORMATION: EPA received from Asgrow Seed Co., Kalamzoo, MI 49004, pesticide petition (PP) 4E4310 on December 6, 1993, proposing to amend 40 CFR part 180 by establishing a regulation pursuant to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a, to exempt from the requirement of a tolerance, the residues of the plant-pesticides watermelon mosaic virus-2 coat protein and zucchini yellow mosaic virus coat protein as expressed in Asgrow line ZW20 of *Cucurbita pepo* L., and subsequent generations obtained through normal sexual reproduction. An amendment to this petition was received on April 4, 1994, which changed the proposed exemption by including the genetic material necessary for the production of these proteins.

The squash plants identified as Asgrow line ZW20 have been genetically modified to produce the coat proteins of two viruses which commonly infect squash plants (watermelon mosaic virus-2 and zucchini yellow mosaic virus). Production of specific viral coat proteins by the plant will protect it from infection by those viruses. Viral coat proteins, along with the genetic material (nucleic acids) necessary to produce

them in the plant, are designated as plant pesticides by EPA.

The data submitted in the petition and all other relevant material have been evaluated. The data considered in support of the exemption from the requirement of a tolerance include the following: Sequences of the engineered WMV2 and ZYMV coat protein coding regions and their resulting coat proteins, Southern blots to show absence of NPT2 gene and non-T-DNA sequences in ZW 20 squash, levels of WMV2 and ZYMV coat protein deduced from amino acid sequence, and levels of viral coat proteins in fruit collected from local markets.

The Agency agrees with the petitioner's contention that components of plant pathogenic viruses, as represented by the protein coats of zucchini yellow mosaic virus and watermelon mosaic virus-2, present no health concerns when expressed in edible portions of the plant. The data include evidence to support the lack of any NPT2 marker gene in the ZW20 plants. Therefore, the only transgene expressed is the viral coat protein. The submitted data include results of tests to determine the levels of the proteins in market-ready fruit from line ZW20 and related this information to the normal levels of these viruses in cucurbit fruits pruchased at local markets. These data demonstrated that, overall, the levels of viral coat proteins in locally grown cucurbit plants were higher than those expressed in the transgenic squash.

The exemption from the requirement of a tolerance for specific viral coat proteins WMV2 and ZYMV is based on the following: (1) Virus-infected plants have always been a part of the human and domestic animal food supply since most crops are frequently infected with plant viruses, and food from these crops has been and is being consumed without observed adverse human health effects; (2) plant viruses have never been shown to be infectious to humans or mammals. Plant viruses are not able to replicate in mammals or other vertebrates. Thus, there is no possibility of human infection. In addition, only the portion of the viral genome coding for the whole coat protein or a subcomponent of the coat protein will be expressed in the ZW20 plants. This portion by itself is incapable of forming infectious particles. Since whole intact plant viruses are not known to cause deleterious human health effects, it is reasonable to assume that a subunit of these viruses likewise will not cause adverse human health effects.

Asgrow Seed Co. amended its petition to include the genetic material necessary for the production of the proteins because EPA considers such genetic material to be part of the plant-pesticide product. It is the genetic material that is introduced into the plant with the intent that it will ultimately result in a pesticidal effect (i.e., the plant will produce the viral coat protein). Moreover, the pesticidal proteins could not be produced without the genetic material being present in the plant. The exemption from a tolerance for the genetic material which codes for the production of the viral coat proteins is based on the fact that the nucleic acids which form the genetic material are found in all foods and have not, by themselves, been associated with toxic or pathogenic effects on animals and humans. None of these constituents of nucleic acids are know to be acute toxicants by themselves but, like proteins and other normal constituents of food, may cause indirect, adverse metabolic effects if consumed exclusively at high doses over a long period of time in the absence of a normal balanced diet. Nucleic acids will not occur at these high amounts in ZW20 plants. Thus, EPA does not believe there is any potential for adverse health effects related to the consumption of the ZW20 plants.

The data and information submitted with this petition are acceptable and are adequate to show that there are no forseeable human or domestic health hazards likely to arise from the consumption of fruit from the Asgrow line ZW20 of *Cucurbita pepo* L.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrate that these plant pesticides are not toxic to humans. No enforcement actions are expected based upon the level of residues of viral coat proteins and the genetic material necessary for their production. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This will be the first exemption from the requirement of a tolerance for this plant pesticide.

The plant pesticides in the Asgrow squash line ZW20 are considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is proposed as set forth below.

Interested persons are invited to submit written comments on the proposed rule. Comments must bear a notation indicating the document control number, [PP 4E4310/P585]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Interested persons are invited to submit written comments on the proposed rule. Comments must bear a notation indicating the document control number [PP 4E4310/P585]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: July 11, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1132, to read as follows:

§ 180.1132 Watermelon mosaic virus-2 coat protein, zucchini yellow mosaic virus coat protein and the genetic material necessary for the production of these proteins; exemption from the requirement of a tolerance.

The plant-pesticides watermelon mosaic virus-2 coat protein and zucchini yellow mosaic virus coat protein as expressed in Asgrow line ZW20 of *Cucurbita pepo* L. and the genetic material (nucleic acids) necessary for the production of these proteins are exempted from the requirement of a tolerance in this transgenic plant and in subsequent generations of Asgrow line ZW20 of *cucurbita pepo* L. obtained through normal sexual reproduction.

[FR Doc. 94–17912 Filed 7–26–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300296; FRL–4635–3]

RIN No. 2070–AC18

Acrylonitrile-Butadiene Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to establish an exemption from the requirement of a tolerance for residues of acrylonitrile-butadiene copolymer(CAS Reg. No. 9003–18–3) when used as an inert ingredient (component of ear tags and similar slow-release devices) in pesticide formulations applied to animals. Y-Tex Corp. requested this regulation.

DATES: Comments, identified by the document control number, [OPP–300296], must be received on or before August 26, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for inspection in Rm. 1132, at the address given above, from 8 a.m. to 4 p.m., Mondays through Fridays, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry B. Leifer, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, Arlington, VA 22202, (703)–308–8323.

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued a proposed rule in the **Federal Register** of February 3, 1989 (54 FR 5502), in which it announced that the Y-Tex Corp., P.O. Box 1450, 1825 Big Horn Ave., Cody, WY 82414, had requested that the Administrator amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance under section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)) for acrylonitrile-butadiene copolymer, FD & C Yellow No. 6 aluminum lake, 2-(2'-hydroxy-5'-methylphenyl)benzotriazole and octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate when used as components of ear tags and similar slow-release devices in pesticide formulations applied to animals.

One comment was received in response to the proposed rule. The commenter claimed that among the bases for approval of the acrylonitrile-butadiene copolymer is an erroneous interpretation of the results of a risk assessment conducted by the U. S. Food and Drug Administration (FDA).

One of the bases for approval listed in the proposed rule under the subheading "acrylonitrile-butadiene copolymer" references an FDA risk assessment for acrylonitrile monomer and states, ". . . the worst case exposure to this monomer would result in an upper daily lifetime oncogenic risk of less than 1.2×10^{-7}, based upon a daily lifetime consumption of 1,060 grams of soft drinks contained in acrylonitrile/styrene plastic beverage bottles (from which the monomer might be expected to migrate) with acrylonitrile monomer concentration not exceeding 80 ppm." The quoted language (49 FR 36635; September 19, 1984) was part of the preamble of a **Federal Register** document that amended the food additive regulations at 21 CFR 177.1040(c) to add a description of an acrylonitrile/styrene copolymer suitable for use in packaging soft drinks.

The commenter noted that the maximum residual acrylonitrile monomer content of a finished article intended for such use is specified in the regulation as 0.10 ppm rather than 80 ppm. The FDA assessment of risk used as a basis of approval was based upon the 0.10-ppm value. In addition, the commenter asserted that the barrier properties of the acrylonitrile/styrene copolymer that is the subject of 21 CFR 177.1040 are such that the migration of the residual acrylonitrile monomer would occur more slowly and to a lesser extent than would be the case for the acrylonitrile-butadiene copolymer for which the exemption from the requirement of a tolerance was proposed. For the reasons cited above, the commenter claimed that EPA's citation of the FDA calculation of the lifetime risk from exposure to monomeric acrylonitrile does not support the action proposed.

EPA agrees with the comment and in response EPA has decided to reissue a proposal to establish an exemption from the requirement of a tolerance for the acrylonitrile-butadiene copolymer that includes a revised calculation of lifetime risk from exposure to monomeric acrylonitrile.

II. Application of Assessment in Proposed Rulemaking

A. Exposure to Acrylonitrile Monomer

Data provided by the petitioner regarding the levels of acrylonitrile monomer typically expected to be present in the subject acrylonitrile-butadiene copolymer indicate that the concentration does not exceed 1 part per million (ppm). Using this concentration of acrylonitrile monomer and the conditions of use of the acrylonitrile-butadiene copolymer in animal ear tags, an estimation of exposure to acrylonitrile monomer resulting from the use of acrylonitrile-butadiene copolymer as a component of an animal tag or similar devices was conducted.

The following assumptions were incorporated into a "worst-case" exposure assessment:

1. The subject acrylonitrile-butadiene copolymer contains a residual acrylonitrile monomer concentration of 1 ppm.

2. The copolymer comprises 50% of the weight of the tag.

3. The tag weight does not exceed 15 grams.

4. Each animal wears two tags.

5. The animal weighs 800 pounds (363.2 kilograms). This would correspond to the lower range of weight for beef cattle, the predominant wearers of insecticidal animal tags.

6. All acrylonitrile monomer present in the tags migrates into the animal and is not metabolized and/or excreted.

7. A human diet of 3,000 grams per day consists solely of meat emanating from cattle wearing tags containing acrylonitrile monomer.

These "worst-case" assumptions produce an estimate of human acrylonitrile monomer dietary consumption of 0.12 microgram per day.

B. Toxicity of Acrylonitrile Monomer

As described in the previously cited **Federal Register** document establishing a food-additive regulation for acrylonitrile-styrene copolymer, the FDA's Center for Food Safety and Applied Nutrition Cancer Assessment Committee concluded from its quantitative risk assessment that acrylonitrile monomer exposure corresponding to an upper-limit lifetime risk of 10^{-6}, i.e., 1 in 1 million, is about 0.5 to 1.0 microgram per day.

C. Extrapolation of Risk for Acrylonitrile Monomer

Using the above FDA quantitative risk assessment and the "worst-case" exposure estimate, EPA concludes that the upper-limit individual lifetime risk for acrylonitrile monomer resulting from the use of acrylonitrile-butadiene copolymer as a component of an animal ear tag is about 1.2×10^{-7} to 2.4×10^{-7}, or slightly more than 1 in 7 million.

Because of the numerous conservative assumptions included in the worst-case exposure estimate, lifetime-averaged individual exposure to acrylonitrile monomer is expected to be significantly less than the estimated exposure and, therefore, the calculated upper-bound risk would be significantly less.

III. Additional Bases of Approval

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exlcude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Acrylonitrile-butadiene copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers.

1. The minimum number average molecular weight of acrylonitrile-butadiene copolymer is greater than 1,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. Acrylonitrile-butadiene copolymer is not a cationic polymer nor is it reasonably expected to become a cationic polymer in a natural aquatic environment.

3. Acrylonitrile-butadiene copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Acrylonitrile-butadiene copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Acrylonitrile-butadiene copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Acrylonitrile-butadiene copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. Acrylonitrile-butadiene copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. Acrylonitrile-butadiene copolymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. Acrylonitrile-butadiene copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and that the establishment of a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains the ingredient listed herein, may request, within 30 days after publication of this document in the **Federal Register**, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP–300296]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, by amending paragraph (e) in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	*	* * *
Acrylonitrile-butadiene copolymer (CAS Reg. No. 9003–18–3) conforming to 21 CFR 180.22, minimum average molecular weight 1,000..	.....	Carrier in animal tag and similar slow-release devices.
* * *	*	* * *

[FR Doc. 94–17774 Filed 7–26–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Bureau of Land Management

43 CFR Parts 1780 and 4100

[WO–220–4320–02 24 1A]

RIN 1004–AB89

Department Hearings and Appeals Procedures; Cooperative Relations; Grazing Administration—Exclusive of Alaska

AGENCY: Office of the Secretary and the Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of comment period and additional request for comment.

SUMMARY: The comment period on the Department's proposed rule pertaining primarily to the administration of livestock grazing on public lands is extended to provide additional opportunity for public comment. This document also solicits public comment on whether the Department of the Interior should consider reducing the fee that would be charged for grazing sheep on public lands. Comments on this issue will be considered along with comments on the proposed rule published in the **Federal Register** on March 25, 1994, in developing the Department's final rule.

DATES: Comments on this proposed rule must be submitted in writing by September 9, 1994. Comments postmarked after this date will not be considered in the preparation of the final rule.

ADDRESSES: Send comments on this proposed rule to Rangeland Reform '94, P.O. Box 66300, Washington, D.C. 20035–6300. Com ments delivered to an address other than above may not be considered in the preparation of the final rule.

Comments on the proposed rule will be made available for public inspection during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday. Viewing of the comments can be arranged by contacting the Bureau of Land Management at the telephone number provided below.

FOR FURTHER INFORMATION CONTACT: Mark W. Stiles, Regulations Analyst, Division of Legislation and Regulatory Management, Bureau of Land Management, (202) 208–4256.

SUPPLEMENTARY INFORMATION: A proposed rule that would amend primarily the regulations that govern how the Secretary of the Interior, through the Bureau of Land Management, administers livestock grazing was published in the **Federal Register** March 25, 1994 (59 FR 14314). That proposed rule is a part of the Department's Rangeland Reform '94, an effort to improve the administration of grazing. The original comment period on the proposed rule was to end on July 28, 1994. The comment period is being extended until September 9, 1994.

During the development of the proposed rule and since the opening of the comment period on the Rangeland Reform '94 proposal, the Governors of several States have organized groups to consider the Department's proposals. The Governor of Wyoming has established one such group which is developing comments and alternative actions to be considered. The Governor of Wyoming has requested an extension of the comment period to provide the Wyoming working group sufficient time to complete their model for rangeland reform. In keeping with the Department's intent to encourage collaborative efforts in the resolution of difficult public land management issues, the comment period on the proposed rule is being extended until September 9, 1994.

Elements of Rangeland Reform '94 have been analyzed through a draft environmental impact statement (EIS), notice of which was published in the **Federal Register** on May 13, 1994 (59 FR 25118). The Forest Service is a cooperating agency in the preparation of the EIS. The comment period on the draft EIS ends August 11, 1994, but the Department is considering the need to extend the EIS comment period to coincide with the closing of the comment period on the related proposed rule. Any extension of the comment period for the draft EIS will be made through a separate **Federal Register** notice.

A key provision of the Department's proposed rule published March 25, 1994, would raise the Federal grazing fee to a level more closely reflecting market value. Under the proposed rule the grazing fee would be charged for each animal unit month (AUM) of grazing on Federal lands. An AUM was defined, for billing purposes, as a month's use and occupancy of range by one cow, bull, steer, heifer, horse, burro, mule, five sheep, or five goats, over the age of six months at the time of entering the public lands or other lands administered by the Bureau of Land Management (BLM); for all such weaned animals regardless of age; and for such animals that will become 12 months of age during the authorized period of use. This document requests comment from the public regarding whether the definition of an AUM for billing purposes, as it pertains to sheep, should be six or seven sheep, rather than five sheep.

The Department solicits comments on this aspect of the proposed rule in recognition of the decline in the number of sheep operators and number of sheep AUMs authorized on public lands over the last 20 years. During the period of 1975 through 1993 the number of sheep operators using public rangelands administered by the BLM dropped from 2,490 to 1,624. During the same period the number of AUMs authorized for sheep use dropped from about 1.8 million to about 1.2 million. The decline in sheep grazing on the public lands may be attributed to a number of factors, but has resulted in a shift from sheep to cattle in many areas where grazing by sheep would be environmentally and administratively preferable. It has come to the attention of the Department that the long-term

trend in the shift from sheep to cattle may be accelerated by recent changes in market factors such as the phase-out of wool incentive and unshorn lamb payments.

The public is asked to provide information addressing whether or how the proposed rule might affect the long-term trend in the shift from sheep to cattle. In particular, the Department is inviting comment on the effect of changing the definition of an AUM for billing purposes in a manner that would reduce the proposed grazing fee that would be charged for the use of public lands by sheep by 17 percent if the number of sheep per billing unit would be changed from five to six, or 28 percent if changed from five to seven.

An adjustment in the definition of an AUM for billing purposes would not affect the manner in which sheep stocking rates are determined. It would only affect the price paid for the use of public lands by sheep. Stocking rates are determined by, among other things, assessing the capacity of the public lands for a given kind of livestock. The equivalency between cattle and sheep expressed in the definition of an AUM for billing purposes is not used by the BLM in determining stocking rates.

The Department intends that any change in the definition of an AUM for billing purposes would not affect the proposed 30 percent incentive fee reduction.

Due to the great volume of comments already received and anticipated on this proposed rule, the Department requests that reviewers identify the specific section and paragraph label for the regulatory text on which they are commenting. Specific statements of what regulatory text the reviewer feels should be modified, and the reasons for the recommended changes, are encouraged.

This additional request for comment is proposed under the authority of the Taylor Grazing Act of 1934 (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*).

This rule has been reviewed under Executive Order 12866.

The Department has prepared an initial Small Entity Flexibility Analysis analyzing the economic impact of the March 25, 1994 rulemaking (59 FR 14314) on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*). The anticipated effects of this additional request would be consistent with the analysis prepared for the March 25, 1994, proposed rule. The initial analysis is available at the address provided above.

This additional request for comment on the proposed rule has been reviewed under Executive Order 12630, the Attorney General Guidelines, Department of the Interior Guidelines, and the Attorney General Supplemental Guidelines to determine the takings implications of the proposed rule if it were promulgated as currently drafted. The Department has determined that this additional request for comment does not present a risk of a taking.

The Department has certified to the Office of Management and Budget that the proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This additional request for comment does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94–18304 Filed 7–26–94; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 13

[PR Docket No. 94–58; FCC 94–169]

Temporary Operating Authority for Commercial Radio Operator Applicants

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This action proposes to authorize persons who have passed the required examinations and applied for commercial radio operator licenses to perform the functions of a commercial radio operator on a temporary and conditional basis while awaiting their licenses. The proposed rules are necessary so that persons who need their licenses immediately as a condition of employment can begin work.

DATES: Comments are due on or before September 1, 1994. Reply comments are due on or before October 1, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20544, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted June 13, 1994, and released July 6, 1994. The complete text of this Commission action, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230), 1919 M Street, N.W., Washington, D.C. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc), 2100 M Street N.W., Suite 140, Washington, D.C. 20037.

Summary of Notice of Proposed Rule Making

1. A commercial radio operator license is required to be held by a person who operates stations in a number of radio services. To qualify for certain of these licenses, an applicant must pass an examination(s) that is administered by one of the nine Commission-certified Commercial Operator License Examination (COLE) Managers. Within 10 days of completion of an examination element(s), the COLE Manager must issued a Proof-of-Passing Certificate (PPC) to an examinee who scores a passing grade on an examination element. When the examinee is credited for all examination elements required for the commercial operator license sought, the examinee applies to the Commission for the license. The Commission then processes the application and, if the applicant is fully qualified, grants the license. Total processing time may be as much as eight weeks.

2. We are dedicated to providing better and friendlier service to our customers. One significant way we can further this goal is by permitting applicants who have passed the qualifying examinations and applied for a commercial radio operator license to perform the functions of a commercial radio operator prior to receiving the Commission license. This would be a significant benefit to persons who must have the license as a condition of employment by allowing them to start work immediately. Providing for such temporary conditional operating authority would product a secondary benefit by likely applicants receiving their Commission-issued licenses sooner because there would be a reduction in the number of inquiries to the processing staff regarding the status of pending applications. Answering such inquires diverts resources from the primary task of processing license applications.

3. We propose to amend §§ 13.9 and 13.13 of the Commission's Rules to provide temporary conditional operating authority to successful examinee upon properly filing an application with the Commission. This proposed temporary operating authority, however, would not apply to any person who has previously had a commercial radio operator license revoked, suspended, or is the subject of an ongoing suspension proceeding. In addition, the proposed rules provide that the Commission, in its discretion, may cancel the temporary conditional operating authority without a hearing, if the need for such action arises.

4. For purposes of making log entries, the Commission proposed that a commercial radio operator exercising temporary conditional operating authority would enter the PPC serial number and date of issue in place of the FCC-issued license serial number and expiration date. Possession of the PPC document would activate the operating authority of proposed § 13.9(d) and § 13.13(d) and would thereby serve in the stead of the license temporarily and conditionally. This procedure would be verifiable and simple to implement.

5. The proposed rules are set forth at the end of this document.

6. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as specified in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

7. In accordance with Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission provides the following:

Initial Regulatory Flexibility Analysis

Reasons for Action

Objectives: This rule making proceeding is initiated to obtain comments concerning proposed rule changes to Part 13 of the Rules to permit a person who has passed the examinations necessary to qualify for a commercial radio operator license, but who has not yet received the license, to temporarily and conditionally perform the functions of a commercial radio operator.

Legal Basis: The proposed action is authorized under Sections 4(i), 303(b), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 (b), (g), and (r).

Reporting, Recordkeeping and Other Compliance Requirements: None.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

Description, Potential Impact, and Number of Small Entities Involved: Any rule changes adopted as a result of this proceeding may affect various small entities that require an individual to hold a commercial radio operator license as a condition of employment. Potentially, small entities could hire commercial radio operator licensees sooner than under present licensing procedures.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives: The Notice solicits comments dealing with and addressing the proposed action, and the Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1981).

8. This Notice of Proposed Rule Making and the proposed rule amendments are issued under the authority of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

9. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 13

Operator licensing, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Part 13 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 13—COMMERCIAL RADIO OPERATORS

1. The authority citation for part 13 would continue to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. Section 13.9 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively, and adding a new paragraph (d) to read as follows:

§ 13.9 Eligibility and application for new license or endorsement.

* * * * *

(d) Provided that a person's commercial radio operator license was not revoked, or suspended, and is not the subject of an ongoing suspension proceeding, a person who has properly filed with the FCC an application for a commercial radio operator license which has not yet been acted upon and who holds a PPC(s) indicating that he or she passed the necessary examination(s) within the previous 365 days is authorized to exercise the rights and privileges of the operator license for which the application is filed. This authority is valid for a period of 90 days from the date the application is filed. The FCC, in its discretion, may cancel this temporary conditional operating authority without a hearing.

* * * * *

3. Section 13.13 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively, and adding a new paragraph (d) to read as follows:

§ 13.13 Application for a renewed or modified license.

* * * * *

(d) Provided that a person's commercial radio operator license was not revoked, or suspended, and is not the subject of an ongoing suspension proceeding, a person holding a General Radiotelephone Operator License, Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, GMDSS Radio Operator's License, or GMDSS Radio Maintainer's License, who has properly filed with the FCC an application for another commercial radio operator license which has not yet been acted upon and who holds a PPC(s) indicating that he or she passed the necessary examination(s) within the previous 365 days is authorized to exercise the rights and privileges of the license for which the application is filed. This authority is valid for a period of 90 days from the date the application is filed. The FCC, in its discretion, may cancel this temporary conditional operating authority without a hearing.

* * * * *

4. Section 13.19 is amended by revising paragraphs (b)(3) and (c) to read as follows:

§ 13.19 Operator's responsibility.

* * * * *

(b) * * *

(3) The class, serial number and expiration date of the license when the FCC has issued the operator a license, or the PPC serial number(s) and date(s) of issue when the operator is awaiting FCC action on an application:

(c) When the operator is on duty and in charge of transmitting systems, or

performing service, maintenance or inspection functions, the license or permit document, or a photocopy thereof, or a copy of the application and PPC(s) properly filed with the FCC, must be posted or in the operator's personal possession, and available for inspection upon request by a FCC representative.

* * * * *

[FR Doc. 94–18116 Filed 7–26–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 143
Wednesday, July 27, 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.

ARCTIC RESEARCH COMMISSION

Commission Meeting

Notice is hereby given that the Arctic Research Commission will hold its 36th Meeting in Fairbanks, Alaska, on August 24–25, 1994. On Wednesday, August 24, a Business Session open to the public will convene at 9 a.m. in the Sherman Carter Conference Room of the Butrovich Building at the University of Alaska Fairbanks. Agenda items include: (1) Chairman's Report; (2) Status of Oil and Gas Risk Methodology Development; (3) Status of 1995 Arctic Science Submarine Cruise; (4) Status of Arctic Research Vessel Procurement; (5) Report of the Fisheries Research at UAF and the Development of the Elmer E. Rasmuson Fisheries Research Center; (7) Status of Current ARCUS Activities; (8) UAF Research Activities; (9) Poker Flat Upgrade Status and Other Activities at the Geophysical Institute; and (10) Status of Arctic Health Initiatives. On Thursday, August 25, the Business Session will reconvene at 9 a.m. Agenda items for this session include: (1) NOAA Hazmat Applied Research Work in the Arctic; (2) Arctic Research by the Bureau of Land Management; (3) Status of Logistics Information Systems Development; (4) Contact by the Bellona Foundation of Oslo, Norway, and (5) 1995 Commission Meeting Schedule and Plans for the 37th Meeting in San Francisco, California, December 7–8, 1994. An Executive Session for Members of the Commission will be held following the Business Session on August 25.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Lyle D. Perrigo, Acting Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Lyle D. Perrigo,
Acting Executive Director.

[FR Doc. 94–18294 Filed 7–26–94; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Service Annual Survey.

Form Number(s): B–500T, B–500T1, B–500T2, B–500T3, B–500T4, B–500T5, B–500T6, B–500M, B–500M1, B–500M2, B–500M3.

Agency Approval Number: 0607–0422.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 12,000 hours.

Number of Respondents: 30,000.

Avg Hours Per Response: 24 minutes.

Needs and Uses: The Service Annual Survey (SAS) is the only annual source of data on the dollar volume of receipts for various service industries. The data is needed for national income accounting, productivity, and price measurement. The Bureau of Economic Analysis uses SAS data in its preparation of the national income and product accounts, and its benchmark and annual input–output tables. The Bureau of Labor Statistics (BLS) uses the data as input to its Producer Price Indexes and in developing productivity measurements. Other government agencies use the data for program planning and development. The SAS provides detailed information on sources of receipts and receipts lines for various industries such as computer programming, data processing, and other computer related services, management and public relations services, equipment rental and leasing, automotive rental and leasing, amusement parks, and offices and clinics of health practitioners.

Affected Public: Business or other for–profit institutions, non–profit institutions, and small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 21, 1994.

Gerald Taché,
Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–18236 Filed 7–26–94; 8:45 am]

BILLING CODE 3510–07–F

National Institute of Standards and Technology

[Docket No. 940795–4195]

RIN 0693–AB34

Proposed Federal Information Processing Standard (FIPS) for Cryptographic Service Calls

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The purpose of this notice is to announce the proposed Federal Information Processing Standard (FIPS) for Cryptographic Service Calls for Federal agency use. This proposed FIPS specifies a standard interface for application programs to request cryptographic functions from a cryptographic module. The cryptographic functions include message encryption and decryption, message authentication, digital signature generation and verification, key management, and user authentication. The proposed standard supports both secret key and public key algorithms

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of

manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

The specifications are also available in electronic form as

cryptcal.txt (ASCII version)

cryptcal.ps (PostScript version)

cryptcal.ps.Z (Compressed Postscript version)

For access by modem, dial (301) 948–5717 and set modem communications parameters at no parity, 8 data bits and one stop. Modem speeds of up to 2400 baud are supported. Files are in /NISTPUBS directory.

For access by Internet, ftp to csrc.ncsl.nist.gov (129.6.54.11). Files are in the /pub/nist/pubs directory.

DATES: Comments on this proposed FIPS must be received on or before October 25, 1994.

ADDRESSES: Written comments concerning this FIPS should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for Cryptographic Service Calls, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Ms. Shu-Jen H. Chang, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2940.

Dated: July 21, 1994.

Raymond G. Kammer,

Deputy Director.

Proposed Federal Information Processing Standards Publication XXX

1994 May 23

Announcing the Standard for Cryptographic Service Calls

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Cryptographic Service Calls (FIPS PUB XXX).
2. Category of Standard. Computer Security, Cryptography.
3. Explanation. This standard specifies a set of generic cryptographic service calls, or applications program interface (API), for application programs to interface with a cryptographic module for requesting cryptographic functions. The service calls specify the interface for common cryptographic functions such as message encryption and decryption, message authentication, digital signature generation and verification, key management, and user authentication. Cryptographic algorithms that are supported include both secret-key based and public-key based algorithms. In this standard, the terms *cryptographic service calls* and *cryptographic APIs* can be used interchangeably.
4. Approving Authority. Secretary of Commerce.
5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology, (Computer Systems Laboratory).
6. Cross Index.

a. FIPS PUB 46–2, Data Encryption Standard.

b. FIPS PUB 74, Guidelines for Implementing and Using the NBS Data Encryption Standard.

c. FIPS PUB 81, DES Modes of Operation.

d. FIPS PUB 113, Computer Data Authentication.

e. FIPS PUB 171, Key Management Using ANSI X9.17.

f. FIPS PUB 180, Secure Hash Standard.

g. FIPS PUB XXX, Digital Signature Standard.

h. FIPS PUB 185, Escrowed Encryption Standard.

i. Special Publication 800–2, Public Key Cryptography.

j. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

Other NIST publications may be applicable to the implementation and use of this standard. A list (NIST Publications List 91) of currently available computer security publications, including ordering information, can be obtained from NIST.

7. Objectives. A standard cryptographic interface will facilitate interoperability among different cryptographic implementations. Specifically, a standard set of cryptographic service calls provides the following advantages:

a. Application programmers will need to learn only one set of cryptographic service calls for multiple cryptographic applications.

b. Cryptographic modules from different vendors, which conform to this interface standard, may be interfaced to a given application without requiring modification to the application program.

c. Contracts for additional cryptographic modules would not have to be sole sourced because multiple vendors would offer the standard service calls.

d. Vendors could build cryptographic modules which would interface to a wide variety of applications.

8. Applicability. This standard is applicable to all Federal departments and agencies that use cryptographic-based security systems for the protection of unclassified information that is not subject to Section 2315 of Title 10, U.S. Code, or Section 3502(2) of Title 44, U.S. Code. The standard shall be used by all Federal departments and agencies in designing, acquiring and implementing cryptographic services where a cryptographic interface is to be provided. Not all of the service calls specified in this standard need to be used in its entirety by an application. The specific service calls that shall be used depend on the security requirements for the particular application and environment in which the system is to be utilized. Private and commercial organizations are encouraged to adopt and use this standard in order to facilitate interoperability among different cryptographic products.

9. Applications. The standard may be used in any application which uses cryptography to provide any of the following cryptographic functions: message encryption/decryption, message authentication, digital signature generation and verification, and key management. Not all the service calls specified in this standard need to

be used by an application. An application can make use of additional service calls not available in this standard.

10. Specifications. Federal Information Processing Standard (FIPS) XXX, *Cryptographic Service Calls.*

11. Implementations. Though this document specifies a standard interface for requesting cryptographic functions, the standard, however, does not mandate a specific implementation of these cryptographic functions other than what are explicitly specified in the document. The cryptographic functions may in fact be implemented in software, firmware, hardware, or any combination thereof. However, there may be other standards that are applicable to the implementation of specific cryptographic functions. For specific requirements, the individual standard shall be referred to. Conformance to this standard requires that the cryptographic service calls used by an application provide exactly the same name and letter case for the service calls and their parameters as specified in the standard. In the rare case where the standard naming and specification of the service calls and parameters may violate certain rules of a particular programming language in use, the exception should be noted and the selected naming and case specification should match the standard as much as possible.

12. Export Control. Certain cryptographic devices and technical data regarding them are deemed to be defense articles (i.e., inherently military in character) and are subject to Federal government export controls as specified in Title 22, Code of Federal Regulations, Parts 120–128. Some exports of cryptographic modules conforming to this standard and technical data regarding them must comply with these Federal regulations and be licensed by the U.S. Department of State. Other exports of cryptographic modules conforming to this standard and technical data regarding them fall under the licensing authority of the Bureau of Export Administration of the U.S. Department of Commerce. The Department of Commerce is responsible for licensing cryptographic devices used for authentication, access control, proprietary software, automatic teller machines (ATMs), and certain devices used in other equipment and software. For advice concerning which agency has licensing authority for a particular cryptographic device, please contact the respective agencies.

13. Implementation Schedule. This standard becomes effective six months after publication of a notice in the **Federal Register** of its approval by the Secretary of Commerce.

14. Qualifications. While this standard specifies a standard interface for application programs to request cryptographic functions from a cryptographic module, conformance to this standard does not assure that a particular cryptographic module or implementation is secure. Security requirements for a cryptographic module are addressed in FIPS 140–1. The responsible authority in each agency or department shall assure that the overall system provides an acceptable level of security.

15. Waiver Procedure. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelgate such authority only to a senior official designated pursuant to Section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under Section 552(b) of Title 5, U.S. Code, shall be part of the procurement documentation and retained by the agency.

16. Where to obtain copies. Copies of this publication are available for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication XXX (FIPS PUB XXX), and title. When microfiche is desired, this should be specified. Payment may be made by check, money order, credit card, or deposit account.

[FR Doc. 94–18270 Filed 7–26–94; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

[Docket No. 940682–4182; I.D. 050694M]

RIN 0648–ZA08

Financial Assistance for Research and Development Projects to Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico and off the U.S. South Atlantic Coastal States (MARFIN)

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

ACTION: Notice.

SUMMARY: Subject to the availability of funds, NMFS issues this notice describing funding to assist persons in carrying out research and development projects that optimize the use of U.S. Gulf of Mexico and South Atlantic (North Carolina to Florida) fisheries involving the U.S. fishing industry (recreational and commercial), including fishery biology, resource assessment, socio-economic assessment, management and conservation, selected harvesting methods, and fish handling and processing. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be selected for funding. Areas of this Marine Fisheries Initiative (MARFIN) emphasis for FY 1995 were formulated from recommendations received from non-Federal scientific and technical experts,

and NMFS research and operations officials.

DATES: Applications for funding under this program will be accepted between July 27, 1994 and 5 p.m. eastern daylight time on September 26, 1994. Applications received after that time will not be considered for funding. No facsimile applications will be accepted.

Applications may be inspected at the NMFS Southeast Regional Office (see **ADDRESSES**) from September 30, 1994 through October 3, 1994.

ADDRESSES: Send applications to: Ellie Roche, Competitive Programs Manager, Cooperative Programs Division, Southeast Regional Office, National Marine Fisheries Service, 9721 Executive Center Drive, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Ellie Roche, 813–893–3720.

SUPPLEMENTARY INFORMATION:

I. Authority.

The Secretary of Commerce (Secretary) is authorized under 15 U.S.C. 713c–3(d) to enter into cooperative agreements for research and development addressed to all aspects of U.S. fisheries.

II. Catalog of Federal Domestic Assistance (CFDA).

This program is described in the Catalog of Federal Domestic Assistance under program number 11.433, Marine Fisheries Initiative.

III. Program Description.

MARFIN is a competitive Federal grant program that promotes and endorses programs that seek to optimize economic and social benefits from marine fishery resources through cooperative efforts that involve the best research and management talents to accomplish priority activities. Preference is given to selecting and funding applications for project grants that provide an opportunity for cooperative NMFS/applicant efforts and for multiple cooperating applicants/NMFS efforts with up to 3-year time horizons. Projects funded under MARFIN are focused into cooperative efforts that provide clear answers for fishery needs covered by the NMFS Strategic Plan, available from the Southeast Regional Office (see **ADDRESSES**), particularly those goals relating to rebuilding overfished marine fisheries, maintaining currently productive fisheries, and integrating conservation of protected species and fisheries management.

Applications from multiple cooperating applicants that address conservation and management needs over a wide range of a fishery or fishery organism are encouraged. Emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving the understanding of factors affecting recruitment success; and/or generating increased values and recreational opportunities from fisheries. Projects will be evaluated as to the likelihood of achieving these benefits through both short-term and long-term research efforts, with consideration of the magnitude of the eventual economic or social benefits that may be realized. Short-term projects that may yield more immediate benefits, and projects yielding longer-term benefits will receive equal consideration.

IV. Funding Availability.

This solicitation announces that funding of approximately $1.25 million may be available in FY 1995 pending Congressional appropriation. MARFIN financial assistance started in FY 1986, and for FY 1986 through FY 1994, awards totaled about $15.5 million for financial assistance to conduct research for fishery resources in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia and Florida. There is no guarantee that sufficient funds will be available to make awards for all approved projects.

Project proposals accepted for funding for a project period over 1 year that include multiple project components or severable tasks to be funded each budget period will not compete for funding in subsequent budget periods within the approved project period. However, funding for subsequent project components is contingent upon the availability of funds from Congress and satisfactory performance, and will be at the sole discretion of the agency. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate all or any parts of the available funds.

V. Matching Requirements.

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the MARFIN program. However, cost-sharing is encouraged, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in applicable Federal cost principles. If an applicant chooses to cost-share, and if that application is selected for funding, the applicant will be bound by the percentage of the cost share reflected in the cooperative agreement award.

The non-Federal share may include funds received from private sources or from state or local governments, or the value of in-kind contributions by the applicant or third parties. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and use of real or personal property owned by others (for which consideration is not required) in carrying out the projects.

The total cost of a project begins on the effective date of a cooperative agreement between the applicant and the NOAA Grants Officer and ends on the date specified in the award. Accordingly, time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

VI. Type of Funding Instrument.

The cooperative agreement has been determined to be the appropriate funding instrument. NMFS is substantially involved in developing program research priorities, conducting cooperative activities with recipients, and evaluating the performance of recipients for effectiveness in meeting national and regional goals for fishery research in the southeastern United States.

VII. Eligibility Criteria.

1. Applications for cooperative agreements for MARFIN projects may be made, in accordance with the procedures set forth in this notice, by:

a. Any individual who is a citizen or national of the United States;

b. Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 app. U.S.C. 802).

c. Colleges and universities, and game and fish departments of the several states.

2. NOAA employees, including full-time, part-time, and intermittent personnel (or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application during the

60-day solicitation period, except to provide information about the MARFIN program and the priorities and procedures included in this solicitation. However, NOAA employees are permitted to provide information about ongoing and planned NOAA programs and activities that may have implication for an application. Potential applicants are encouraged to contact Ms. Ellie Roche at the NMFS Southeast Regional Office (see ADDRESSES) for information on NOAA programs. Documents available from that office that may be useful to the applicant include:

a. A Cooperative Reef Fish Research Program for the Gulf of Mexico.

b. A Cooperative Bycatch Research Plan for the Southeast Region.

c. Strategic Plan of the National Marine Fisheries Service.

d. National Status of Stocks Report.

e. Various fishery management plans and plan amendments produced by the Councils and the Commissions.

f. Report of a Workshop on Grouper Reproduction, November 1993.

VIII. Award Period.

The award period for the project may be made for more than one year consisting of one, two, or three budget periods which correspond to the funding for the proposed project components. The award period will depend upon the duration of funding requested by the applicant in the Application for Federal Assistance, the decision of the NMFS selecting official on the amount of funding, the results of post-selection negotiations between the applicant and NOAA officials, and preaward review of the application by NOAA and Department of Commerce (DOC) officials. Normally, each project budget period may be no more than 18 months in duration. NOAA policy limits the total duration of a project to about 3 years.

IX. Indirect Costs.

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 25 percent of the total proposed direct costs dollar amount in the application, whichever is less. Institutions with indirect cost rates above 25 percent may use the amount above the 25–percent level as part of the non-Federal share. A copy of the current, approved, negotiated Indirect Cost Agreement with the Federal government must be included with the application.

X. Profit or Fees.

Profit or management fees paid to for-profit or commercial organization grantees are allowable at the discretion of NOAA. However, they shall not exceed 7 percent of the total estimated direct costs. There must be no profit or fees to the recipient in any overhead charge. Payment of fees or profit is based on successful completion of project objectives.

XI. Application Forms and Kit.

Before submitting an application under this program, applicants should contact the NMFS Southeast Regional Office for a copy of this solicitation's MARFIN Application Package (see ADDRESSES).

Applications for project funding under this program must be complete and be in accordance with instructions in the MARFIN Application Package. They must identify the principal participants and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico and/or South Atlantic fishery resources, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown, by category of expenditures, with appropriate justification for both the Federal and non-Federal shares. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application. Applications are not to be bound in any manner and should be one-sided. All incomplete applications will be returned to the applicant. Three copies (one original and two copies) of each application are required, and should be submitted to the NMFS Southeast Regional Office, Cooperative Programs Division (see ADDRESSES).

XII. Project Funding Priorities.

A. Proposals for FY 1995 should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multidisciplinary. Coordinated efforts involving multiple institutions or persons are encouraged. The areas of special emphasis are listed below, but proposals in other areas will be considered on a funds-available basis.

In addition to referencing specific area(s) of special interest as listed below, proposals should state whether the research will apply to the Gulf of Mexico only, the South Atlantic only, or to both areas. Successful applicants may be required to collect and manage data in accordance with standardized procedures and formats approved by NMFS, and to participate with NMFS in specific cooperative activities that will be determined by consultations between NMFS and successful applicants before project grants are awarded. Recipients of financial assistance for projects with multiple project periods must include funding in their applications for travel expenses for the principal investigator to participate in one annual project review and evaluation meeting in St. Petersburg, FL. All recipients of financial assistance under this program shall include funding in their applications for the principal investigator to participate in an annual MARFIN Conference at the completion of the project.

Research needs identified in fishery management plans (FMPs) and amendments prepared by the Gulf and South Atlantic Fishery Management Councils (Councils) and the Gulf and Atlantic States Marine Fisheries Commissions (Commissions) are included. For availability of these documents, contact the NMFS Southeast Regional Office (see ADDRESSES). Areas of special emphasis for FY 1995 include:

1. *Shrimp Trawler Bycatch.*

Studies are needed to contribute to the regional shrimp trawler bycatch program being conducted by NMFS in cooperation with state fishery management agencies, commercial and recreational fishing organizations and interests, environmental organizations, universities, Councils, and Commissions. Specific guidance and research requirements are contained in the Regional Bycatch Plan prepared through the Gulf and South Atlantic Fisheries Development Foundation. In particular, the studies should address:

a. Data collection and analyses to expand and update current bycatch estimates temporally and spatially from offshore, nearshore, and inshore waters, emphasizing areas of greatest shrimping impact. Sampling effort should include estimates of numbers, weight, and age structure of the associated bycatch complex.

b. Assessments of the status and condition of fish stocks significantly impacted by shrimp trawler bycatch, with emphasis given to overfished species under the jurisdiction of the Councils.

c. Identification, development, and evaluation of gear, non- gear and tactical fishing options to reduce bycatch.

d. Improved methods for communicating with and improving technology and information transfer to the shrimp industry.

e. Social and economic impacts of management options to reduce shrimp fishery bycatch.

2. *Highly Migratory Pelagic Fisheries.*

a. *Longline Fisheries, Including Bycatch.*

A number of pelagic longline fisheries exist in the Gulf and South Atlantic, targeting highly migratory species such as tunas, some sharks, and swordfish. These fisheries have evolved rapidly over the last decade, with increases in fishing effort and changes in fishing gear and tactics. These changes need to be characterized and their effects quantified. High priority areas include:

(1) Characterization of specific longline fisheries, including targeted species, stock identification, catch-per-unit-effort of bycatch, and biological parameters (e.g., sex ratios and reproductive state) by gear type, area and season.

(2) Evaluation of vessel log data for monitoring the fisheries.

(3) Development and evaluation of gear and fishing tactics to minimize bycatch of undersized and unwanted species, including sea turtles and marine mammals.

(4) Assessment of the impact of longline bycatch on related fisheries, including biological, social, and economic factors and effects.

(5) Dependence of vessels and persons engaged in pelagic longlining on other fisheries. Particular emphasis should be placed on the extent to which the capital and/or labor engages in other fisheries at particular times of the year and reasons for this switching behavior.

b. *Sharks.*

A Secretarial FMP for sharks has been developed that identifies a number of research needs, including:

(1) Characterization of the commercial and recreational fisheries from historical and current databases. Emphasis should be on species composition, bycatch, stock identification, size, sex ratios and catch-per-unit-effort by season, area, and gear type.

(2) Collection and analysis of basic biological data on movements, habitats, growth rates, mortality rates, age structure and reproduction parameters. These data are of particular importance for blacktip and sandbar sharks. Information on the relationship of sandbar sharks to water depth and determination of the southern boundary of its range are specifically needed.

(3) Determination of baseline cost and returns for commercial fisheries that land sharks, and estimation of demand curves for shark products and recreational shark fisheries.

(4) Development of species profiles and stock assessments for sharks taken in significant quantities by commercial and recreational fishers, and as bycatch in other fisheries. Assessments can be species-specific or for species groups, following those identified in the Atlantic Sharks FMP.

(5) Identification of coastal sharks, using laboratory methodologies.

(6) Development of a more precise and accurate estimate of the recreational shark fishery. Proposals in this area must demonstrate a knowledge of the Marine Recreational Fishery Statistical Survey (MRFSS), and should indicate a willingness to participate directly in the MRFSS through add-on surveys or enhancement of current surveys.

(7) Development of fishery-independent abundance indices.

3. *Reef Fish.*

A number of species within the reef fish complex are showing signs of being overfished, either by directed efforts or as bycatch in other fisheries. The ecology of reef fish makes them vulnerable to overfishing because they tend to concentrate over specific types of habitats with patchy distribution. This behavior pattern can make traditional fishery statistics misleading. Priority research areas include:

a. Collection of basic biological data for species in commercially and recreationally important fisheries.

(1) Age and growth of reef fish.

(a) Description of age and growth patterns (especially red snapper, gray triggerfish and red porgy in the Gulf of Mexico and greater amberjack in the Gulf and South Atlantic).

(b) Development of annual age-length keys for vermilion snapper in the northern Gulf and west coast central Florida, and for red grouper in the Gulf, along with new growth models for red grouper that include possible density-dependent effects, as well as environmental effects.

(2) Reproduction studies of reef fish.

(a) Maturity schedules and fecundity of commercially and recreationally important reef fish (especially gray triggerfish and red porgy in the Gulf of Mexico).

(b) Detailed histological studies of red snapper to characterize the actual reproductive contribution of females, by age.

(c) Identification and characterization of spawning aggregations by species, areas, and seasons. Information is especially needed on changes in sex ratios for gag grouper caused by fishing on spawning aggregations.

(d) Reproductive studies covering extensive geographic distributions along the southeastern U.S. coast (North Carolina through the Florida Keys). Samples should be obtained from recreational (private and headboats) and commercial vessels.

(e) Reproductive biology of gag, red grouper and other grouper species. Of particular importance are evaluation of sperm limitation, determination of the proximal causes of sex change (whether behavioral or developmental), determination of the annual periodicity of sex-change induction and age-specific spawning frequency, and other research identified in the recommendations of the workshop on grouper reproduction held in Panama City, FL, in November 1993.

(3) Recruitment of reef fish.

(a) Source of recruitment in Gulf of Mexico and South Atlantic waters (especially amberjack and vermilion snapper), and possible Caribbean source for Florida Keys snapper and grouper.

(b) Annual estimation of the absolute or relative recruitment of juvenile gag to the seagrass beds off the west coast of Florida and to similar estuarine nursery habitats along the South Atlantic Bight; development of an index of juvenile gag recruitment for the South Atlantic based on historical databases and/or field studies.

(c) Evaluation of the contribution of live-bottom habitat to reef fish recruitment

(4) Stock structure of reef fish.

(a) Movement and migration patterns of commercially and recreationally valuable reef fish species (especially gag and greater amberjack in the South Atlantic).

(b) Techniques to allow field separation of lesser amberjack, almaco jack, and banded rudderfish from greater amberjack to facilitate accurate reporting of catch.

(c) Stock structure of gag and wreckfish in the South Atlantic, and greater amberjack in the Gulf and South Atlantic.

(d) Use of parasitological surveys in species such as wreckfish and white grunt to determine stock structure.

b. Behavioral studies of reef fish.

(1) Description of the behavior of age–0 and age–1 red snapper.

(2) Effects of fishing on reproductive behavior, in formation of aggregations and disruption of existing aggregations.

c. Population assessment of reef fish.

(1) Effect of reproductive mode and sex change (protogynous hermaphroditism) on population size and characteristics, with reference to sizes of fish exploited in the fisheries

and the significance to proper management.

(2) Design of sampling routines to provide a production-style aging program representative of the reef fish fishery. Effective dock-side sampling programs, especially for groupers, are needed over a wide geographic range to collect information on reproductive state, size, age, and sex. These research needs are discussed in the report of the workshop on grouper reproduction held in Panama City, FL, in November 1993.

(3) Source and quantification of natural and human-induced mortalities.

(4) Determination of the habitat and limiting factors for important reef fish resources (such as snappers in the Gulf of Mexico). Information is also needed on the importance of human-created and natural channels for controlling stock sizes and growth rates of snappers and groupers.

(5) Description of habitat and fish populations in the deep reef community and the prey distributions supporting the community.

(6) Evaluation of the effect of misidentifying gag as black grouper on landing statistics and stock assessments.

(7) Development of statistically valid indices of abundance for important reef fish species in the South Atlantic and Gulf of Mexico (especially red grouper), including spatial and temporal variations in size distribution.

(8) Assessment of tag performance on reef fish species, mainly snappers and groupers. Characteristics examined should include shedding rate, effects on growth and survival, and effects of these characteristics on estimations of vital population parameters.

(9) Stock assessments to establish the status of major recreational and commercial species. Innovative methods are needed for stock assessments of aggregate species, including the effect of fishing on genetic structure and the incorporation of sex change for protogynous hermaphrodites into stock assessment models.

(10) Fishery-independent assessments of spawning aggregations of gag, scamp, yellowedge and other groupers, using hydroacoustic and underwater video technology.

d. Management of reef fish.

(1) Research in direct support of management, including catch-and-release mortalities by gear and depth, the value of limiting longlines to specific water depths (e.g., outside the 50–fathom (91.4–m) curve), and modifications (gear, techniques) to minimize bycatch.

(2) Evaluation of the use of reef fish marine reserves as an alternative or supplement to current fishery management measures and practices, especially in the South Atlantic. Of particular interest is Oculina Banks off the Atlantic Coast of Florida.

(3) Characterization and evaluation of the social and economic behavior of commercial and recreational fishermen, and how these characteristics change in response to management measures.

(4) Characterization and quantification of the biological, economic, and social impacts of the longline fishery for reef fish along the west coast of Florida. This should include the following:

(a) Catch-per-unit-effort of target and bycatch species, and biological parameters (e.g., size, sex, and reproductive state) by gear type, area, and season.

(b) Evaluation of vessel log data for monitoring the fishery.

(c) Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals.

(d) Assessment of the impact of longline bycatch on related fisheries.

4. *Coastal Herrings.*

Preliminary studies indicate that substantial stocks of coastal herrings occur in the Gulf and South Atlantic. Most of the available data are generated from fishery-independent surveys conducted by NMFS and state fishery management agencies. Because of the size of these stocks, their importance as prey, and in some instances as predator species, their potential for development as commercial and recreational fisheries must be understood. General research needs include:

a. Collection, collation, and analysis of available fishery-independent and fishery-dependent data from state and Federal surveys, with emphasis on species and size composition, seasonal distribution patterns, biomass, bycatch, and environmental relationships. Emphasis should be given to species such as Spanish sardine that are important as prey to gamefish.

b. Description and quantification of predator-prey relationships between coastal herring species and carnivores such as mackerels, tunas, swordfish, billfish, sharks, bluefish, and others in high demand by commercial and recreational fisheries.

c. Design of innovative economic and social management approaches for the purse seine menhaden fishery, including, but not limited to, limited entry.

5. *Coastal Migratory Pelagic Fisheries.*

The commercial and recreational demand for migratory coastal pelagics has led to overfishing for certain species, including king and Spanish mackerel. Additionally, some are transboundary with Mexico and other countries and ultimately will demand international management attention. Current high priorities include:

a. Recruitment indices for king and Spanish mackerel, cobia, dolphin, and bluefish, primarily from fishery-independent data sources.

b. Assessment and management models for coastal pelagic resources that are dominated by single year classes, such as Spanish mackerel, dolphin, and bluefish.

c. Fishery-independent methods of assessing stock abundance of king and Spanish mackerel.

d. Improved catch statistics for all species in Mexican waters, with special emphasis on king mackerel; needed especially is length-frequency, life history and genetic information.

e. Information on populations of coastal pelagics overwintering off North Carolina, South Carolina, and Georgia, especially population size, age and movement patterns.

f. Basic biostatistical information on cobia and dolphin to develop age-length keys and maturation schedules for stock assessments.

g. Impact of bag limits on total catch and landings of king and Spanish mackerel.

h. Demand and supply functions for recreational and commercial fisheries for king mackerel in the South Atlantic and Gulf of Mexico. Emphasis should be on changes in marginal values of producer and consumer surpluses, since the studies would be used in allocation frameworks where total values are not necessarily required.

6. *Groundfish and Estuarine Fishes*

Substantial stocks of groundfish and estuarine species occur in the Gulf and South Atlantic. Most of the database for assessments comes from studies conducted by NMFS and state fishery management agencies. Because of the historic and current size of these fish stocks, their importance as predator and prey species, and their current or potential use as commercial and recreational fisheries, more information on their biology and conservation is needed. General research needs are:

a. Red drum.

(1) Effects of sportfishing on red drum populations in the Gulf of Mexico and South Atlantic. A specific need in the South Atlantic is increased sampling of nighttime fishing for red drum on the Outer Banks of North Carolina.

(2) Size and age-structure of the offshore adult red drum stock in the Gulf of Mexico.

(3) Immigration and escapement of red drum from state waters into the Exclusive Economic Zone in the Gulf of Mexico and the South Atlantic.

(4) Life history parameters and stock structure for the Gulf of Mexico and the South Atlantic. Research should include migratory patterns, long-term changes in abundance, growth rates and age structure, and comparisons of the inshore and offshore components of recreational and/or commercial fisheries. Specific research needs for Atlantic red drum are fecundity estimates, as a function of length and weight, and improved coastwide coverage for age-length keys.

(5) Catch-and-release mortality rates from inshore and nearshore waters, and fishing mortality rates in state territorial waters of the Gulf of Mexico.

b. Life history and stock structure for weakfish, menhaden, spot and croaker in the Gulf of Mexico and the South Atlantic. Research should include migratory patterns, long-term changes in abundance, growth rates and age structure, and comparisons of the inshore and offshore components of recreational and/or commercial fisheries.

c. Improved catch and effort statistics from recreational and commercial fisheries, including size and age structure of the catch, to develop production models.

d. Quantification and qualification of the bycatch in finfish trawl fisheries, such as the flounder and fly-net fisheries in the South Atlantic.

e. Determination of catch-and-release mortality rates for spotted seatrout from inshore and nearshore waters.

7. *Crabs and Lobsters.*

a. Monitoring of fecundity and sex/size frequencies for examination of spawning potential in relation to overfishing criteria for stone crab and spiny lobster.

b. Development of recruitment indices, and population assessment and management models for stone crab and spiny lobster.

c. Determination of the relationship between the reproductive cycle characteristics of spiny lobster in Florida and the Caribbean.

8. *Sea Turtle Conservation.*

The conservation of endangered and threatened sea turtles in the Southeast Region continues to be a high priority. Specific needs include:

a. Distribution, abundance and size composition of sea turtles in inshore waters, especially where these turtles may be affected by inshore fisheries.

b. Turtle excluder device (TED) modifications or designs to exclude adult leatherback sea turtles. The area of special concern is off South Carolina, Georgia, and Florida.

c. TED designs and modifications for use in small inshore shrimp trawls. Especially needed is research on shrimp retention and on the effectiveness of TEDs operating in areas with debris.

d. Sea turtle incidental catch in fisheries other than the shrimp fishery.

e. Evaluation of the utility of turtle stranding data as an indication of fishery-caused mortality.

9. *General.*

There are many areas of research that need to be addressed for improved understanding and management of fishery resources. These include methods for data collection, management, analysis, and for better conservation. Examples of high priority research needs include:

a. Design and critical analysis of a data collection system that may involve permits, logbooks, trip interviews, dealer reporting or other innovative methods. The system design should be applicable across the entire range of species that may be pursued throughout the Gulf and South Atlantic, and should address economic, biological and social data needs.

b. Assessment of the changes in recreational and commercial values that have resulted from past management practices for red drum, shrimp, mackerels and reef fish.

c. Development of improved methods and procedures for technology transfer, and education of constituency groups on fishery management and conservation programs. Of special importance are programs concerned with controlled access and introduction of conservation gear.

d. Compilation of baseline socio-demographic data for describing the social and cultural framework of managed fisheries. B. Priority in program emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving the understanding of factors affecting recruitment success; and generating increased values and recreational opportunities from fisheries. Projects will be evaluated as to the likelihood of achieving these benefits through short- and long-term research efforts, with consideration given to the magnitude of the eventual economic benefits that may be realized.

C. Further information on current Federal programs that address the above-listed priorities may be obtained from the NMFS Southeast Regional Office (see **ADDRESSES**).

XIII. Evaluation Criteria.

Successful applicants generally will be recommended within 210 days from the date of publication of this notice. The earliest start date of awards will be about 90 days after each project is selected and after all NMFS/applicant negotiations of cooperative activities have been completed (The earliest start date of awards will be about 300 days after the date of publication of this notice). Applicants should consider this selection and processing time in developing requested start dates for their applications. Proposed projects will be evaluated and ranked as follows:

1. Cooperatively developed applications that propose activities of two or more qualified applicants to address important fishery conservation and management issues or problems identified in the Areas of Emphasis for this solicitation may be evaluated as a group by NMFS. If selected for funding, individual cooperative awards may be made to each individual applicant. Application procedures for this type of proposal are also included in the FY 1995 MARFIN Application Package.

2. Unless otherwise specified by statute, in reviewing applications for cooperative agreements, including those that include consultants and contracts, NOAA will make a determination regarding the following:

a. Is the involvement of the applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

b. Is the proposed allocation of the applicant's time reasonable and commensurate with the applicant's involvement in the project?

c. Are the proposed costs for the applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

d. Is the project proposal substantial in character and design?

3. Applications meeting the above requirements will be forwarded for technical evaluation. Applicants submitting applications not meeting the above requirements will be notified. Evaluations normally will involve experts from non-NOAA, as well as NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will provide point scores on proposals, based on the following evaluation criteria:

a. Does the proposal have a clearly stated goal(s) with associated objectives that meet the needs outlined in the Project Narrative? (30 points)

b. Does the proposal clearly identify and describe, in the Project Outline and Statement of Work, scientifically valid methodologies and analytical procedures that will adequately address project goals and objectives? (30 points)

c. Do the principal investigators provide a scientifically realistic timetable to enable full accomplishment of all aspects of the Statements of Work? (20 points)

d. Do the principal investigators define how they will maintain stewardship of the project performance, finances, cooperative relationships and reporting requirements for the proposal? (10 points)

e. Are the proposed costs appropriate for the scope of work proposed? (10 points)

XIV. Selection Procedures.

All applications will be ranked by a NMFS scientific panel into two groups: (a) Recommended, and (b) Not Recommended. Proposals ranked as Not Recommended will not be given further consideration for selection and funding. All rankings will be presented to a panel of non-NOAA fishery experts, who will individually consider the significance of the problem addressed in each project proposal, the technical evaluation, and need for funding. These panel members will provide individual recommendations to NMFS on each proposal classified as Recommended or Not Recommended.

The non-NOAA panel members' individual comments, recommendations and evaluations, and recommendations of the NMFS scientific panel and NMFS Southeast Program Officer will be considered by the Director, Southeast Region, NMFS (Regional Director). The Regional Director, in consultation with the NOAA Assistant Administrator for Fisheries, will: (a) Determine which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices, and recommend the projects to be funded. The exact amount of funds awarded, the final scope of activities, the project duration, and specific NMFS cooperative involvement with the activities of each project will be determined in pre-award negotiations between the applicant, the NOAA Grants Office, and the NMFS Program Staff. Projects must not be initiated by recipients until a signed award is received from the NOAA Grants Office. For project periods of more than 1 year, funds for subsequent budget periods may be provided if initial project tasks are satisfactorily completed and after NMFS has received MARFIN funds for subsequent periods.

NMFS will make project applications available for review as follows:

A. *Public Review and Comment* Applications may be inspected at the NMFS Southeast Regional Office (see ADDRESSES and DATES).

B. *Consultation with Members of the Fishing Industry, Management Agencies, Environmental Organizations, and Academic Institutions* NMFS shall, at its discretion, request comments from members of the fishing and associated industries, groups, organizations and institutions who have knowledge in the subject matter of a project or who would be affected by a project.

C. *Consultation with Government Agencies* Applications will be reviewed by the NMFS Southeast Region Program Office in consultation with the NMFS Southeast Fisheries Science Center and Southeast Operations Directors, including appropriate operations and laboratory personnel, the NOAA Grants Officer and, as appropriate, DOC bureaus and other Federal agencies.

XV. Other Requirements.

A. *Federal Policies and Procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards. Women and minority individuals and groups are encouraged to submit applications under this program.

B. *Past Performance.* Any first-time applicant for Federal grant funds is subject to a pre-award accounting survey prior to execution of the award. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

C. *Preaward Activities.* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of DOC to cover preaward costs.

D. *No Obligation of Future Funding.* If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

E. *Delinquent Federal Debts.* No award of Federal funds shall be made to an applicant who has any outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to DOC are made.

F. *Name Check Review.* 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 that significantly reflect on the applicant's management honesty or financial integrity. Potential non-profit and for-profit recipients may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

G. *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," and the following explanations are hereby provided:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit a Form SL-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

H. *Lower Tier Certifications.* Recipients shall require applicants/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.

I. *False Statements.* A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

J. *Intergovernmental Review.* Applications under this program are subject to the provisions of E.O. 12372, "Intergovernmental Review of Federal Programs".

K. *Requirement to Buy American-Made Equipment and Products.* Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Pub. L. 103–121, Sections 606(a) and (b).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for

this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

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

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Federal participation under the MARFIN Program may include the assignment of DOC scientific personnel and equipment.

Reasonable, negotiated financial compensation will be provided under awards for the work of eligible grantee workers.

Information-collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB Clearance No. 0648–0175) under the provisions of the Paperwork Reduction Act. Public reporting burden for agency-specific collection-of-information elements, exclusive of requirements

specified under applicable OMB circulars, is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Authority: 15 U.S.C. 713c–3(d)

Dated: July 21, 1994.

Nancy Foster, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–18232 Filed 7–26–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071994B]

North Pacific Fishery Management Council; Plan Team Meeting

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

ACTION: Notice of meeting.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fishery management plan teams will hold a meeting on August 29 through September 2, 1994, at the Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Room 2079, Building 4, Seattle, WA.

The meeting will begin at 1:00 p.m. on August 29. The agenda includes the following:

(1) Review available stock assessments and catch statistics and begin preparation of preliminary stock assessment documents for the 1995 season;

(2) Review status of plan amendment analyses, and provide input as necessary;

(3) Prioritize research needs; and

(4) Review plan team "Terms of Reference" (organization and procedures).

FOR FURTHER INFORMATION CONTACT: David Witherell, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: July 20, 1994.

David S. Crestin,

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

[FR Doc. 94–18231 Filed 7–26–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071994C]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Squid, Mackerel and Butterfish Committee, together with its Industry Advisory Subcommittee, will hold a meeting on August 1, 1994, in the 1776 Room of the Ramada Inn, 7600 Industrial Highway, Essington, PA. The meeting will begin at 10:00 a.m. and will end by late afternoon.

The purpose of the meeting is to make recommendations to the Council for Atlantic mackerel, Loligo and Illex squid, and butterfish specifications for 1995.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 working days prior to the meeting date.

Dated: July 20, 1994.

David S. Crestin,

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

[FR Doc. 94–18230 Filed 7–26–94; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Solicitation and Acceptance of Donations

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the

Corporation) is announcing that it is soliciting cash donations and donations of goods and services from private sector companies, foundations, and individuals in order to leverage federally appropriated resources in carrying out its national service program.

ADDRESSES: Reponses to this notice should be mailed to the Office of Private Sector Outreach, 7th Floor, 1100 Vermont Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: The Office of Private Sector Outreach at (202) 606–5000, ext. 260.

SUPPLEMENTARY INFORMATION: The Corporation is a new government corporation that encompasses the work and staff of two previously existing federal agencies, the Commission on National and Community Service and ACTION. The Corporation's mission is to engage Americans of all ages and backgrounds in community-based service. This service will address the nation's education, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide education opportunity for those who make a substantial commitment to service.

The Corporation will fund a new national service initiative called AmeriCorps that includes a wide variety of programs operated by grantees, the National Civilian Community Corps, and the Volunteers in Service to America (VISTA) program. The Corporation will also support service-learning initiatives for elementary and secondary schools and institutions of higher education called Learn and Serve America, and operate the senior volunteers programs previously supported by ACTION. Some of the national service programs will be operating this summer, and most of the others will be operational by this fall.

Purusant to the National and Community Service Trust Act of 1993 (the Act), the Corporation may "solicit, accept, hold, administer, use, and dispose of, in furtherance of [the purposes of national service], donations of any money, or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise." 42 U.S.C. 12651g(a)(2)(A). Such donations "shall be considered to be a gift, devise, or bequest to, or for the use of, the United States," 42 U.S.C. 12651g(a)(2)(B), and therefore may be allowable as a charitable tax deduction under the Internal Revenue Code. 26 U.S.C. 170. The Corporation may also "solicit and accept the voluntary services of individuals" to assist the Corporation in carrying out the national service program. 42 U.S.C. 12651g(a)(2)(A).

The Corporation is striving to build innovative public/private partnerships that support national and community service programs throughout the country. The Corporation's primary goal is to foster strategic linkages between private sector companies, foundations, government agencies, and community service organizations, in order to multiply their combined abilities to address shared community problems. To this end, the Corporation seeks to leverage its federally appropriated resources with donations of goods and services form private sector companies, foundations, and individuals. Such goods and services include, but are not limited to, the following:

—apparel;
—footwear;
—food and beverages;
—communication equipment and services;
—print and broadcast media services;
—transportation equipment and services;
—computer equipment and services;
—gardening and building supplies;
—office equipment and supplies;
—books and other printed material;
—printing and duplication services;
—facilities for training and special events;
—audiovisual equipment and services;
—sporting equipment;
—arts and crafts supplies;
—marketing, public relations, and advertising services;
—financial, accounting, and legal services;
—any other goods and services that will further the mission and goals of the Corporation.

The Corporation is also interested in receiving cash donations.

The Chief Executive Officer (the CEO) of the Corporation, or his or her designee, has the authority to solicit donations on behalf of the Corporation and to accept or reject donations offered to the Corporation. In order to be accepted, the donations must further the goals and missions of the Corporation and must be economically advantageous to the Corporation, considering foreseeable expenditures for matters such as storage, transportation, maintenance, and distribution. The CEO will only solicit or accept, donations if the solicitation or acceptance "will not reflect unfavorably upon the ability of the Corporation, or of any officer or employee of the Corporation, to carry out the responsibilities or official duties of the Corporation in a fair and objective manner; and * * * will not compromise the integrity of the programs of the Corporation or any official or employee of the Corporation involved in such programs." 42 U.S.C. 12651g(a)(2)(C). In addition, the CEO will not solicit or accept, products or services from the manufacturers, distributors, or sellers of alcohol, tobacco, or firearms products.

Dated: July 21, 1994.

Terry Russell,

General Counsel.

[FR Doc. 94–18225 Filed 7–26–94; 8:45 am]

BILLING CODE 6820–BA–M

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information Systems Agency.

ACTION: Notice of membership of the Defense Information Systems Agency, Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the appointment of members of the Senior Executive Service Performance Review Board of the Defense Information Systems Agency. The publication of Performance Review Board membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Information Systems Agency.

EFFECTIVE DATE: July 1. 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Painter, SES Program Manager, Civilian Personnel Division (BC), Center for Agency Services (BA), Defense Information Systems Agency, Washington, DC 20305-2000, (703) 692-2792.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the Senior Executive Service Performance Review Board. The members will serve a one-

year renewable term, effective July 1, 1994.

James A. Rhoads,

Director, Human Resources.

Daid T. Signori, Jr., Deputy Director, DISA
Donovan K. Leyden, Chief of Staff
Robert M. Marquette, Deputy Manager, National Communications System
BGEN Bruce J. Bohn, Director, Joint Interoperability and Engineering Organization
BGEN John M. Watkins, Jr., Director, Defense Information Services Organization

[FR Doc. 94–18295 Filed 7–26–94; 8:45 am]

BILLING CODE 3610–05–M

DEPARTMENT OF EDUCATION

Office of Human Resources and Administration

Performance Review Board; Notice of Membership

AGENCY: Department of Education.

ACTION: Notice of Membership of the Performance Review Board (PRB).

SUMMARY: Notice is hereby given of the names of members of the Department of Education's PRB.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Staff, Personnel Management Service, Office of Human Resources and Administration, Department of Education, Room 1187–A, FOB–6, 400 Maryland Avenue, SW., Washington, DC 20202, Telephone: (202) 401–0546. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 4314 (c) (1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Senior Executive Service (SES) PRBs. The Board shall review and evaluate the initial appraisal of a senior executive's performance along with any comments by senior executives and any higher level executive and make recommendations to the appointing authority relative to the performance of the senior executive.

The PRB is also responsible for providing recertification recommendations for career SES appointees in accordance with section 3393a of Title 5, U.S.C. and § 317.504(f) of Title 5, Code of Federal Regulations.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Rodney McCowan, Chair, Mary Jean LeTendre, Co-chair, Alicia Coro, Philip Link, Carol Cichowski, Thomas Skelly, Ricky Takai, William Smith, Charles Karelis, John Haines, Carl O'Riley, Geraldine Jasper, John Higgins, Gary Rasmussen, Susan Craig, Jeanette Lim, Patricia Guard, Andrew Pepin, Ray Fry, Paul Planchon, Raymond Pierce, Thomas Hehir, Thomas Wolanin, Eugene Garcia, Jamienne Studley. The following executives have been selected to serve as alternate members of the Performance Review Board: Hazel Fiers, Valerie Plisko, Charles Hansen, Douglas Ponci, Therese Dozier, Henry Smith.

Dated: July 20, 1884.

Rodney McCowan,

Assistant Secretary for Human Resources and Administration.

[FR Doc. 94–18202 Filed 7–26–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Financial Assistance Solicitation Availability Notice (Cooperative Agreement)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: On or about August 2, 1994, The U.S. Department of Energy, Morgantown Energy Technology Center, plans to issue a Solicitation for Cooperative Agreement Proposal (SCAP) No. DE–SC21–94MC31176 for the solicitation of applications in support of research and development entitled "Utility Advanced Turbine Systems (ATS) Technology Readiness Testing and Pre-Commercial Demonstration." Authority for this action is the DOE Organization Act Public Law 95–91 and the DOE Financial Assistance Regulations 10 CFR part 600. DOE anticipates multiple awards with a project duration of approximately 60 months. DOE plans to make available funds totalling $197,000,000 over the project duration; a minimum cost share of 35% for the readiness testing effort and 50% for the pre-commercial demonstration effort is required.

DATES: Proposals are due 60 days after release of solicitation.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, IO7, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone (304) 291–4386, Procurement Request No. 21–94MC31176.000.

SUPPLEMENTARY INFORMATION: The objective of the project is for participants to successfully demonstrate, at full-scale, a highly efficient, natural-gas-fired gas turbine system for utility-scale power generation. To accomplish this objective, participants shall first show (at an appropriate scale) technology readiness of parts and subsystems critical to their ATS. Participants will design parts that are critical to the ATS and plan and execute tests of components and subsystems to prove the technology readiness of the design. Having established technology readiness, participants will finalize the design, build the ATS at full scale, and demonstrate that the ATS meets performance targets. Copies of the SCAP may be obtained by submitting a written request to the address provided above. The solicitation package will be provided on electronic media utilizing WordPerfect Version 5.1. Telephone requests will not be honored. A separate **Federal Register** notice will be issued for Solicitation Number DE–SC21–94MC31173 research titled "Industrial Advanced Turbine Systems (ATS) Development and Demonstration" program.

Louie L. Calaway,

Director Acquisition and Assistance Division, Morgantown Energy Technology Center

[FR Doc. 94–18290 Filed 7–26–94; 8:45 am]

BILLING CODE 6450–01–P

Golden Field Office; Federal Assistance Award to Sacramento Municipal Utility District

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application; 36–94G010024.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to enter into a cooperative agreement with the Sacramento Municipal Utility District for the implementation of utility, grid-connected photovoltaic systems.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden

Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: W. Webb, Contract Specialist. The telephone number is 303–275–4724. Dr. Paul K. Kearns is the Contracting Officer.

SUPPLEMENTARY INFORMATION: DOE has evaluated, in accordance with the DOE Federal Assistance Regulations, 10 CFR 600.14, the unsolicited proposal entitled "Sustained Utility Implementation of Photovoltaics" and recommends that the unsolicited proposal be accepted for support without further competition in accordance with § 600.14 of the Federal Assistance Regulations.

This award involves cost sharing on the hardware, installation and evaluation of utility, grid-connected photovoltaic systems for residential, commercial/utility sized (substation), and building-integrated applications. Sacramento Municipal Utility Districts' (SMUD) "sustained orderly development" effort to advance the commercialization of grid-connected photovoltaics plans to install about 900 kW of grid-connected PV systems. This will include about 100 residential "PV Pioneer" systems, several systems of the commercial/utility size, and building-integrated applications such as PV integrated as architectural building components and demand-side management applications.

The phase I activities include procurement activities, including issuance of the RFP, bids, proposal evaluations, negotiations and SMUD board approval. Phase II activities include the installation, monitoring and evaluation of PV systems.

This project represents a unique opportunity to evaluate large-scale, distributed, utility grid-connected PV applications; implement a substantial hardware procurement; and support the commercialization of grid-connected photovoltaics. SMUD has a high probability of achieving the project objectives based on past projects, a "large" service area for the implementation of grid-connected applications and community commitment to the adoption of PV technology. SMUD's resources and commitment to extending the utility PV collaborative process and promoting cooperative ventures to accelerate the commercialization of utility PV applications should provide a basis for the successful implementation.

The program cost is estimated to be $10,800,000 total, with the DOE share being $1,600,000 or 14.8%. The proposed DOE funding for FY 94 is $500,000 and for FY 95 is $1,100,000.

Issued in Golden, Colorado, on July 13, 1994.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 94–18289 Filed 7–26–94; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order with Murphy Oil Corporation, Murphy Oil USA, Inc. and Murphy Exploration & Production Company

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Murphy Oil Corporation, Murphy Oil USA, Inc. and Murphy Exploration & Production Company (Murphy). The agreement proposes to resolve matters relating to Murphy's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 28, 1981. If this Consent Order is approved, Murphy will pay $10,700,000.00 to DOE. To distribute these monies, DOE's Office of Hearings and Appeals will be petitioned to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR § 205.199J, ERA will receive written comments on the proposed Consent Order and will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the **Federal Register**, along with an analysis of significant written comments in response to this notice, as well as any other considerations that were relevant to the final decision.

DATES: Comments must be received by August 26, 1994.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposed Consent Order to: Murphy Consent Order Comments, U.S. Department of Energy, Economic Regulatory Administration, GC–44, 820 First Street, N.E., Suite 810, Washington, D.C. 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR § 205.9(f).

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 820 First Street, N.E., Suite 810, Washington, D.C. 20585, (202) 523–3045.

SUPPLEMENTARY INFORMATION: Murphy is a petroleum refiner and a producer subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by the proposed Consent Order, January 1, 1973 through January 28, 1981, Murphy engaged in, among other things, the production, sale and refining of crude oil. On February 9, 1987, Murphy and DOE entered into a Consent Order (hereinafter the 1987 Consent Order) that settled, with certain specific exceptions, all claims and disputes against Murphy by DOE for the period January 1, 1973 through January 28, 1981. The 1987 Consent Order specifically excepted, among other things, issues or claims then pending or arising out of first sales of crude oil produced and sold from properties operated by Murphy.

As a result of DOE's investigation of Murphy's compliance with the federal petroleum price and allocation regulations during the period covered by the proposed Consent Order, ERA issued a Proposed Remedial Order (PRO) to Murphy on December 15, 1986. On June 17, 1992, DOE's Office of Hearings and Appeals (OHA) modified the PRO and issued it as a Remedial Order (RO) to Murphy. *Murphy Oil Corp.*, 22 DOE ¶ 83,005 (1992). The RO finds Murphy liable to make restitution of $13,366,664.60, plus interest to the date of restitution, for violations of the regulations applicable to first sales of domestic crude oil (10 CFR §§ 212.72–212.74), the regulations exempting from the price rules the sale of crude oil produced from "stripper well" properties (10 CFR §§ 210.32 and 212.54), and the normal business practices rule (10 CFR § 210.62(c)) in connection with Murphy's first sales of crude oil during the period September 1973 through December 1979. With interest, Murphy's current liability under the RO would total $67.6 million through June 1994. Murphy appealed that RO to the Federal Energy Regulatory Commission (FERC).

The RO also remands for further proceedings claims against Murphy pertaining to Murphy's operation of

properties for which the PRO found violations during the year 1979, as well as certain crude oil properties not included within ERA's investigation of Murphy or within the PRO.

On January 24, 1994, a FERC Administrative Law Judge issued a decision and proposed order (D&PO) that modified the RO and directed recalculation of the amount of restitution. *Ocean Drilling & Exploration Co., et al.*, 66 FERC ¶ 63,002 (1994). The D&PO is now pending before the Commission in Docket No. RO92–5–000. With interest, Murphy's current liability under the D&PO (including ERA's estimate of Murphy's liability for previously unaudited properties and unaudited time periods (yet to be adjudicated by OHA or FERC)) totals approximately $5.2 million.

ERA has preliminarily agreed to the proposed $10,700,000 settlement as resolution of Murphy's liability for DOE regulatory violations for the period covered by the proposed Consent Order. ERA has made this tentative determination after an assessment of the risks of the current matters in litigation. Among other things, ERA has considered the risk pertaining to the following issues that Murphy has raised in its defense: whether Murphy properly applied the definition of "property" to certain of its offshore and onshore producing premises in the period September 1973 through August 1976; whether the largest of Murphy's offshore producing premises qualified as multiple DOE "properties" under DOE Rulings 1977–1 and 1977–2; whether Murphy charged prices in excess of the appropriate ceiling prices for crude oil produced from offshore and onshore properties that it operated; whether Murphy should be liable for 100% of the overcharges associated with sales of crude oil that had been taken "in kind" from Murphy-operated properties and sold by working interest owners; and whether Murphy should be liable for 100% of the overcharges associated with certain sales of crude oil from Murphy-operated properties as to which the federal government received a royalty interest. ERA has also considered the time and expense that would be required for the government to litigate every issue fully. Based on these factors, ERA has tentatively concluded that the resolution of its claims against Murphy for $10,700,000 is an appropriate settlement and in the public interest. Except as specifically excluded, all pending and potential civil and administrative disputes, claims and causes of action, whether or not heretofore asserted, between the DOE and Murphy relating to Murphy's compliance with the federal petroleum price and allocation regulations are resolved and extinguished by this Consent Order. Murphy and DOE mutually release each other from the claims arising under the subject matter covered by the proposed Consent Order.

Under the terms of the proposed Consent Order, Murphy is required to pay the sum of $10,700,000 within thirty (30) days of the effective date of the Consent Order and shall maintain records as are necessary to demonstrate compliance with the terms of this Consent Order.

If the settlement is not made final by the one hundred fiftieth (150th) day following execution, Murphy may withdraw from the proposed agreement.

Submission of Written Comments:

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

All comments received by the thirtieth (30th) day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Issued in Washington, D.C., on July 21, 1994.

Robert R. Nordhaus,

Acting Administrator, Economic Regulatory Administration, General Counsel.

[FR Doc. 94–18291 Filed 7–26–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2363–MN; Project No. 2360–MN]

Potlatch Corporation; et al. Public Meeting Scheduled for Licensing of St. Louis River Basin Hydroelectric Projects

July 21, 1994.

The Federal Energy Regulatory Commission's (FERC) Office of Hydropower Licensing will hold a Public Meeting to present findings and solicit comments on the Draft Environmental Impact Statement (DEIS) for the relicensing of hydroelectric projects within the St. Louis River Basin. The projects are: St. Louis River (No. 2360) and Cloquet (No. 2363). The projects are located near the City of Duluth, Minnesota.

The public meeting will be held August 11, at 7 p.m. until 10 p.m. in the Lake Michigan Room of the Holiday Inn—Downtown Waterfront, 200 West First Street.

Participants wishing to make oral comments at the meeting are asked to keep them brief.

Statements made at the public meeting will not constitute official DEIS comments pursuant to the National Environmental Policy Act. Official DEIS comments must be filed in writing with: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426. Reference should be made to the St. Louis River Project (No. 2360) or the Cloquet Project (No. 2363).

The comment period ends September 5, 1994.

Questions regarding the relicensing of the projects can be addressed to John Blair, Task Monitor, FERC, (202) 219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 94–18224 Filed 7–26–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50798; FRL–4901–7]

Receipt of Notification to Conduct Small-Scale Testing of Nonindigenous Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of two notifications of intent to conduct small-scale testing of nonindigenous strains of *Bacillus thuringiensis* from the Ciba–Geigy Corporation.

DATES: Written comments must be received by August 26, 1994.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50798 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)305–7690.

SUPPLEMENTARY INFORMATION: Two notifications of intent to conduct small-scale field testing pursuant to the EPA's Statement of Policy entitled "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), have been received by Ciba-Geigy Corporation of Greensboro, North Carolina. The purpose of the proposed testing is to determine the biological activity of several among 16 nonindigenous strains of *Bacillus thuringiensis* against the Colorado potato beetle on potatoes and among 17 nonindigenous strains of *Bacillus thuringiensis* against *Heliothis* species on cotton. Potato testing will take place in New York and Wisconsin over a 3–year period with 0.11 acres per year per strain being evaluated. Treated potatoes will be destroyed subsequent to testing. Cotton testing will take place in Florida and Mississippi over a 3–year period with 0.66 acres per strain per year being evaluated. Cotton treated with these strains will not be processed into food or feed items.

Following review of the Ciba-Geigy Corporation application and any comments received in response to this Notice, EPA will decide whether or not an Experimental Use Permit is required.

Dated: July 15, 1994.

Lois A. Rosi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–18227 Filed 7–26–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180946; FRL 4901–8]

Receipt of Application for Emergency Exemption to Use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arizona Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide imidacloprid (CAS 105827–78–9) to treat up to 55,000 acres of head and leaf lettuce, 8,500 acres of broccoli, 6,100 acres of cauliflower, and 3,500 acres of cabbage to control the sweet potato, or silverleaf whitefly (*Bemesia tabaci = argentifolii*). The Applicant proposes the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before August 11, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180946," should be submitted by mail to: Public Response and Program Resource Branch Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on head and leaf lettuce, broccoli, cabbage, and cauliflower to control the sweet potato, or silverleaf whitefly (SLW). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that a new strain, or possibly a new species, of whitefly, often referred to as the strain B of sweet potato whitefly, or silverleaf whitefly (SLW), was initially found in Arizona in 1988. Since that time, it has steadily spread to new host plants and grown in population size each summer and fall. The SLW causes damage by feeding, and also through the production of honeydew, which encourages growth of sooty mold and other fungi. When SLWs become numerous as they did in many areas of the state in the past several years, their direct feeding lowers the yield. The SLW has also been implicated as a vector of virus. The Applicant claims that adequate control of the SLW is not being achieved with currently registered products and alternative cultural practices. Along with this request, the Applicant has also requested a specific exemption for use of a different chemical, bifenthrin, on the named crops, for control of the same pest. The Applicant justifies requests for two chemicals, by stating that the imidacloprid would be applied once at planting, as a soil treatment; since imidacloprid is a systemic, it would be taken up by the seedling as it germinates, and protect the emerging seedling. The Applicant states that bifenthrin can only be applied as a foliar spray, which is of little value during the early establishment phase of seedling development, as there is limited leaf area at that time. Thus the Applicant

proposed that use of bifenthrin be allowed later in the crop season, as a foliar treatment. The Applicant indicates that imidacloprid would not be of use as both a soil treatment and a foliar spray, because its mode of action is such that resistance development is a concern. The Registrant of imidacloprid will not support the use of this chemical further into the growing season for this reason. The Applicant indicates that without adequate control of the SLW in the named crops, significant economic losses will be suffered.

The Applicant proposes to apply imidacloprid at a maximum rate of 5 oz. (dry) active ingredient (20 fluid oz. of product) per acre with a maximum of one application per crop season on a total of 73,100 acres of the above-listed crops. For each of the crops named, it is possible to produce two crops per calendar year on a given acre, and therefore, the acreage could potentially receive two applications of imidacloprid per calendar year. However, the Applicant proposes to limit the maximum amount which could be applied per calendar year to 0.5 lb. a.i. (32 fl. oz. product) per acre. Therefore, use under this exemption could potentially amount to a maximum total of 36,550 lbs. of active ingredient, or 18,275 gal. of product. This is the second time that the Applicant has applied for the use of imidacloprid on the named crops. The Applicant received specific exemptions last year (1993) for imidacloprid on broccoli, cauliflower, cabbage, and head and leaf lettuce, and for bifenthrin on broccoli, cauliflower, and head lettuce. In 1992, the Applicant was granted specific exemptions for the use of bifenthrin for SLW control in broccoli, cauliflower, and head lettuce.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing the first food use of an active ingredient. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Arizona Department of Agriculture.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

1Dated: July 11, 1994.

Lois A. Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–17915 Filed 7–26–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–300347; FRL–4807–2]

Statement of Policy for Termiticide Labeling Revision; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on a proposed policy for revising soil applied and most other termiticide labeling, except fumigant type termiticides such as sulfuryl fluoride and nitrogen. That policy has been developed in a draft pesticide regulation (PR) notice, "Termiticide Labeling," which is available upon request. Interested parties may request a copy of the Agency's proposed policy as set forth in the address section of this notice.

DATES: Written comments, identified by the document control number [OPP–300347], must be received on or before September 12, 1994.

ADDRESSES: The PR Notice is available from Harvey L. Warnick. By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person: Rm. 208, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. By telephone: (703)–305–5200.

Submit written comments to: By mail, Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person: Bring comments to Rm. 1128, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Harvey L. Warnick, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 208, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)–305–5200.

SUPPLEMENTARY INFORMATION: Because of the highly specialized nature of termiticides, a number of issues evolved over the years with regard to products' labeling: (1) limitations on distribution, sale, or use; (2) precautionary statements; (3) environmental hazards statements; (4) storage and disposal statements; (5) use directions; (6) the longevity of termiticide treatments; and (7) application at less-than-labeled rates. In 1988, representatives from the termiticide manufacturing and user industry, State pesticide regulatory officials, and EPA representatives met voluntarily under the auspices of the Association of American Pesticide Control Officials (AAPCO) and the State FIFRA Issues Research and Evaluation Group (SFIREG) to identify specific issues to be addressed. The identified issues were set forth in AAPCO/SFIREG's 1989 Termiticide Labeling Report and were endorsed by the Association of Structural Pest Control Regulatory Officials (ASPCRO).

EPA has reviewed the AAPCO/SFIREG 1989 Termiticide Labeling Report and has developed a draft PR Notice setting forth proposed policy regarding termiticide lableing and longevity of termiticide treatments. This **Federal Register** notice announces the availability of the draft PR Notice and solicits comment on the proposed policy. If, after reviewing any comments, EPA determines that changes to the Policy are warranted, the Agency will revise the Draft PR Notice prior to release.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 7, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–17775 Filed 7–26–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP-30369; FRL-4898-4]

Daniel R. Freeman; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to conditionally register the pesticide product Repels Plus Dog and Cat Repellent, containing an active ingredient not included in any currently registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by August 26, 1994.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP-30369] and the EPA File Symbol (21215-A) to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), attention Product Manager (PM) 14, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: PM 14, Robert Forrest, Rm. 219, CM #2, (703-305-6600).

SUPPLEMENTARY INFORMATION: EPA received an application from Daniel R. Freeman, 25 Kevin Lee Lane, Rancho Mirage, CA 92270, to conditionally register the pesticide product Repels Plus Dog and Cat Repellent to reduce the frequency of defecation or urination by dogs on lawns, around hedges, trees, shrubs, and vines, and to reduce digging by cats in flower and vegetable gardens, lawns, and under bushes (EPA File Symbol 20215-A). This product contains the active ingredients thiram-tetramethylthiuram disulfide, and 2-undecanone both at 6.25 percent; castor oil was later added to the formula at 5.50 percent. Castor oil is an active ingredient not included in any currently registered product pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 12, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-18040 Filed 7-26-94; 8:45 am]

BILLING CODE 6560-50-F

[PP 3G4203/T662; FRL 4872-6]

Cadre; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the herbicide cadre in or the raw agricultural commodity peanut hulls or meat at 0.1 part per million (ppm).

DATES: This temporary tolerance expires May 31, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-6800.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543-0400, has requested in pesticide petition (PP) 3G4203 the establishment of a temporary tolerance for residues of the herbicide cadre Ammonium salt of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid in or on the raw agricultural commodity peanut hulls or meat at 0.1 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 241-EUP-125, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires May 31, 1996. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 21 U.S.C. 346a(j).

Dated: July 5, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–17776 Filed 7–26–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50797; FRL–4901–6]

Receipt of Notification to Conduct Small-Scale Testing of Genetically Altered Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a notification of intent to conduct small-scale testing of four genetically altered strains of *Bacillus thuringiensis* from the Ciba-Geigy Corporation.

DATES: Written comments must be received by August 26, 1994.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50797 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305–7690.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's Statement of Policy entitled "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received by Ciba-Geigy Corporation of Greensboro, North Carolina. The purpose of the proposed testing is to determine the biological activity of the *Bacillus thuringiensis strains* CGB203, CGB208, CGB209, and CGB210 against diamondback moth, fall armyworm, beet armyworm, and tomato fruitworm on cole crops and tomatoes over a 2–year period. These strains have had various *Bacillus thuringiensis* cry genes inserted into them via a *B. thuringiensis - E. coli* shuttle vector containing a *B. thuringiensis* origin of replication and ampicillin and erythromycin resistance markers. One of these strains also had a cry gene introduced via conjugal transfer between two strains of *B. thuringiensis*. The testing will take place in Florida on less than 1 acre per strain per year. Plants in the test sites will be plowed into the soil at the termination of the testing.

Following review of the Ciba-Geigy Corporation application and any comments received in response to this Notice, EPA will decide whether or not an Experimental Use Permit is required.

Dated: July 15, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–18228 Filed 7–26–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1034–DR]

Alabama; 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 Alabama (FEMA–1034–DR), dated July 8, 1994, and related determinations.

EFFECTIVE DATE: July 19, 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 the incident period for this disaster is closed effective July 19, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–18271 Filed 7–26–94; 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 21, 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 area 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:

Rockdale County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Frank Thomas,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 94–18272 Filed7–26–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capital Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011463.

Title: East Coast North America to West Coast South America and Caribbean Cooperative Working Agreement.

Parties:

Compania Chilena de Navegacion Interoceanica S.A.

Compania Sud Americana de Vapores S.A.

Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed Agreement authorizes the parties to consult and agree upon development and utilization of vessels, rationalization of sailings, the chartering of space from each other or from other persons, and to discuss other matters of mutual concern in the trade between U.S. East Coast ports and points and Puerto Rico, on the one hand, and ports and points in the Caribbean, Colombia, Panama, Ecuador, Peru and Chile (including points in Bolivia) and Argentina on the other hand. Adherence to any agreement reached is voluntary.

Agreement No.: 224–220563–003.

Title: Port of Oakland/Trans Pacific Container Service Corporation Terminal Agreement.

Parties:

Port of Oakland ("Port")

Trans Pacific Container Service Corporation ("TPCC")

Synopsis: The proposed amendment provides for an increased level of tariff revenue sharing by TPCC to 60 percent for secondary users who enter into use agreements with TPCC and approved by the Port for the use of the assigned premises as their regular scheduled port of call for a period of five years or more.

Dated: July 22, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–18283 Filed 7–26–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why and of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20593.

Global Trading Resources, Inc., 2915 NE Marine Drive, Portland, OR 97211, Officers: Edward T. Shonsey, President, Patrice A. Iverson-Summer, Vice President, Mary C. Shonsey, Secretary

AZ Forwarding Inc., 473 Crescent Street, Brooklyn, NY 11208, Shaheed Rahaman, Sole Proprietor

Air/Sea International Freight Forwarders, Inc., 3418 Rockhaven Circle, Atlanta, GA 30324, Officers: Marvin E. Segraves, Jr., President, Dennis R. Smith, Treasurer

Consolidated Incorporated of Orlando, 701b L.F. Roper Parkway, Ocoee, FL 34761, Officer: Mona El Tagi, President

Straightway, Inc., 28745 Wick Road, Romulus, MI 48174, Officer: Daniel T. Gregg, President

Gateway International Forwarding Company (partnership), 5353 De Soto, #1715, Houston, TX 77091, Officers: Betty Nix, Chief Executive Officer, Gilda Warren, Chief Executive Officer

Freight Service Network Inc., 914 Sivert Drive, Wood Dale, IL 60191, Officers: Sadru Rasool, President, Grace Kung, Treasurer

Dated: July 21, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–18237 Filed 7–26–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061794 AND 070894

NAME OF ACQUIRING PERSON, NAME OF ACQUIRED PERSON, NAME OF ACQUIRED ENTITY	PMN NO.	DATE TERMINATED
Tribune Company, Farm Journal, Inc., Farm Journal, Inc	94–1570	06/27/94
Petroleum Heat and Power Co., Inc., DeBlois Oil Company, DeBlois Oil Company	94–1486	06/28/94
Torchmark Corporation, Unocal Corporation, Union Oil Company of California	94–1555	06/28/94
Consolidated Oil & Gas, Inc., Comdisco, Inc., NBB Oil & Gas Partners (USA)	94–1574	06/28/94
Comdisco, Inc., Consolidated Oil & Gas, Inc., Consolidated Oil & Gas, Inc	94–1575	06/28/94
Century Communications Corp., Oliver R. Grace, Jr., Midsouth Cellular L.P. et. al	94–1552	06/29/94
Airgas, Inc., John F. Conine, The Jimmie Jones Co.	94–1460	06/30/94
Liberty Media Corporation, John Moussouris, MicroUnity Systems Engineering, Inc	94–1479	06/30/94

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061794 AND 070894—Continued

NAME OF ACQUIRING PERSON, NAME OF ACQUIRED PERSON, NAME OF ACQUIRED ENTITY	PMN NO.	DATE TERMINATED
Mid-America Dairymen, Inc., State Dairy Association, Incorporated, State Dairy Association, Incorporated	94–1518	06/30/94
PriCellular Corporation, Century Telephone Enterprises, Inc., Century Cellunet of Minnesota RSA #6, Inc	94–1523	06/30/94
Horizon Healthcare Corporation, Robert J. Schlegel and Myrna Schlegel, PeopleCare Heritage Manor Plano., et al	94–1553	06/30/94
J. David Wargo, TCI/Liberty Holding Company, TCI/Liberty Holding Company	94–1558	06/30/94
Banc One Corporation, British Petroleum Company, p.l.c., BP Exploration & Oil Inc	94–1564	06/30/94
Jacobs Engineering Group Inc., CRSS Inc., CRSS Constructors, Inc	94–1571	06/30/94
Avnet, Inc., Bruce S. White, Pen-Stock, Inc	94–1588	06/30/94
Green Spring Health Services, Inc., Independence Blue Cross, TAO, Inc	94–1600	06/30/94
Health o Meter Products, Inc., Mr. Coffee, Inc., Mr. Coffee, Inc	94–1472	07/01/94
Engelhard Corporation, Derlan Industries Limited, General Plasma, Inc	94–1579	07/01/94
Fund American Venture Corporation ("FAVC"), Hallwood Energy Partners, L.P., Hallwood Energy Partners, L.P	94–1591	07/01/94
UniHealth America, C.E. Heath International Holdings Limited, C.E. Heath Holdings (Insurance) Inc., C.E. Heath	94–1601	07/01/94
VeriFone, Inc., CFO Holdings Corporation, CFO Holdings Corporation	94–1604	07/01/94
La Quinta Inns, Inc., CIGNA Corporation, Connecticut General Life Insurance Company	94–1609	07/01/94
Argo Partnership, L.P. ("Argo"), Carena Holdings, Inc., Trizec Corporation Ltd	94–1626	07/01/94
Natonal Semiconductor Corporation, U.S. West, Inc., U.S. West Financial Services, Inc	94–1627	07/01/94
Hannaford Bros. Co., Lawrence A. Wilson, Sr., Boney Wilson & Sons, Inc. & Wilson Bros. Partnership	94–1631	07/01/94
Kendall International, Inc., David S. Sheridan, Sheridan Catheter Corp. & Sheridan Development Corp	94–1640	07/01/94
Richard H. Pickup, Pac Rim Holdings Corporation, Pac Rim Holdings Corporation	94–1471	07/02/94
Ford Motor Company, Westinghouse Electric Corporation, Westinghouse Electric Corporation	94–1573	07/05/94
Malcolm I. Glazer, The San Diego Padres Baseball Partnership, The San Diego Padres Baseball Partnership	94–1481	07/06/94
Kirby Corporation, OMI Corp., OMI Willamette Transport Inc	94–1582	07/06/94
Harrowston Inc., Imperial Chemical Industries PLC, ICI Americas Inc	94–1611	07/06/94
First Brands Corporation, Stephens Family Trust, Excel-Mineral Company, Inc. & Excel International, Inc	94–1528	07/07/94
Cirrus Logic Inc., PicoPower Technology, Inc., PicoPower Technology, Inc	94–1587	07/07/94
Welsh, Carson, Anderson & Stowe VI, L.P., Seer Technologies, Inc., Seer Technologies, Inc	94–1593	07/08/94
General Electric Company, Barclays PLC, Barclays Business Credit, Inc	94–1618	07/08/94
Jack N. Berkman, Associated Communications of Delaware, Inc., Associated Communications of Delaware, Inc	94–1632	07/08/94
Myles P. Berkman, Associated Communications of Delaware, Inc., Associated Communications of Delaware, Inc	94–1633	07/08/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–18257 Filed 7–26–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941 0020]

Healthtrust, Inc.—The Hospital Company; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Tennessee-based corporation that provides acute care hospital services to divest Holy Cross Hospital of Salt Lake City to a Commission approved acquirer; to complete the divestiture within six months of the date of the order; and to consent to the appointment of a trustee, if the divestiture is not completed within six months. In addition, the proposed consent agreement would require the respondent to obtain prior Commission approval, for ten years, before purchasing any acute care hospital or any hospital, medical or surgical diagnostic or treatment service or facility in the Utah counties of Weber, Davis, and Salt Lake.

DATES: Comments must be received on or before September 26, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak or Philip Eisenstat, FTC/S–3115, Washington, DC 20580. (202) 326–2756 or 326–2769.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rule of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation into the proposed acquisition of assets of Holy Cross Health System Corporation by Healthtrust, Inc.—The Hospital Company ("Healthtrust") is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between the proposed respondent by its duly

authorized officer and attorney, and counsel for the Commission that:

1. The proposed respondent Healthtrust is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at 4525 Harding Road, Nashville, Tennessee.

2. The proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. The proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and to cease and desist, and other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

As used in this order, the following definitions shall apply:

A. "Respondent" or "Healthtrust" means Healthtrust, Inc. The Hospital Co., its partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates controlled by Respondent, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

B. The "Acquisition" means the acquisition by Healthtrust of certain assets of Holy Cross Health System Corporation including Holy Cross Hospital of Salt Lake City, Holy Cross-Jordan Valley Hospital, and St. Benedict's Hospital.

C. "Acute care hospital" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, the provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

D. To "operate an acute care hospital" means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

E. "Affiliate" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

F. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

G. "Three-County Area" means the area consisting of the following three Utah counties: Salt Lake County, Davis County, and Weber County.

H. "Commission" means the Federal Trade Commission.

I. "Schedule A Assets" means assets acquired by the respondent and listed on the attached Schedule A.

J. "Viability and competitiveness" means that the Schedule A Assets are capable of functioning independently and competitively.

K. "Assets and Businesses" include, but are not limited to, all assets, properties, businesses, rights, privileges, contractual interests, licenses, and goodwill of whatever nature, tangible and intangible, including, without limitation, the following:

1. all real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), together with all buildings, improvements and fixtures located thereon, all construction in progress thereat, all appurtenances thereto, and all licenses and permits related thereto (collectively, the "Real Property");

2. all contracts and agreements with physicians, other health care providers, unions, third party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners and consignees (collectively, the "contracts");

3. all machinery, equipment, fixtures, vehicles, furniture, inventories and supplies (other than such inventories and supplies as are used in the ordinary course of business during the time that Healthtrust owns the assets) (collectively, the "Personal Property");

4. all research materials, technical information, management information systems, software, software licenses, inventions, trade secrets, technology, know how, specifications, designs, drawings, processes, and quality control data (collectively, the "Intangible Personal Property");

5. all books, records and files, excluding, however, the corporate

minute books and tax records of Healthtrust and its Affiliates; and

6. all prepaid expenses.

II

It is ordered, that:

A. Respondent shall divest, absolutely and in good faith, within six (6) months of the date this order becomes final, the Schedule A Assets, and shall also divest such additional assets and businesses ancillary to Holy Cross Hospital of Salt Lake City, Utah (excluding Pioneer Valley Hospital, Lakeview Hospital, Jordan Valley Hospital, St. Benedict's Hospital, Salt Lake Industrial Clinic, and West Jordan Clinic), and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of the Schedule A Assets.

B. Respondent shall divest the Schedule A Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Schedule A Assets is to ensure the continuation of the Schedule A Assets as an ongoing, viable acute care hospital and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Respondent shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this order or until such other time as the Agreement to Hold Separate provides.

D. Pending divestiture of the Schedule A Assets, respondent shall take such actions as are necessary to maintain the viability and competitiveness and the marketability of the Schedule A Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Scheduled Assets except for ordinary wear and tear.

E. A condition of approval by the Commission of the divestiture shall be a written agreement by the acquirer of the Schedule A Assets that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships or otherwise, without the prior approval of the Commission, the Schedule A Assets to any person who operates, or will operate immediately following the sale, any other acute care hospital in the Three-County Area. Provided, however, that the acquirer is not required to seek prior approval of the Commission for the sale of any of the assets identified in Part II of Schedule A.

III

It is further ordered , that:

A. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Schedule A Assets, in accordance with this order, within six (6) months of the date this order becomes final, the Commission may appoint a trustee to divest the Schedule A Assets. In the event that the Commission or the Attorney General brings an action for any failure to comply with this Order or in any way relating to the Acquisition, pursuant to Section 5(*1*) of the Federal Trade Commission Act, 15 U.S.C. 45(*1*), or any other statute enforced by the Commission, the respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this order, the respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Schedule A Assets.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves that the trust agreement described in Paragraph III.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Schedule A Assets or to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the respondent's absolute and unconditional obligation to divest at no minimum price., The divestiture shall be made in the manner and to the acquirer as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of the respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all

remaining monies shall be paid at the direction of the respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Schedule A Assets.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative, or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Schedule A Assets.

12. The trustee shall report in writing to the respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital in the Three-County Area;

B. Acquire any assets used, or previously used, in the Three-County Area (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital in the Three-County Area;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any acute care hospital, or any part thereof, in the Three-County Area, including but not limited to, a lease of or management contract for any such acute care hospital;

D. Acquire or otherwise obtain the right to designate directly or indirectly directors or trustees of any acute care hospital in the Three-County Area;

E. Permit any acute care hospital it operates in the Three-County Area to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in the Three-County Area.

Provided, however, that such prior approval shall not be required for:

1. The establishment of a new hospital service or facility (other than as a replacement for a hospital service or facility, not operated by respondent, in the Three-County Area, pursuant to an agreement or understanding between respondent and the person operating the replaced service or facility);

2. Any transaction otherwise subject to this Paragraph IV of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars ($1,000,000); or

3. The acquisition of products or services in the ordinary course of business.

V

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not, directly or indirectly, through subsidiaries, partnerships of otherwise, without providing advance written notification to the Commission, consummate any joint venture or other arrangement with any other acute care hospital in the Three-County Area for the joint establishment or operation of any new acute care hospital, hospital medical or surgical diagnostic or treatment service or facility, or part thereof, in the Three-County Area. Such advance notification shall be filed immediately upon respondent's issuance of a letter of intent for, or execution of an agreement to enter into, such a transaction, whichever is earlier.

Said notification required by this Paragraph V of this order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations (as amended), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent is not required to observe any waiting period for said notification required by this Paragraph V.

Respondent shall comply with reasonable requests by the Commission staff for additional information concerning any transaction subject to this Paragraph V of this order, within fifteen (15) days of service of such requests.

Provided, however, that no transaction shall be subject to this Paragraph V of this order if:

1. the fair market value of the assets to be contributed to the joint venture or other arrangement by acute care hospitals not operated by respondent does not exceed one million dollars ($1,000,000);

2. the service, facility or part thereof to be established or operate in a transaction subject to this order is to engage in no activities other than the provision of the following services: laundry; data processing; purchasing; materials management; billing and collection; dietary; industrial engineering maintenance; printing; security; records management; laboratory testing; personnel education, testing, or training; or health care financing (such as through a health maintenance organization or preferred provider organization); or

3. notification is required to be made, and has been made, pursuant to section 7A of the Clayton Act, 15 U.S.C. § 18a, or prior approval by the Commission is required, and has been requested, pursuant to paragraph IV of this order.

VI

It is further ordered, that, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all or any substantial part of any acute care hospital it operates in the Three-County Area to be acquired by any other person (except pursuant to the divestiture required by paragraph II of this order) unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

VII

It is further ordered, that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until the respondent has fully complied with paragraph II of this order, the respondent shall submit to the

Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraph II of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraph II of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports of all written communications to and from such parties, all internal memorandum, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has compiled and it is complying with paragraphs IV, V and VI of this order.

VIII

It is further ordered, that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

IX

It is further ordered, that, for the purpose of determining or securing compliance with this order, the respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

Schedule A

The assets to be divested ("Schedule A Assets") shall consist of, without limitation, all Assets and Businesses relating to Holy Cross Hospital of Salt Lake City (the "Hospital"), which were acquired by HealthTrust pursuant to the Acquisition (including all improvements, additions and enhancements made to such assets prior to divestiture), and shall include, without limitation, the Assets and Businesses of the following:

Part I

1. Holy Cross Hospital of Salt Lake City, 1050 East South Temple, Salt Lake City;

Part II

2. Moreau Medical Building, 1002 East South Temple, Salt Lake City;
3. Salt Lake Professional Building, 24 South 1100 East, Salt Lake City;
4. Foothill Family Clinic, 2295 Foothill Drive, Salt Lake City;
5. Eastridge Clinic medical office suites, South 10th East, Salt Lake City;
6. Southeast Health Center, 1275 East Fort Union Boulevard, Midvale, Utah (Southeast Center for Family Medicine; Holy Cross Medical Park);
7. Southwest Health Center, 1990 West 7800 South, West Jordan Valley, Utah (Southwest Center for Family Medicine; Southwest Emergency Clinic);
8. The Magna Health Clinic, 8370 West 3500 South, Magna, Utah; and
9. The Hospitals' Park City, Utah Ambulance Service.
10. The Real Property located at:

A. 45 South 1100 East, Salt Lake City—approximately .227 acres with house thereon;

B. 57 South 1100 East, Salt Lake City—approximately .21 acres with house thereon;

C. 59 South 1100 East, Salt Lake City—approximately .086 acres with house/office thereon;

D. 42 South 1000 East, Salt Lake City—approximately .1875 acres of unimproved land;

11. Option to purchase four contiguous residential properties consisting of approximately .54 acres in the aggregate located at approximately 1014 through 1026 East 100 South, Salt Lake City

* * * * *

It is further provided, that to the extent that any of the contracts, warranties with respect to Personal Property, licenses or other interests in the Intangible Personal Property, or other Schedule A Assets:

(A) also applies to facilities or operations other than those included in the Schedule A Assets, then during the period (the "Contract Period") beginning on the closing date of the Acquisition and ending on the earlier of (1) the expiration of the term of the given contract or other right and (2) the second anniversary of Healthtrust's divestiture of the Schedule A Assets, Healthtrust, at the request of the owner or acquirer of the Schedule A Assets, shall use its reasonable best efforts to cause the services, property or other benefits provided or made available under such a contract or other Schedule A Asset to continue to be available to the owner or acquirer of the Schedule A Assets on terms and conditions substantially similar to those presently in effect; or

(B) requires the consent of a third party in order to transfer or assign such Contract or other Schedule A Asset, then Healthtrust, at the request of the owner or acquirer of the Schedule A Assets, shall use its reasonable best efforts to obtain such consent and, if such consent cannot be obtained, to cooperate in any reasonable arrangement with the owner or acquirer of the Schedule A Assets designed to provide to such owner or acquirer the benefits of the given contract or other Schedule A Asset during the Contract Period on terms and conditions substantially similar to those presently in effect.

Appendix I

Agreement to Hold Separate

This Agreement to Hold Separate ("Agreement") is by and between Healthtrust, Inc.—The Hospital Company ("respondent" or "Healthtrust"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 4525 Harding Road, Nashville, Tennessee 37205; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Whereas, on or about December 3, 1993, respondent entered into an agreement with Holy Cross Health System Corporation ("Holy Cross"), an Indiana corporation, whereby respondent will acquire from Holy Cross certain Holy Cross assets in Utah (hereinafter the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), which would require the divestiture of certain assets listed in Schedule A of the Consent Order ("Schedule A Assets"), including Holy Cross Hospital ("HCH") in Salt Lake City, Utah, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the

provisions of Section 2.34 of the Commission's Rules' and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Schedule A Assets during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Schedule A Assets as described in Paragraph II of the Consent Order and the Commission's right to have HCH continue as a viable independent acute care hospital; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) preserve HCH as a viable independent acute care hospital pending its divestiture, and

(ii) remedy any anticompetitive effects of the Acquisition;

Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Schedule A Assets pursuant to the Consent Order, as follows:

1. Respondent agrees to execute the Agreement Containing Consent Order and be bound by the attached Consent Order.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a-2.b, it will comply with the provisions of paragraph 3 of this Agreement:

a. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the day after the divestiture required by the Consent Order has been completed.

3. Respondent will hold the Schedule A Assets as they are presently constituted separate and apart on the following terms and conditions:

a. The Schedule A Assets, as they are presently constituted, shall be held separate and apart and shall be operated independently of respondent (meaning here and hereinafter, Healthtrust excluding the Schedule A Assets) except to the extent that respondent must exercise direction and control over the Schedule A Assets to assure compliance with this Agreement or the Consent Order, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with its acquisition of the Holy Cross assets in Utah, respondent shall organize a distinct and separate legal entity, either a corporation, limited liability company, general or limited partnership ("New Company") and adopt constituent documents for the New Company that are not inconsistent with other provisions of this Agreement or the Consent Order. Respondent shall transfer all ownership and control of all Schedule A Assets to the New Company.

c. The board of directors of the New Company, or, in the event respondent organizes an entity other than a corporation, the governing body of the entity ("New Company Board") shall have five members. Respondent may elect the members of the New Company Board; provided, however, that the New Company Board shall include no more than two members who are a director, officer, employee, or agent of respondent ("the respondent's New Company Board member(s)"). The New Company Board shall include a chairman who is independent of respondent and is competent to assure the continued viability and competitiveness of the Schedule A Assets. Meetings of the New Company Board during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Schedule A Assets, the independent Chairman of the Board of the New Company, the New Board, or the New Company or any of its operations or businesses; provided, however, that respondent may exercise only such direction and control over the New Company as is necessary to assure compliance with this Agreement or the Consent Order.

e. Respondent shall maintain the viability and competitiveness and the marketability of the Schedule A Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their viability and competitiveness or their marketability.

f. Except for the respondent's New Company Board members, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of the New Company.

g. The New Company shall be staffed with sufficient employees to maintain the viability and competitiveness of the Schedule A Assets, which employees shall be selected from Holy Cross's existing employee base and may also be hired from sources other than Holy Cross.

h. With the exception of the respondent's New Company Board Members, respondent shall not change the composition of the New Company Board unless the independent chairman consents. The independent chairman shall have power to remove members of the New Company Board for cause. Respondent shall not change the composition of the management of the New Company except that the New Company Board shall have the power to remove management employees for cause.

i. If the independent chairman ceases to act or fails to act diligently, a substitute chairman shall be appointed in the same manner as provided in Paragraph 3.c. of this Agreement.

j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or defending or prosecuting litigation, or negotiating agreements to divest assets, or complying with this Agreement or the Consent Order, respondent shall not receive or have access to, or use or continue to use, any material confidential information not in the public domain about the New Company or the activities of the New Company Board. Nor shall the New Company or the New Company Board receive or have access to, or use or continue to use, any material confidential information not in the public domain about respondent and relating to respondent's acute care hospitals in Utah. Respondent may receive on a regular basis aggregate financial information relating to the New Company necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to respondent from sources other than the New Company, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

k. Except as permitted by this Agreement, the respondent's New Company Board members shall not in their capacity as New Company Board members, receive material confidential information and shall not disclose any such information received under this Agreement to respondent or use it to obtain any advantage for respondent. The respondent's New Company Board members shall enter a confidentiality agreement prohibiting disclosure of material confidential information. The respondent's New Company Board members shall participate in matters that come before the New Company Board only for the limited purposes of considering a capital investment or other transaction exceeding $250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the Consent Order. Except as permitted by this Agreement, the respondent's New Company Board members shall not participate in any matter, or attempt to influence the votes of the other members of the New Company Board with respect to matters, that would involve a conflict of interest if respondent and the New Company were separate and independent entities.

l. If necessary to assure compliance with the terms of this Agreement, the Consent Agreement, or the Consent Order, respondent may, but is not required to, assign an individual to the New Company for the purpose of overseeing such compliance ("on-site person"). The on-site person shall have access to all officers and employees of the New Company and such records of the New Company as he deems necessary and reasonable to assure compliance. Such individual shall enter into a confidentiality agreement prohibiting disclosure of material confidential information.

m. Any material transaction of the New Company that is out of the ordinary course of business must be approved by a majority vote of the New Company Board; provided that the New Company shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

n. All earnings and profits of the New Company shall be retained separately in the New Company. If necessary, respondent shall provide the New Company with sufficient working capital to operate at its current rate of operation, and to carry out any capital improvement plans for the New Company which have already been approved.

o. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) six months after the date the Consent Order becomes final, or (ii) the date contemplated by subparagraph 2.a (the "Initial Divestiture Period"), respondent shall make available for use by the New Company funds sufficient to perform all necessary routine maintenance to, and replacements of, the Schedule A Assets ("normal repair and replacement"). After termination of the Initial Divestiture Period and until the earlier of the date contemplated by either subparagraph 2.a or 2.b, respondent shall make available for use by the New Company each year an amount not less than that required for normal repair and replacement, plus $1,000,000 for capital improvements to the Schedule A Assets, unless a smaller amount is requested or required by the New Company, in its sole discretion, for capital expenditures. Provided, however, that in any event, respondent shall provide the New Company with such funds as are necessary to maintain the viability and competitiveness and marketability of the Schedule A Assets.

4. Should the Federal Trade Commission seek in any proceeding to compel respondent to divest any of the Schedule A Assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Agreement, or in any way relating to the Acquisition, as defined in the draft complaint, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or Consent Order.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of respondent and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondent relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers or employees of respondent, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a proposed consent order from Healthtrust Inc.—The Hospital Company ("Healthtrust"). The agreement would settle charges by the Federal Trade Commission that Healthtrust's proposed acquisition of three hospitals from Holy Cross Health System Corporation ("Holy Cross") would have violated Section 7 of the Clayton Act, and Section 5 of the Federal Trade Commission Act, if it had been carried out.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or issue and serve the agreement's proposed order.

Both Healthtrust and Holy Cross own and operate acute care hospitals in various states, including acute care hospitals in the Salt Lake City area, encompassing Salt Lake County and southern Davis County; and the Salt Lake City—Ogden Metropolitan Statistical Area, an area encompassing three contiguous counties in northern Utah: Weber County, Davis County, and Salt Lake County ("Three-County Area"). The complaint accompanying the proposed consent order concerns the proposed acquisition's impact upon competition for acute care hospital services in the Salt Lake City area and the Three-County Area. According to the complaint, Healthtrust owns and operates Lakeview Hospital in Bountiful (in southern Davis County) and Pioneer Valley Hospital in West Valley City (in Salt Lake County). Holy Cross owns and operates St. Benedict's Hospital in Ogden (in Weber County), and two acute care hospitals in Salt Lake County, Holy Cross Hospital in Salt Lake City, and Holy-Cross-Jordan Valley Hospital in West Jordan.

The consent order, if finally accepted by the Commission, would settle charges that the acquisition may substantially lessen competition in the Salt Lake City area and the Three-County Area. The complaint alleges that Healthtrust and Holy Cross are competitors in those markets. The hospital markets in the Salt Lake City area and the Three-County Area, according to the complaint, were already highly concentrated, and entry by new competitors would be difficult. The complaint alleges that the Commission has reason to believe that the acquisition would have anticompetitive effects in the Salt Lake City area and the Three-County Area hospital markets, in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment contains provisions requiring the divestiture by Healthtrust of the Holy Cross Hospital and related assets, including interests in five clinics, in Salt Lake City, Utah. The purpose of the divestiture is to ensure the continuation of Holy Cross Hospital as an ongoing, viable acute care hospital independent of Healthtrust, and to remedy the lessening of competition in the Salt Lake City area and the Three-County Area hospital markets resulting from the acquisition.

The proposed order requires Healthtrust to obtain the approval of the Commission for the divestiture of Holy Cross Hospital. Under the terms of the order, the required divestiture must be completed within six months of the date the order becomes final. If the required divestiture were not completed within the six-month period, Healthtrust would consent to the appointment of a trustee, who would have twelve additional months to effect the divestiture. The hold separate agreement executed as part of the consent order requires Healthtrust, until the completion of the divestiture or as otherwise specified, to hold separate and preserve all of the assets and businesses of Holy Cross Hospital.

The proposed order provides that approval by the Commission of the divestiture shall be conditioned upon the agreement by the acquirer that, for ten years from the date of the divestiture, it will not sell, without the prior approval of the Commission, Holy Cross Hospital to another person operating (or in the process of acquiring) any other acute care hospital in the Three-County Area.

The order would prohibit Healthtrust from acquiring any acute care hospital in the Three-County Area without the prior approval of the Federal Trade Commission. It would also prohibit Healthtrust from transferring, without prior Commission approval, any acute care hospital it operates in the Three-County Area to another person operating (or in the process of acquiring) an acute care hospital in the area. These provisions, in combination, would give the Commission authority to prohibit any substantial combination of the acute care hospital operations of Healthtrust with those of any other acute care hospital in the Three-County Area, unless Healthtrust convinced the Commission that a particular transaction would not endanger competition in the Salt Lake City area or the Three-County Area. The provisions would not apply to acquisitions or sales where the value of the transferred assets is $1 million or less, and the provisions would expire ten years after the order becomes final.

For ten years, the order would prohibit Healthtrust from transferring all or any substantial part of any hospital in the Three-County Area to another party without first filing with the Commission an agreement by the transferee to be bound by the order.

The purpose of this analysis is to invite public comment concerning the proposed order, to assist the Commission in its determination whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by Healthtrust that its proposed acquisition would have violated the law, as alleged in the Commission's complaint.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Dennis A. Yao

In HealthTrust/Holy Cross, File No. 941 0020

I voted against acceptance of the proposed consent agreement in this matter, as well as against a previous motion to seek a preliminary injunction to enjoin HealthTrust from acquiring three Holy Cross hospitals in the Salt Lake City, Utah, area. The three hospitals to be acquired were: Jordan Valley, a 50-bed hospital located in the Salt Lake City metropolitan area; St. Benedict's, a 239-bed tertiary level hospital [1] located approximately 34 miles north of Salt Lake City in Ogden; and a 200-bed tertiary facility located in downtown Salt Lake City. In analyzing the original proposed transaction, I concluded that the merger of these two hospital systems would generate significant net efficiencies that would outweigh any potential anticompetitive effects of the merger in the Salt Lake City Metropolitan area and throughout the Wasatch Front. Specifically, the Holy Cross hospitals offered HealthTrust the opportunity to expand its geographic coverage by including hospitals located throughout the Wasatch Front, and broaden the services it provided by including a downtown Salt Lake City tertiary care facility.

The proposed consent allows HealthTrust to acquire two of the Holy Cross hospitals, Jordan Valley and St. Benedict's, while requiring divestiture of the downtown Holy Cross hospital. Allowing HealthTrust to acquire the two Holy Cross hospitals will give HealthTrust better geographic coverage across the Wasatch Front. However, requiring the divestiture of the downtown Holy Cross facility means that the newly formed hospital network will not include a tertiary care facility in the Salt Lake City Metropolitan area.

It was argued in this case (as it has been argued in several recent hospital mergers) that the merging hospital systems can achieve network and operational efficiencies through acquisition that are not possible through alternative arrangements such as contracting or joint venturing. Parties have sought to show that contracting and joint venturing is inefficient as an alternative to outright merger, among other reasons, because of the need to deter "gaming" on patient referrals as each hospital attempts to shift costly patients to other hospitals. This argument seems plausible in this industry because of contracting problems involved in establishing "capitation" regimes.

In this particular case, it was argued that purchasing a downtown Salt Lake City tertiary care facility was essential to achieve network efficiencies and that contracting or joint venturing was an inferior alternative. I find this argument persuasive.[2] Therefore, because I believe that the bulk of the network and operational efficiencies that are possible from this merger will be lost if the downtown facility is divested, and because I believe that the potential anticompetitive effects that may have resulted from allowing HealthTrust to acquire the downtown facility are outweighed by those efficiencies, I have dissented from the issuance of this consent.

[FR Doc. 94–18258 Filed 7–26–94; 8:45 am]

BILLING CODE 6750–01–M

[1] Medical services are generally divided into primary, secondary, tertiary and now quaternary levels. Primary services are provided by generalists, including family practitioners, pediatricians, obstetricians, and internists. Secondary services are provided by specialists, such as cardiologists, oncologists, and orthopedic specialists. Tertiary services are those provided by sub-specialists, such as invasive cardiology or neurosurgery. Quaternary level services are those offered by only a few highly specialized facilities, like high level burn units or organ transplants. The demarcation between the various levels of service is not precise, but these levels are all included as part of the "acute care inpatient hospital services" market alleged in the complaint here.

[2] The relative effectiveness of different organizational forms such as mergers, joint ventures or contracting relationships deserves further study in light of the current restructuring of the health care industry. While I agree that network efficiency claims may be more credible if they are endorsed by health plans (see Remarks of Mary Lou Steptoe before the Practicing Law Institute, June 17–20, 1994) we are often presented with situations of "dueling" affidavits, in which case other evidence must be present to support such claims.

[File No. 912 3004]

L&S Research Corporation, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the New Jersey corporation and its officer to pay $1.45 million to the United States Treasury, would prohibit the respondents from

making misrepresentations regarding the efficacy of their bodybuilding an weight loss products, and would require them to possess competent and reliable scientific evidence to substantiate future bodybuilding and weight loss claims.

DATES: Comments must be received on or before September 26, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Cleland or Nancy Warder, FTC/S–4002, Washington, D.C. 20580. (202) 326–3088.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Before Federal Trade Commission

In the matter of L&S Research Corporation, a corporation, and Scott Chinery, individually and as an officer of said corporation. File No. 912–3004.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of L&S Research Corporation, a corporation, and Scott Chinery, individually and as an officer of said corporation, and it now appearing that L&S Research Corporation, a corporation, and Scott Chinery, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an Order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between L&S Research Corporation, by its authorized officer, and Scott Chinery, individually and as an officer of said corporation that,

1. (a) Proposed respondent L&S Research Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 450 Oberlin Ave., S., in the City of Lakewood, State of New Jersey.

(b) Proposed respondent Scott Chinery is an officer of said corporation. He formulates, directs, and controls the policies, acts, and practices of said corporation, and his principal place of business is located at the above stated address.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

(a) any further procedural steps;

(b) the requirement that the Commission's decision contain a statement of facts or conclusion of law;

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) all claims under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record in the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of the Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by the proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft complaint here attached, or that proposed respondents have engaged in any other unlawful conduct.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision concerning the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery to the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the proposed complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

8. If it is accepted by the Commission, this Agreement constitutes a full settlement between the Commission and proposed respondents as to the activities alleged in the complaint to have constituted violations of the Federal Trade Commission Act and which occurred prior to the date of entry of the Order. As to those activities alleged in the complaint, and which occurred prior to the date of entry of the Order, the Commission hereby releases the proposed respondents from all other further liability to the Commission.

Order

For purposes of this Order the following definitions apply:

A. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence, based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

B. "Substantially similar product" shall mean any product that is substantially similar in composition, in terms of the types of ingredients that it contains, or possesses substantially similar properties.

I

It is ordered That respondents, L&S Research Corporation, a corporation, its successors and assigns, and Scott Chinery, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the product component of Cybergencis Total Body Building System, Cybergencis for Hard Gainers, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Any such product component causes a user of such product to achieve greater or more rapid loss of fat or gain of muscle than a non-user of such product; or

B. Any such product component works for all users.

II

It is further ordered That respondents, L&S Research Corporation, a corporation, its successors and assigns, and Scott Chinery, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Cybergenics Mega-Fat Burner Tablet (also known as Super Fat-Loss Tablet) [referred to herein as Cybergenics Mega-Fat Burner Tablet], or the product component of Cybertrim, Cybergenics QuickTrim, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Any such product component or Cybergenics Mega-Fat Burner Tablet causes a user of such product to maintain weight loss longer than a non-user of such product; or

B. Any such product component or Cybergenics Mega-Fat Burner Tablet provides a benefit to a maturing person who uses such product which causes that person to lose more weight than a non-user of such product.

III

It is further ordered That respondents, L&S Research Corporation, a corporation, its successors and assigns, and Scott Chinery, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Cybergenics Mega-Fat Burner Tablet, or the product component of Cybergenics Total Body Building System, Cybergenics for Hard Gainers, Cybertrim, Cybergenics QuickTrim, or any substantially similar product, (do forthwith cease and desist from representing, directly or by implication, contrary to fact, that scientific evidence demonstrates that:

A. Any such product intended for body building causes a user to lose more fat or gain more muscle than a non-user of such product; or

B. Any such product intended for weight or fat loss causes a user to lose more fat or weight than a non-user of such product.

IV

It is further ordered That respondents, L&S Research Corporation, a corporation, its successors and assigns, and Scott Chinery, individually and as an officer of said corporation and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Any such product or program causes, assists, or enables a user to lose or control weight or fat loss, or maintain weight or fat loss, or to suppress hunger or appetite;

B. Any such product or program causes, assists, or enables a user to achieve muscle gain or development;

C. Any such product or program works for all users;

D. Chromium picolinate in any such product, or used in conjunction with any such program, builds muscle, reduces fat, or lowers cholesterol; or

E. Any such product or program intended for body building, weight loss, or fat loss is more effective than other products or programs intended for similar purposes; unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

V

It is further ordered That respondents, L&S Research Corporation, a corporation, its successors and assigns, and Scott Chinery, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR § 255.0(b)), including "before" and "after" pictures) of a product or program represents the typical or ordinary experience of members of the public who use the product or program, unless at the time of making such representation, the representation is true, and respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation, provided, however, respondents may use such endorsements, including accurate "before" and "after" pictures, if the statements or depictions that comprise the endorsements are true and accurate, and if respondents disclose clearly and prominently and in close proximity to the endorsement what the generally expected performance would be in the depicted circumstances or the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

VI

It is further ordered That respondents, L&S Research Corporation, a corporation, its successors and assigns, and Scott Chinery, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting,

in any manner, directly or by implication, that:

A. Any such product or program is new or unique; or

B. The ease of use of, or lack of effort required by, any such product or program intended for weight or fat loss if achieving the advertised results depends on adhering to a special diet or exercising.

VII

It is further ordered That respondents, L&S Research Corporation, a corporation, its successors and assigns, and Scott Chinery, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

VIII

It is further ordered That within five (5) business days of the date of service of this Order, respondent L&S Research Corporation, or its successors and assigns, shall pay the sum of one million four hundred fifty thousand dollars ($1,450,000.00) to the United States Treasury. Such payment shall be by cashier's check or certified check made payable to the United States Treasury. In the event of default of payment, which default continues for more than ten (10) days beyond the due date of payment, and without any notice required to be given to the respondents:

A. Respondent shall also pay interest as computed under 28 U.S.C. § 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid;

B. Individual respondent Scott Chinery shall become liable for the full unpaid balance and interest; and

C. The Commission may draw the balance of the payment due on the Irrevocable Standby Letter of Credit, which has been provided by respondent as security for the payment provided for herein.

No portion of the payment herein described shall be deemed a payment of any fine, penalty, or punitive assessment against respondents with respect to the acts and practices which are the subject of the Complaint and which occurred prior to issuance of the Order.

IX

It is further ordered That the corporate respondent L&S Research Corporation shall for five (5) years following the service of this Order, notify the Commission at least thirty (30) days prior to any change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order, or of any change in the position and responsibilities of the individual respondent Scott Chinery in regard to L&S Research Corporation or any subsidiary of which he is an officer. The expiration of the notice provisions of this part shall not affect any other obligation arising out of this Order. In addition, respondents shall require, as a condition precedent to the closing of the sale or other disposition of L&S Research Corporation or the right to the use of the name Cybergenics or to market any of the products in its product line, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of this Order.

X

It is further ordered That the individual respondent Scott Chinery promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this Order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the individual respondent's new business address and a statement of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provisions of this part shall not affect any other obligation arising under this Order.

XI

It is further ordered That for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors or assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

XII

It is further ordered That respondent L&S Research Corporation shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondent's current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order;

B. For a period of five (5) years from the date of entry of this Order, provide a copy of this Order to each of respondent's principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with respondent or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position; and that respondent secure from each such person a signed statement acknowledging receipt of said Order.

XIII

It is further ordered That the respondents herein shall within sixty (60) days after service upon them of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents L&S Research Corporation and Scott Chinery.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days the Commission will again review the agreement and the comments received and will decide whether it should

withdraw from the agreement or make final the agreement's proposed order.

Body Building Products

The Commission's complaint charges that the respondents deceptively advertised Cybergenics Total Body Building System and Cybergenics for Hard Gainers, two body building products. According to the complaint, the respondents' advertisements made false and/or unsubstantiated representations that either or both body building products: (1) cause users to lose more body fat and gain more muscle than non-users; (2) cause users to lose body fat and gain muscle more rapidly than non-users; (3) cause users to gain more muscle than users of other body building products; (4) have been demonstrated by scientific research to cause users to gain more muscle than non-users; (5) work for all people; and (6) are new and unique.

Weight Loss Products

The Commission's complaint also charges that the respondents deceptively advertised there weight loss products, Cybergenics CyberTrim, Cybergenics Mega-Fat Burner, and Cybergenics QuickTrim. According to the complaint, the respondents' advertisements made false and/or unsubstantiated representations that one or more of the wright loss products: (1) cause users to lose body fat and weight more rapidly than non-users; (2) cause users to lose weight and lose or burn more body fat than non-users; (3) cause users to lose more body fat and weight than users of all other weight loss products; (4) cause users to lose weight more rapidly than the users of all other weight loss products; (5) are superior to other appetite suppressants; (6) suppress hunger and the biochemical message stimulated by the catabolism of fat; (7) cause users to gain more muscle than non-users; (8) contain an ingredient, chromium picolinate, that has been clinically proven to reduce fat and lower cholesterol; (9) are new and unique; (10) cause users to maintain weight loss longer than non-users; (11) cause maturing women to lose more weight than non-users of the product; (12) are easy to use; and (13) have been demonstrated by scientific evidence to cause users to lose more fat and weight, and to gain more muscle, than non-users.

Use of Testimonials

The Commission's complaint also charges that statements and depictions, including "before" and "after" pictures, in the respondents' advertisements for their body building and weight loss products, represent that the testimonials from consumers who use the advertised product reflect the typical or ordinary experience of members of the public who use the products. According to the complaint, the respondents did not have a reasonable basis for this representation.

In addition, the complaint alleges that the use of a picture of a man in an advertisement for Cybergenics Total Body Building System "before" and "after" he used the product for six months is false and misleading. The man pictured in the advertisement, according to the complaint, was a champion body builder prior to the time when the "before" picture was taken and, therefore, is not typical of users of the product, and his results as shown in the "after" picture are not typical of the experience of ordinary members of the public who use the product.

Proposed Order

Part I of the proposed order prohibits representations that the product component of either of the body building products named in the complaint, or any substantially similar product:

(1) causes users to achieve greater or more rapid loss of fat or gain of muscle than non-users of the product; or

(2) works for all users.

Part II of the proposed order prohibits representations that the product component of any of the three weight loss products named in the complaint, or any substantially similar product:

(1) causes users to maintain weight loss longer than non-users; or

(2) causes maturing women to lose more weight than non-users.

Part III prohibits respondents from representing that scientific evidence establishes that the product component of any of the body building and weight loss products named in the complaint causes users to lose more fat or weight, or gains more muscle, than non-users.

Part IV requires the respondents to cease from making a number of representations about any product or program unless they have substantiation consisting of competent and reliable scientific evidence. The claims that are prohibited unless substantiated are as follows:

(1) that any product or program causes or assists users to lose fat or weight or to maintain weight loss, or suppresses hunger or appetite;

(2) that any product or program causes or assists in muscle gain or development;

(3) that any product or program works for all users;

(4) that chromium picolinate in any product or used in conjunction with any program builds muscle, reduces fat, or lowers cholesterol; and

(5) that any product or program intended for body building, weight loss, or fat loss is more effective than other products or programs intended for similar purposes.

Part V of the proposed order requires respondents to have substantiation, which when appropriate must consist of competent and reliable scientific evidence, for believing that endorsements, including "before" and "after" pictures, represent the typical or ordinary experience of users of any product or program. However, the respondents may use any endorsement if they disclose clearly and prominently in close proximity to the endorsement what the generally expected performance would be in the depicted circumstances, or that consumers should not expect to achieve results similar to those of the endorser.

Part VI prohibits the respondents from misrepresenting that any product or program is new or unique, or that any product or program intended for weight loss is easy to use if achieving the advertised results requires a special diet or exercise.

Part VII requires the respondents to cease misrepresenting the contents, validity, or results of any study in connection with the marketing or any product or program.

Part VIII requires the respondents to pay $1,450,000 to the United States Treasury and provides that none of this amount is deemed to be a fine, penalty, or punitive assessment.

The remaining provisions are standard record keeping and reporting provisions designed to ensure that the respondents remain in compliance with the other provisions of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in I&S Research Corporation, File No. 912–3004

The Commission has strong evidence supporting the central allegations in this complaint, and I have voted to accept the consent agreement for public comment. In my view, however, the complaint should not allege that the maintenance claim for Mega-Fat Burner and the maturing women weight loss claim for QuickTrim were false. I am inclined to believe that the claims are false

but I would prefer to have some corroborating evidence of falsity before finding reason to believe that Section 5 of the FTC Act has been violated. Because the available information shows only that there is no evidence that these claims are true, it seems to me more appropriate to allege that they are unsubstantiated.

In addition, the QuickTrim weight loss allegations seem inconsistent in light of the evidence. The complaint alleges that the weight loss claim for maturing women users of QuickTrim is false but alleges that the same claim for all users of QuickTrim is unsubstantiated. Yet we have no evidence indicating that the weight loss claims are any more likely to be false for maturing women than for users generally.

I therefore do not support the complaint to the extent that the maintenance claim for Mega-Fat Burner and the maturing women weight loss claim for QuickTrim are alleged to be false, not unsubstantiated.

[FR Doc. 94–18259 Filed 7–26–94; 8:45 am]
BILLING CODE 6750–01–M

[File No. 941 0075]

Revco D.S., Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Ohio-based drugstore chain to divest, within one year of the order, to a Commission approved acquirer, all assets related to the retail sale of prescription drugs in either the respondent's store or in the acquired Hook-SupeRx (HSI) retail store in each of three geographic areas, and to complete the divestiture within one year. If not complete in that period of time, the order would require the respondent to consent to the appointment of a trustee to divest the assets. In addition, the proposed consent agreement would require the respondent to obtain prior Commission approval, for ten years, before acquiring any similar business interest in any of the three specified towns.

DATES: Comments must be received on or before September 26, 1994.

ADDRESSES: Comments should be directed to FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT: Laura Wilkinson or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 226–2830 or 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Revco D.S., Inc., a corporation. File No. 941–0075.

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of all of the voting stock of Hook SupeRx, Inc. ("HSI"), by Revco D.S., Inc. ("Revco"), and it is now appearing that Revco, hereinafter sometimes referred to as "Proposed Respondent," is willing to enter into an agreement containing an order ("Agreement") to divest certain assets, and to cease and desist from making certain acquisitions, and providing for certain other relief:

It is hereby agreed by and between Proposed Respondent, by its duty authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Revco is a corporation organized, existing, and doing business under and by the virtue of the laws of the State of Delaware with its office and principal place of business located at 1925 Enterprise Parkway, Twinsburg, Ohio 44087.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed Respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondent's address as stated in this Agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of services. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed Respondent has read the proposed Complaint and Order contemplated hereby. Proposed Respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each

violation of the Order after it becomes final.

Order

I

It is ordered That, as used in this Order, the following definitions shall apply:

A. "Revco" means Revco D.S., Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Revco, and their respective directors, officers, employees, agents, representatives, and their respective successors and assigns.

B. "Commission" means the Federal Trade Commission.

C. "Acquisition" means the acquisition of all the voting stock of Hook-SupeRx, Inc. ("HSI") by Respondent Revco.

D. "Acquirer" means the party or parties to whom Respondent Revco divests the assets herein ordered to be divested.

E. "Prescription drugs" means ethical drugs available at retail only by prescription.

F. "HSI Pharmacy Business" means HSI's business of selling prescription drugs at any of the retail stores listed in Paragraph I.(J). of this Order, but does not include HSI's business of selling other products in those retail stores.

G. "HSI Pharmacy Assets" means all assets constituting the HSI Pharmacy Business, excluding those assets pertaining to the Hook, SupeRx, and Brooks trade names, trade dress, trade marks and service marks, and to Revco's proprietary point of sale equipment or its PAL® system, and including but not limited to:

1. Leases, at the Acquirer's option;

2. zoning approvals and registrations, at the Acquirer's option;

3. books, records, manuals, and operations reports relating to the HSI Pharmacy Business, but only if the divestiture is to an Acquirer that does not already operate a pharmacy in any location;

4. inventory instruction, or, at the Acquirer's option, lists of stock keeping units ("SKUs"), *i.e.*, all forms, package sizes and other units in which prescription drugs are sold and which are used in records of sales and inventories;

5. lists of all prescription drug customers, including but not limited to third party insurers, including all files of names, addresses, and telephone numbers of the individual customer contacts, the unit and dollar amounts of sales, by product, to each customer, and store profit and loss statement(s);

6. all names and addresses of prescription drug manufacturers and distributors that supply or have supplied HSI within the six months preceding the date this Order becomes final; and

7. goodwill, tangible and intangible, utilized in the sale of prescription drugs.

H. "Revco Pharmacy Business" means Revco's business of selling prescription drugs at any of the retail stores listed in Paragraph I.(J). of this Order, but does not include Revco's business of selling other products in those retail stores.

I. "Revco Pharmacy Assets" means all assets constituting the Revco Pharmacy Business, excluding those assets pertaining to the Revco trade names, trade dress, trade marks and service marks, and to Revco's proprietary point of sale equipment or its PAL® system, and including but not limited to:

1. Leases, at the Acquirer's option;

2. zoning approvals and registrations, at the Acquirer's option;

3. books, records, manuals, and operations reports, relating to the Revco Pharmacy Business, but only if the divestiture is to an Acquirer that does not already operate a pharmacy in any location;

4. inventory instruction, or, at the Acquirer's option, lists of SKUs, *i.e.*, all forms, package sizes and other units in which prescription drugs are sold and which are used in records of sales and inventories;

5. lists of all prescription drug customers, including but not limited to third party insurers, including all files of names, addresses, and telephone numbers of the individual customer contacts, the unit and dollar amounts of sales, by product, to each customer, and store profit and loss statement(s);

6. all names and addresses of prescription drug manufacturers and distributors that supply or have supplied Revco within the six months preceding the date this Order becomes final; and

7. goodwill, tangible and intangible, utilized in the sale of prescription drugs.

J. "Assets To Be Divested" means either the HSI Pharmacy Assets or the Revco Pharmacy Assets constituting the HSI Pharmacy Business or the Revco Pharmacy Business in the following cities or towns:

1. Covington, Virginia;

2. Marion, Virginia; and

3. Radford, Virginia.

K. "Competitiveness, viability and marketability" of the Assets To Be Divested mean that Respondent shall continue the operation of the Assets To Be Divested in the ordinary course of business without material change or alteration that would adversely affect the value or goodwill of the Assets To Be Divested.

II

It is further ordered That:

A. Respondent shall divest, absolutely and in good faith, within twelve (12) months of the date this Order becomes final, the Assets To Be Divested.

B. Respondent shall divest the Assets To Be Divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Assets To Be Divested is to ensure the continued use of the Assets To Be Divested as ongoing viable pharmacies engaged in the same businesses in which the Assets To Be Divested are presently employed and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the Assets To Be Divested, Respondent shall take such actions as are necessary to maintain the competitiveness, viability and marketability of the Assets To Be Divested and to prevent the destruction, removal, wasting, deterioration, or impairment of any Assets To Be Divested except for ordinary wear and tear.

D. If a divestiture includes a lease of physical space, and if pursuant to that lease Respondent through default of the lease or otherwise regains possession of the space, Respondent must notify the Commission of such repossession within thirty (30) days and must redivest such assets or interest pursuant to Paragraph II of this Order within six (6) months of such repossession. If Respondent has not redivested such assets or interest pursuant to Paragraph II of this Order within six (6) months of such repossession, the provisions of Paragraph III shall apply to these assets.

III

It is further ordered That:

A. If Respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested within twelve (12) months of the date this Order becomes final, the Commission may appoint a trustee to divest the Assets To Be Divested. In the event the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action Neither the appointment of a trustee nor a decision not to appoint a trustee under

this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.

3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee by the court.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Assets To Be Divested, or to any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission subject to Respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this Order. *Provided, however,* if the trustee receives bona fide offers from more than one acquirer, and if the Commission determines to approve more than one such acquirer, the trustee shall divest to the acquirer or acquirers selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, and Respondent shall either defend against such claims or pay the trustee's expenses, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any such claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

12. The trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered That, for a period of ten (10) years from the date this Order becomes final, Respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise: (A) Acquire any stock, share capital, equity, leasehold or other interest in any concern, corporate or non-corporate, presently engaged in, or within the six months preceding such acquisition engaged in, the business of selling prescription drugs at retail stores located in any of the cities or towns listed in Paragraph I. (J). of this Order; or (B) Acquire any assets used for, or previously used for (and still suitable for use for), the business of selling prescription drugs at retail stores located in any of the cities or towns listed in Paragraph I.(J). of this Order from any concern, corporate or non-corporate, presently engaged in or within the six months preceding such acquisition engaged in, the business of selling prescription drugs at retail stores located in any of the cities or towns listed in Paragraph I.(J). of this Order. *Provided, however,* that these prohibitions shall not relate to the construction of new facilities.

V

It is further ordered That:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondent has fully complied with the provisions of Paragraphs II. and III. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with

those provisions. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually thereafter for the next nine (9) years on the anniversary of the date this Order became final, and at such other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph IV. of this Order.

VI

It is further ordered That Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

VII

It is further ordered That, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this consent order; and

B. Upon five (5) days notice to Respondent, and without restraint or interference from it, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted provisionally an agreement containing a proposed Consent Order from Revco D.S., Inc. ("Revco") under which Revco would divest pharmacy assets in three (3) geographic locations where it faces limited competition. Revco operates the Revco chain of drug stores.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On March 31, 1994 Revco and Hook-SupeRx, Inc. ("HSI") executed an Agreement and Plan or Merger providing for the acquisition by Revco of all of the voting securities of HSI. The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the market for the sale of prescription drugs in retail stores in the following towns: Covington, Virginia; Marion, Virginia; and Radford, Virginia (hereinafter "relevant geographic area"). The proposed Consent Order would remedy the alleged violation by maintaining the current number of competitors in the relevant geographic areas where Revco and HSI are direct competitors and where they face limited competition.

The proposed Consent Order provides that within one (1) year of the Order becoming final, Revco shall divest all assets related to the retail sale of prescription drugs in Revco or HSI retail stores in the relevant geographic areas. The divestiture of the Revco or HSI pharmacy business in the relevant geographic areas shall be made only to an acquirer or acquirers that receive prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The assets shall be divested to an eligible acquirer or acquirers that will operate a pharmacy business in the relevant geographic areas. Eligible acquirers in each relevant geographic area include, but are not limited to: owners of retail stores that currently do not operate a pharmacy in that relevant geographic area; persons previously employed by Revco or HSI; or persons who will open a new retail store. In the event that Revco has not divested the Revco or HSI pharmacy assets in the relevant areas in one (1) year, the proposed Consent Order provides that Revco shall consent to the appointment by the Commission of a trustee to divest the pharmacy assets.

Under the provisions of the Consent Order, Revco is also required to provide to the Commission a report of its compliance with the divestiture provisions of the Order within sixty (60) days following the date this Order becomes final, and every sixty (60) days thereafter until Revco has completely divested its interest in assets related to the retail sale of prescription drugs in the relevant geographic areas. The proposed Order will also prohibit Revco, for a period of ten (10) years, from acquiring, without Federal Trade Commission approval, any stock in any concern engaged in the business of selling prescription drugs at retail in the relevant geographic areas or any assets used for the business of selling prescription drugs at retail in the relevant geographic areas.

One year from the date the Order becomes final and annually thereafter for nine (9) years, Revco will be required to provide to the Commission a report of its compliance with the Consent Order. The Consent Order also requires Revco to notify the Commission at least thirty (30) day prior to any change in the structure of Revco resulting in the emergence of a successor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–18260 Filed 7–26–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Recommendations for Civilian Communities Near Chemical Weapons Depots: Guidelines for Medical Preparedness

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Request for comment.

SUMMARY: The National Center for Environmental Health, CDC, is recommending *minimum standards* for prehospital and hospital emergency medical services' readiness in communities near the eight locations where the U.S. stockpile of lethal chemical weapons is stored.

DATES: Comments must be received on or before August 26, 1994.

ADDRESSES: Comments may be mailed to Director, National Center for Environmental Health, (NCEH), CDC, 4770 Buford Highway NE., Mailstop F29, Atlanta, GA 30341–3724.

FOR FURTHER INFORMATION CONTACT: Linda W. Anderson, Chief, Special Programs Group, NCEH, CDC, 4770 Buford Highway NE., Mailstop F29, Atlanta, GA 30341–3724, telephone (404) 488–7071.

SUPPLEMENTARY INFORMATION: CDC Recommendations for Civilian Communities Near Chemical Weapons Depots: Guidelines for Medical Preparedness.

I. Executive Summary

In 1985, Congress mandated that unitary chemical warfare agents be destroyed in such a manner as to provide maximum protection for the environment, the public, and personnel involved in destroying the agents. The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), was delegated review and oversight responsibility for any Department of the Army (DA) plans to dispose of or transport chemical weapons (Public Law 91–121 and 91–441, Armed Forces Appropriation Authorization of 1970 and 1971).

As part of its ongoing efforts to improve medical preparedness within the medical sector of civilian communities surrounding chemical agent depots, CDC has developed the following medical preparedness and response guidelines. These guidelines represent *minimum standards* of medical preparedness for civilian communities that might be exposed to chemical warfare agents during the incineration or storage process. These guidelines were developed in cooperation with a panel of recognized experts in the fields of emergency medicine, disaster preparedness, nursing, chemical warfare preparedness, and the prehospital emergency medical system.

II. Background

In 1985, Congress mandated that unitary chemical warfare agents be destroyed in such a manner as to provide maximum protection for the environment, the public, and the personnel involved in destroying the agents. This mandate was further defined in the Department of Defense (DOD) Authorization Act of 1986, Public Law 99–145. Consistent with its desire to promote the most environmentally safe method of destroying chemical agents, the National Research Council determined that incineration is the best method for disposing of the weapons(1). In 1988, The Authorization Act was amended to permit DA to set up a prototype incineration facility on Johnston Island in the Pacific in order to verify the safety of such an operation. To date, more than 700,000 pounds of chemical agent have been safely incinerated there.

NCEH, CDC, was delegated the responsibility of reviewing and overseeing any DA plans to dispose of or transport chemical weapons (Public Law 91–121 and 91–441, Armed Forces Appropriation Authorization of 1970 and 1971). In addition, an interagency agreement between CDC and DA requires CDC to provide technical assistance to the DA in protecting the public health in nearby communities during the destruction of unitary chemical agents and weapon systems.

Currently, large quantities of chemical warfare agents are stored in eight facilities in the continental United States. These chemical stockpiles consist primarily of nerve agents, mustard agents, or a combination of both. In Tooele, Utah, construction of the chemical agent incinerator is now complete, and destruction of the weapons and chemicals in this depot is scheduled to begin in Spring of 1995. To improve the ability of local health care personnel to handle emergencies related to a chemical agent release, CDC has presented medical preparedness courses to civilian medical personnel on sites adjacent to the eight chemical weapons depots on 13 occasions. Emergency physicians, nurses, internists, surgeons, hospital administrators, and prehospital emergency medical responders have attended these courses.

As part of its ongoing efforts to improve medical readiness in civilian communities surrounding chemical agent depots, CDC developed medical preparedness and response guidelines. These guidelines represent *minimum standards* for medical preparedness in civilian communities that might be inadvertently exposed to chemical warfare agents during the incineration or storage process. These guidelines were developed in cooperation with a working group of recognized experts in the fields of emergency medicine, disaster preparedness, nursing, chemical stockpile emergency preparedness, and prehospital emergency medical systems. These guidelines do not supersede current medical and public health practices and requirements (e.g., precautions for handling bodily fluids).

The following recommendations for civilian community response to the release of a chemical agent are divided into prehospital and hospital. The recommendations are designed to ensure high quality medical preparedness for chemical agent emergencies. Appendix A is a summary of important questions to ask when evaluating medical preparedness in the civilian prehospital and hospital environments. The prehospital environment encompasses all areas outside both the installation boundaries and the hospital grounds. People potentially affected in the prehospital environment include the general public, and first responders. First responders include police, sheriff's, and fire department personnel, hazardous materials response teams, and medical response teams (including emergency medical technicians, paramedics, and any other medically-trained personnel responding to the site of injury with the ambulance teams). The hospital environment includes primarily the emergency department but encompasses outside areas which might be used for triage and decontamination and other hospital departments which might support the hospital's response.

III. Recommendations for Prehospital Medical Preparedness

- Integrate all local medical emergency response plans related to the release of a chemical agent into the overall State or local disaster response plan.
- Provide protective equipment for all members of the local medical response team.
- Train members of the local medical response team in these measures:

—Prevention of secondary contamination from chemically exposed patients.
—Decontamination procedures.
—Evaluation of the medical needs of chemically exposed patients.
—Treatment of large groups of patients.
—Transportation of victims to a medical facility.

1. Personal Protective Equipment (PPE)

Chemical protective clothing and respiratory protection enable responders to care for patients exposed to chemicals while protecting themselves from secondary contamination.

- Ensure that such equipment protects the skin, eyes, and respiratory tracts of the emergency responders.
- Use DA battledress overgarments (BDOs) and portable air-purifying respirators (PAPRs) with an organic vapor cartridge to protect civilians from chemical warfare agents. BDOs can be

used for up to 24 hours in an agent-contaminated environment at levels of up to 10 grams of agent per square meter of surface area. Notwithstanding this recommendation, however, civilian emergency responders should use the equipment with which they are most familiar, providing that the equipment used is at least as protective as the above CDC recommendations.

• Train personnel required to use personal protective equipment when responding to chemical agent-related emergencies in accordance with the guidelines published by the Occupational Safety and Health Administration (OSHA).

2. First Responders

• Ensure that all persons (e.g., medics, paramedics, fire fighters, or medical personnel) designated by the State or local disaster plans as members of the initial medical team that responds to a chemical warfare agent release have the appropriate level of PPE and are trained in its proper use (2).

• Ensure that equipment of first responders is *adequately maintained* and available at all times.

• Schedule regular drills and training sessions designed to maintain first responders' familiarity with equipment into State and local disaster plans.

3. The Public

CDC does not recommend distributing PPE (e.g., gas masks or protective suits) to the public. In the unlikely event that a chemical agent release threatens the civilian population adjacent to a military facility, CDC recommends the following graded emergency response:

• Evacuate the population at risk in accordance with State or local disaster management guidelines. If no local guidelines exist, follow the Federal Emergency Management Agency (FEMA) and DA joint guidelines for evacuating civilian populations threatened by chemical warfare agents (3).

• Follow FEMA and DA recommendations for sheltering the population in place (e.g., keep people in their homes, institutions, or places of business and seal windows and doors from an external vapor threat) if it is not practical to evacuate the population (3).

4. Decontamination

Decontamination is the careful and systematic removal of hazardous substances from victims, equipment, and the environment. Transporting contaminated patients exposes emergency response personnel to chemical warfare agents and contaminates rescue vehicles. Proper decontamination prevents secondary contamination and chemical injury to medical and rescue personnel. Acceptable decontamination guidelines for persons who may possibly have been exposed to chemical warfare agents are published by FEMA and DA (3,4).

• Decontamination of patients can be achieved by mechanically removing, diluting, absorbing, or neutralizing the chemical agent.

• Decontaminate all persons who may possibly have been contaminated with a chemical warfare agent before they are transported to a hospital.

• Decontamination substances should be readily available. Suitable decontamination substances include soap, water, and 5% hypochlorite.

• To protect the environment, include in State and local disaster plans a method for containing and disposing of contaminated runoff. CDC does not recommend establishing fixed decontamination units in prehospital areas because of the expense and inflexibility of such units.

5. Level of Medical Preparedness Training

• *At a minimum,* train persons designated as prehospital medical responders in evaluating patients exposed to chemical warfare agents, managing patients' airways (excluding intubation), transporting patients, and decontaminating patients.

• Train prehospital responders who have been designated in State or local disaster plans to operate in environments contaminated by a chemical warfare agent in the proper use of PPE in accordance with OSHA guidelines (2).

• Ensure that, *at a minimum,* physicians who have been designated in State and local disaster plans to provide medical supervision for prehospital emergency responders and medical care for victims of a chemical agent release receive specialized training through continuing education in the emergency response areas specified for prehospital responders.

6. Patient Triage

• The basic premise of patient triage, to provide maximum benefit to the greatest number of victims, is of utmost importance during a mass-casualty event involving chemical agents.

• Have the most experienced responder conduct triage operations.

• Base decisions regarding patient triage on local resources, the extent of patient contamination, the type of chemical warfare agent to which the patient is exposed, the patient's clinical status, and the likelihood of additional traumatic injuries.

7. Public Information

• Inform the public appropriately, accurately, and rapidly about chemical agent exposures that have or may have occurred.

• Establish, through the local emergency medical services (EMS) and hospital community, a coordinated public information policy for chemical emergencies.

• Contact local and regional news media in advance to establish an accurate and rapid way of disseminating critical information to the public concerning a chemical agent emergency.

• Ensure that hospital and EMS personnel coordinate their plans to provide public information with the plans of those who have overall responsibility for emergency response.

8. Communication

Medical personnel must have access to the emergency communication network 24 hours a day. Such a network should link the chemical agent depot, local and regional EMS, and all potential receiving hospitals.

• Have medical personnel demonstrate the ability to access the emergency communications network during any evaluation of preparedness for a chemical warfare release into civilian communities.

• Ensure that the hospitals' emergency communications system allows hospital personnel to verify rapidly whether a chemical warfare agent release has occurred.

9. Transporting Exposed Victims

• Coordinate the transportation of chemical agent-exposed victims with the overall disaster response plan, and include a method for tracking transported patients during an emergency response.

• Transport patients only after they have been properly decontaminated.

• Transport decontaminated patients to medical facilities (e.g., hospitals, clinics, and urgent care centers).

• Formal agreements such as memorandums of understanding (MOUs) between organizations that transport patients and the medical facilities that receive them must be part of the planning process. Medical facilities designated to receive should be capable of evaluating and managing patients exposed to chemical agents as described later in the hospital section (Section IV) of this document.

• Base decisions regarding urgent and emergency transfers of decontaminated patients on the capabilities of the

receiving facilities, transportation resources, demand for hospital services, and the clinical condition of the patients. Certain medical care (e.g., for burns, pediatric emergencies, trauma, or pulmonary complications) might require prearrangements for patients to be transferred to a tertiary treatment center. CDC recommends that transfer and evacuation *plans* for victims exposed to chemical warfare agents call for land—rather than air—transportation.

10. Medical Evaluation and Treatment

• Train medical response personnel specifically to assess and manage patients exposed to chemical agents stored at the nearby military depot.

• Decontaminate all exposed patients as described above.

• Provide medical treatment (during or after contamination), according to accepted treatment modalities, to patients exposed to nerve or mustard agents. If antidotes to nerve agents are used in the field by civilian medical responders as designated in State or local disaster plans, CDC recommends using single-dose, pre-armed autoinjectors, unless a higher level of medical response has already been integrated into EMS operations. Additional information on the effects of chemical warfare agents and accepted medical protocols for caring for patients exposed to mustard or nerve agents is available (5–14).

IV. Recommendations for Hospital Preparedness

1. Primary Receiving Hospitals

A primary receiving hospital is a hospital that is designated by State or local disaster plans to provide initial medical care to the civilian population in the event of a chemical warfare agent release. Such hospitals must have established protocols detailing evaluation, decontamination, and treatment procedures for patients exposed to chemical warfare agents.

• Include evaluation, treatment, and decontamination protocols in the hospitals' disaster plans.

• Include chemical warfare agent scenarios in disaster drills for hospitals that have been designated in State or local disaster plans to receive patients exposed to chemical warfare agents.

2. Triage Considerations

• Do *not* allow patients exposed to a chemical warfare agent to enter the emergency department without adequate evaluation and decontamination. Signs of mustard agent exposure, in particular, may require 24–48 hours before they become clinically evident.

• Train medical staff designated by the hospital disaster plan to perform triage during an emergency related to chemical warfare agents to recognize the physical signs and symptoms of patients who have been exposed to such agents.

• Base modifications to patient triage procedures on the extent of patient contamination, the type of chemical warfare agent to which the patient has been exposed, the patient's clinical status, and the possibility of additional traumatic injuries. Priorities for medical treatment of patients should be determined by the most appropriately trained and experienced medical professional.

3. Security

• Address issues related to emergency department security during disasters in the hospital disaster plan.

• Restrict access to the hospital to prevent contaminated patients from entering the hospital. During a chemical agent release, security personnel should direct all patients to enter the hospital only through the triage area.

4. Decontamination

• Decontaminate all persons who may have been contaminated with a chemical warfare agent. Proper decontamination prevents secondary contamination and chemical injury to medical and rescue personnel. Acceptable decontamination guidelines for persons exposed to chemical warfare agents are published by FEMA and DA (3,4).

• Have decontamination substances readily available. Suitable decontamination substances include soap, water, and 5% hypochlorite.

• In the hospital disaster plan, detail a method for catching contaminated runoff from patients whether decontamination is done inside or outside the hospital.

• *At a minimum*, be capable of decontaminating at least one nonambulatory patient.

• During and after chemical agent releases that cause mass casualties, decontaminate patients outdoors. Having indoor decontamination facilities does not obviate a hospital's need to have plans for decontaminating patients outdoors during mass casualty situations.

• Design hospital disaster plans, keeping in mind the possibility of integrating local emergency response resources. Such resources could include hazardous materials emergency response teams or portable decontamination vehicles or facilities.

• In cold weather, set up temporary shelters and heaters to protect patients from extreme environmental conditions when undergoing decontamination outdoors.

• Have in place a method of controlling the flow of air in the decontamination area to prevent such air from contaminating other areas of the hospital.

• Set up a system to allow medical personnel in the decontamination area to be in continuous communication with other medical personnel in the emergency department.

5. Personal Protective Equipment (PPE)

Chemical protective clothing and respiratory protection enable responders to care for chemically exposed patients while protecting themselves from secondary contamination. This equipment must protect the skin, eyes, and respiratory tracts of the responders.

• Use DA BDOs and PAPRs with organic vapor cartridges to protect civilian personnel against chemical warfare agents. The BDO can be used in an agent-contaminated environment for up to 24 hours at contamination levels of up to 10 grams of agent per square meter of surface area.

• Have hospital personnel follow Environmental Protection Agency (EPA) and National Institute for Occupational Safety and Health (NIOSH) guidelines when managing patients exposed to unknown chemicals.

• Have hospital emergency responders use the equipment with which they are most familiar, providing that such equipment is at least as protective as the equipment recommended by CDC.

• Train response personnel to use PPE when responding to a chemical agent emergency according to OSHA guidelines (2).

6. Level of Training

• Train medical staff designated by the hospital disaster plan to provide direct patient care during a chemical warfare agent emergency to a level of medical preparedness that allows them to assess, decontaminate, and manage the treatment of victims of chemical warfare agent releases.

• Medical staff who are required to wear decontamination attire in decontamination procedures must receive training in the use of PPE according to OSHA regulations (2–4).

7. Transportation of Patients to Other Medical Facilities

• Have prearranged written agreements with those medical facilities that agree to accept patients who are exposed to military chemical agents.

• Do not transfer patients without notifying the hospital and having the patient accepted by a physician.

• Have standardized forms available to record patient information and management status.

8. Specific Antidotes

• Have decontaminating solutions available in the emergency department. If nerve agents are stored adjacent to the civilian community, have atropine in multiple-dose units available in the emergency department and in the hospital pharmacy. In addition, have the hospital pharmacy stock atropine and pralidoxime in sufficient quantities to cope with the anticipated number of patients who could be managed by that facility in response to a chemical warfare agent release. Atropine and pralidoxime should be administered intravenously in the emergency environment.

9. Hospital Disaster Plan

• Include plans for providing medical care for patients exposed to chemical agents in the hospital's disaster plan.

• Have in place a method for using the emergency communication system so that reports of a chemical warfare agent release can be verified rapidly. Also include provisions to coordinate activities with State and local disaster plans for mass decontamination.

• Include in disaster drills scenarios in which patients have become exposed to chemical warfare agents.

• Use the hospital quality assurance program to review disaster drills and decontamination procedures and to assist in maintaining the professional skills of hospital personnel necessary to treat the effects of exposure to a chemical warfare agent.

10. Tertiary Hospitals

A tertiary receiving hospital is a hospital that receives referrals from primary receiving hospitals. Additional services such as burn care, psychiatric service, and toxicologic consultation are available at the level of care.

• Ensure that tertiary hospitals designated by State or local disaster plans to provide care for persons exposed to chemical warfare agents have, at a minimum, emergency response capabilities similar to those of the primary receiving hospital.

• Ensure that tertiary hospitals coordinate their disaster plans with State and local disaster plans for mass decontamination of persons exposed to chemical warfare agents.

V. References

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3. Federal Emergency Management Agency and the Department of the Army. Planning Guidance for the Chemical Stockpile Emergency Preparedness Program. Washington, DC, November 25, 1992.
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5. Dunn, M., Sidell, F. Progress in medical defense in nerve agents. JAMA 1989;262:649–52.
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10. Moneni, A. Skin manifestations of mustard gas: a clinical study of 535 patients exposed to mustard gas. Arch Dermatol 1992;128:775–80.
11. Smith, W. Medical defense against blistering chemical warfare agents. Arch Dermatol 1991;127:1207–13.
12. Tafuri, J. Organophosphate poisoning. Ann Emerg Med 1987;16:193–202.
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14. Merrit, N. Malathion overdose: when one patient creates a departmental hazard. J Emerg Nursing 1989;15:463–5.

Dated: July 21, 1994.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Appendix A Summary of Important Medical Preparedness Considerations for Communities Surrounding Chemical Agent Stockpiles

1. Do the communities that surround chemical warfare agent depots have a disaster plan that details the role of the prehospital and hospital medical community during a chemical warfare agent emergency?
2. If medical personnel are designated to treat chemical warfare agent casualties, do they have adequate training to meet minimal standards for evaluating, decontaminating, and treating victims of a chemical warfare agent release?
3. Do medical personnel who are designated by State, local, and hospital disaster plans to use PPE in response to an emergency related to chemical warfare agents have the necessary OSHA level of training to use these devices effectively and safely?
4. If the local disaster plan has provisions to evacuate or transfer patients to other hospitals for further treatment and evaluation, do existing MOUs cover the transfer of chemically contaminated patients?
5. Do hospitals named in the State or local disaster plans have an adequate stockpile of antidotes and decontamination solutions to provide complete medical treatment to at least one chemically contaminated patient?
6. Are hospitals named in the State or local disaster plans able to decontaminate at least one nonambulatory patient exposed to chemical warfare agent?
7. Do the disaster plans of hospitals named to receive patients by State and local disaster plans have specific provisions which detail how they will control access to their medical facilities during a chemical warfare agent emergency?
8. Are all levels of the medical community that are designated by State or local disaster plans to respond to a chemical warfare agent emergency able to communicate via either the State or local disaster communication network?

Appendix B

Working Group Participants

Mr. Lawrence Gallagher, Associate Director, Plant Technology and Management, Joint Committee on Accredited Hospitals Organization

Mr. Kenneth Gray, Fire Chief, Confederate Tribes of the Umatilla Indian Reservation

Mr. Howard Kirkwood, Jr., Chief, Emergency Response Services, Oregon Department of Human Resources

Mr. Denzel Fisher, Emergency Preparedness Officer, Headquarters, Department of the Army

John A. Grant, M.D., M.P.H., Health Officer, Kent County Health Department

Deborah Kim, M.S.N., R.N., Trauma Coordinator, University of Utah Medical Center

Ms. Laurel Lacy, Acting Chief, Chemical Stockpile Branch, Federal Emergency Management Agency

Howard Levitin, M.D., F.A.C.E.P. Emergency Staff Physician St. Francis Hospital

Carole A. Mays, M.S., R.N., C.E.N., Clinical Nurse, Saint Joseph Hospital

Captain Jeff Rylee, Hazardous Materials Coordinator, Salt Lake City Fire Department

Matthew Rice, M.D. J.D., Chief, Department of Emergency Medicine, Madigan Army Medical Center

Mr. Allen Short, Health Department Emergency Coordinator, Utah Department of Health

Yehuda L. Danon, M.D., Director, The Children's Medical Center of Israel

Frederick Sidell, M.D., Commander USAMRICD

Henry J. Siegelson, M.D., F.A.C.E.P, Clinical Assistant Professor, Emory University School of Medicine
Stephen B. Thacker, M.D., M.Sc., Acting Director, NCEH, CDC
Ms. Linda Anderson, M.P.H., Chief, Special Programs Group, NCEH, CDC
Sanford Leffingwell, M.D., M.P.H., Medical Director, Special Programs Group, NCEH, CDC
Vernon N. Houk, M.D., Assistant Surgeon General, NCEH, CDC
Mr. Thomas E. O'Toole, M.P.H., Deputy Chief, Special Programs Group, NCEH, CDC
Scott Lillibridge, M.D., Medical Officer, Div. of Env. Hazards and Health Effects, NCEH, CDC
Mr. Harvey Rogers, M.S., Environmental Engineer, Special Programs Group, NCEH, CDC
Ms. Sharon Dickerson, M.P.A., Program Specialist, Special Programs Group, NCEH, CDC
Henry Falk, M.D., M.P.H., Director, Div. of Env. Hazards and Health Effects, NCEH, CDC
José Cordero, M.D., M.P.H., Deputy Director, National Immunization Program
Eric Noji, M.D., M.P.H., Chief, Disaster Assessment & Epi. Section, Div. of Env. Hazards and Health Effects, NCEH, CDC

[FR Doc. 94–18274 Filed 7–26–94; 8:45 am]

BILLING CODE 4163–18–P

National Institute for Occupational Safety and Health

[Announcement Number 463]

Cooperative Agreement Program for Agricultural Safety Promotion Systems Amendment

A notice announcing the availability of fiscal year (FY) 1994 funds for a cooperative agreement program for agricultural safety promotion systems was published in the **Federal Register** on July 8, 1994 (59 FR 35124).

The notice is amended as follows:

On page 35126, first column, under the heading "Application Submission and Deadline," first paragraph, the application due date should read on or before August 25, 1994.

All other information and requirements of the July 8, 1994, **Federal Register** notice remain the same.

Dated: July 21, 1994.

Linda Rosenstock, M.D., M.P.H.,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–18275 Filed 7–26–94; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Generic Drugs Advisory Committee With Dermatologic Drugs Advisory Committee Representation

Date, time, and place. September 12 and 13, 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, September 12, 1994, 8:30 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; open committee discussion, September 13, 1994, 8:30 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 4 p.m.; Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee gives advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases and makes appropriate recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, the Commissioner of Food and Drugs, and the Director of the Center for Drug Evaluation and Research. The committee may also review agency sponsored intramural and extramural biomedical research programs in support of FDA's generic drugs regulatory responsibilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. In April 1992, the Generic Drugs Advisory Committee met to consider methods for documenting the bioequivalence of topical corticosteroids. Subsequently, on July 1, 1992, the Office of Generic Drugs issued a guidance document entitled "Interim Guidance for Topical Corticosteroids: *In Vivo* Bioequivalence and *In Vitro* Release Methods." The purpose of the September 1994 meeting is to reexamine the 1992 interim guidance in light of new experimental data and methods of analysis. On September 12, 1994, the committee will discuss the pharmacodynamic (i.e., vasoconstrictor) measurement of bioequivalence. On September 13, 1994, this topic will be further discussed along with other issues related to the documentation of equivalence according to the interim guidance. Discussion will be limited to dermatologic products and will not include ophthalmic or inhaled corticosteroid products. Also, on September 13, 1994, there will be a review of the current status of topics discussed at previous Generic Drugs advisory committee meetings.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public

advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 21, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–18242 Filed 7–26–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Center for Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. 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 Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date of Meeting: September 22–23, 1994.

Place of Meeting: National Institutes of Health, Conference Room 10, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: September 22, 9 a.m. until recess.

Closed: September 23, 8 a.m. until 10 a.m.

Open: September 23, 10 a.m. until adjournment.

Name of Committee: The Subcommittee on Planning of the National Advisory Research Resources Council.

Place of Meeting: National Institutes of Health, Conference Room 3B41, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: September 22, 7:30 a.m.–8:45 a.m.

Executive Secretary: Louise Ramm, Ph.D., Deputy Director, National Center for Research Resources, Building 12A, room 4011, Bethesda, MD 20892, Telephone: (301) 496–6023.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, Westwood Building, Room 850, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7938, will provide a summary of meeting and a roster of the members upon request. Dr. Louise Ramm, Executive Secretary, NCRR, Building 12A, room 4011, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health.)

Dated: July 20, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–18220 Filed 7–26–94; 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: Evaluation of Ischemic Heart Disease in Women—Clinical Centers.

Date: August 15–16, 1994.

Time: 9:30 a.m.

Place: Bethesda Hyatt Regency, Bethesda, Maryland.

Contact Person: David M. Monsees, Jr., Ph.D., 5333 Westbard Avenue, Room 550, Bethesda, Maryland 20892, (303) 594–7450.

Purpose/Agenda: To review and evaluate contract proposals.

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 Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 21, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–18223 Filed 7–26–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council on September 1–2, 1994, at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on September 1 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., section 10(d) of Public Law 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on September 1 and from 8:30 a.m. to adjournment on September 2 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Council members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, Room 7A–17, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7454, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 21, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–18222 Filed 7–26–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of National Advisory Environment Health Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 12–13, 1994, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 12 from 9 a.m. to approximately 3:00 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 12 from approximately 3:00 p.m. to recess and from 8:30 a.m. to adjournment on September 13, for the review, discussion and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. B1C02, NIH, Bethesda, Md, 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Herrell in advance of the meeting. Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 933.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health).

Dated: July 20, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–18221 Filed 7–26–94; 8:45 am]

BILLING CODE 4140–01–M

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1994:

NAME: Advisory Committee on Infant Mortality

DATE & TIME: August 25–26, 1994, 9:00 a.m.

PLACE: Barcelo Washington Hotel, 2121 P Street, N.W., Washington, DC 20037

The meeting is open to the public.

PURPOSE: The Committee provides advice and recommendations to the Secretary on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; how best to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People: 2000: National Health Promotion and Disease Prevention Objectives.*

AGENDA: Topics that will be discussed include: Presentation on maternal-fetal transmission of HIV and the analysis of Zidovudine, updates on the Healthy Start Program; and updates on current Programs at the National level.

Anyone requiring information regarding the Committee should contact Dr. Peter van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18–44, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2204.

Persons interested in attending any portion of the meeting should contact Ms. Kerry P. Nesseler, Maternal and Child Health Bureau, Health Resources

and Services Administration, Telephone (301) 443–2204.

Agenda Items are subject to change as priorities dictate.

Dated: July 21, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–18243 Filed 7–26–94; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–4350–01; 4–00154]

Availability of the Wells RMP Draft Elk Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Wells Resource Management Plan (RMP) Draft Elk Amendment and Environmental Assessment (EA) is available to the public for a 30 day review period. This draft amendment analyzes the impacts of several alternatives for managing elk in the BLM's Wells Resource Area, Elko County, Nevada.

DATES: All written comments on the draft amendment must be submitted to BLM in person or postmarked no later than August 31, 1994.

A public open house meeting to answer questions will be held on August 18, 1994. This meeting will begin at 7 p.m., local time.

ADDRESSES: Written comments should be addressed to: Wells Area Manager, Bureau of Land Management, 3900 E. Idaho Street, P.O. Box 831, Elko, Nevada 89803.

The open house meeting will be held at the Wells High School Auditorium, 115 Lake Street, Wells, Nevada.

FOR FURTHER INFORMATION CONTACT: Bill Baker, Wells Area Manager, at the above BLM address of telephone (702) 753–0200.

SUPPLEMENTARY INFORMATION: Through a review of elk habitat management in the Wells Resource Area, it was determined that elk numbers and habitat use areas are expanding from those identified in the Wells RMP Record of Decision, approved July 16, 1985. Elk are recognized as highly adaptable creatures and during recent years have pioneered to adjacent previously unoccupied habitats in the Wells Resource Area from the Pilot Mountain Management Area, northwestern Utah and southern Idaho.

The purpose of this amendment is to establish elk habitat management areas, identify habitat requirements and specific management objectives and practices, establish target elk population management levels, develop factors for attainment and future adjustments in elk population management levels, and identify constraints on other resources within the Wells Resource Area.

Copies of the draft amendment are available from the BLM's Elko District Office.

Dated: July 20, 1994.

Ronald B. Wenker,

Acting State Director, Nevada.

[FR Doc. 94–18278 Filed 7–26–94; 8:45 am]

BILLING CODE 4310–HC–M

[OR–130–4830–01; GP4–226; 4–00151]

Organization, Function, and Authority Delegations; Wenatchee Resource Area Office; Relocation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the relocation of the Bureau of Land Management (BLM), Wenatchee Resource Area Office, temporary closure during that relocation, and information on mail delivery.

FOR FURTHER INFORMATION CONTACT: Jim Fisher, Area Manager, BLM, Wenatchee Resource Area Office, 915 N. Walla Walla Street, Wenatchee, Washington, 98801–1521; 509–665–2100.

SUPPLEMENTARY INFORMATION: Effective at the close of business on August 2, 1994, the Wenatchee Resource Area Office will close for the purpose of relocating to 915 N. Walla Walla Street, Wenatchee, Washington, 98801–1521. The Wenatchee Resource Area Office will reopen at 7:45 a.m. on August 8, 1994. The mailing address for delivery by the U.S. Post Office will be 915 N. Walla Walla Street, Wenatchee, Washington, 98801–1521. The telephone number will be 509–665–2100.

Dated: July 21, 1994.

Joseph K. Buesing,

District Manager.

[FR Doc. 94–18276 Filed 7–26–94; 8:45 am]

BILLING CODE 4310–33–M

[ID–942–04–341A–02]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., July 20, 1994.

The plat, in three sheets, representing the dependent resurvey of portions of the subdivisional lines and the 1962–1969 fixed and limiting boundary, and the survey of portions of the 1991–1993 meander lines of Henrys Fork, and of accretion in section 17, Township 7 North, Range 40 East, Boise Meridian, Idaho, Group No. 816, was accepted July 13, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 20, 1994.

Gary T. Oviatt,

Acting Chief, Cadastral Surveyor for Idaho.

[FR Doc. 94–18297 Filed 7–26–94; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Texas Trailing Phlox for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U. S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Texas trailing phlox (*Phlox nivalis* spp. *texensis*) which the Service listed as an endangered species on September 30, 1991 (56 FR 49639). The plant, Texas trailing phlox, is known from two sites, one each in Tyler and Hardin counties, Texas. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 26, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U. S. Fish and Wildlife Service, 17629 El Camino Real, Suite 211, Houston, Texas 77058. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment,

during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edith Erfling, U. S. Fish and Wildlife Service Biologist, telephone (713) 286–8282 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for recovery levels for downlisting or delisting species, and estimate time and cost for implementing recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires development of recovery plans for listed species unless such a plan would not promote conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Texas trailing phlox is an endangered species known from one site on private land in Tyler County and one population in Hardin County located mostly on land owned by The Nature Conservancy, with a few plants occurring on adjoining roadside rights-of-way and private property. The plant is restricted to sandy soils in open pine woodlands. Texas trailing phlox is threatened primarily by habitat loss due to canopy closure, encroachment of hardwood trees, and soil disturbance associated with human activities.

The Texas trailing phlox recovery plan has been reviewed by the appropriate Service staff in Region 2. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The Authority for this action is section 4(f) of the Act, 16 U.S.C. 1533 (f).

Dated: July 21, 1994.

Joseph P. Mazzoni,

Regional Director.

[FR Doc. 94–18277 Filed 7–26–94; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

American Barrick Resources Corp.; Contribution Acceptance

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Geological Survey has accepted from American Barrick Resources Corporation a contribution of $10,500 to support geological studies of the occurrence of gold mineralization to northern Nevada that are being conducted by scientists in the Branches of Central Mineral Resources and Western Mineral Resources.

DATES: This notice is effective July 27, 1994.

ADDRESS: Information on the work is available to the public upon request at the following location: U.S. Geological Survey, Branch of Central Mineral Resources, Denver Federal Center, MS–935, P.O. Box 25046, Denver, Colorado 80225–0046.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Thorman of the U.S. Geological Survey, Branch of Central Mineral Resources, at the address given above; telephone 303/236–5601.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 94–18296 Filed 7–26–94; 8:45 am]

BILLING CODE 4310–31–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–792526

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to export and re-import 7 male and 8 female captive-bred tigers (*Panthera tigris*) to worldwide sites while on tour for the purpose of enhancement of the survival of the species through conservation education.

PRT–792542

Applicant: Larry Johnson, Yorba Linda, CA

The applicant requests a permit to export a pair of captive-born and one female wild caught (wild caught in 1971) siamang (*Hylobates syndactylus*) to Parque Zoologico de Leon, Leon, Mexico for the purpose of enhancement of propagation of the species through conservation education.

PRT–778487

Applicant: Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to import one wild-caught male presently held in captivity and one captive-born female giant panda (*Ailuropoda melanoleuca*) from the People's Republic of China. This permit was originally requested for the purpose of enhancement of propagation and survival and previously published on May 5, 1993, prior to the announcement of the suspension of review of applications to import giant pandas. The purpose for which the permit is requested has now been modified to focus on scientific research investigating olfactory communication and how it relates to giant panda reproductive physiology and sexual behavior and habitat use. In addition, a female captive-born panda has now been substituted for the female wild-caught animal identified in the initial import request.

PRT–792842

Applicant: David William Owens, Texas A&M University, College Station, TX

The applicant requests a permit to import blood and salvaged tissue samples eggs and dead hatchlings of the olive ridley (*Lepidochelys olivacea*), green (*Chelonia mydas*), black (*Chelonia mydas* (=*agassizi*)), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*) sea turtles from Costa Rica, Australia, Mexico, and Grand Cayman Islands for the purpose of enhancement of the survival of the species through scientific research.

PRT–790722

Applicant: Annamarie Jacobs, De Soto, KS

The applicant requests a permit to purchase in interstate commerce two

pair of Nene geese (*Branta sandvicensis*) from Kenneth Howell, Muldrow, Oklahoma, to enhance the propagation and survival of the species through captive propagation.

PRT–791752

Applicant: Jerry E. Doherty, Red Lodge, MT

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Pine Louw, "Bankfontein", Springfontein, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–739682

Applicant: The New York Blood Center, New York, NY

The applicant requests reissuance of a permit for import of up to 3000 blood and 400 liver tissue samples taken from chimpanzee (*Pan troglodytes*) in Liberia for the purpose of enhancement of the survival of the species through scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 22, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–18281 Filed 7–26–94; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–702 (Preliminary)

Ferrovanadium and Nitrided Vanadium from Russia

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Russia of ferrovanadium and nitrided vanadium, provided for in subheadings 7202.92.00 and 2850.00.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 31, 1994, a petition was filed with the Commission and the U.S. Department of Commerce by counsel on behalf of Shieldalloy Metallurgical Corp., New York, NY, alleging that imports of ferrovanadium and nitrided vanadium from Russia are materially injuring and threatening to materially injure an industry in the United States. Accordingly, effective May 31, 1994, the Commission instituted antidumping investigation No. 731–TA–702 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 8, 1994 (59 F.R. 29617). The conference was held in Washington, DC, on June 21, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 15, 1994. The views of the Commission are contained in USITC Publication 2796 (July 1994), entitled "Ferrovanadium and Nitrided Vanadium from Russia: Investigation No. 731–TA–702 (Preliminary)."

By order of the Commission.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Issued: July 18, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–18280 Filed 7–26–94; 8:45 am]

BILLING CODE 7020–02–P

Investigations Nos. 731–TA–703, 704, and 705 (Preliminary)

Furfuryl Alcohol From China, South Africa, and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, South Africa, and Thailand of furfuryl alcohol, provided for in subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 31, 1994, a petition was filed with the Commission and the Department of Commerce by QO Chemicals, Inc., West Lafayette, IN, alleging that an industry in the United States is materially injured by reason of LTFV imports of furfuryl alcohol from China, South Africa, and Thailand. Accordingly, effective May 31, 1994, the Commission instituted antidumping investigations Nos. 731–TA–703, 704, and 705 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 8, 1994 (59 F.R. 29618). The conference was held in Washington, DC, on June 21, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 15, 1994. The views of the Commission are contained in USITC Publication 2797 (July 1994), entitled "Furfuryl Alcohol from China, South Africa, and Thailand: Investigations Nos. 731–TA–703, 704, and 705 (Preliminary)."

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

By order of the Commission.

Issued: July 18, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–18282 Filed 7–26–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–103 (SUB-NO. 7X), THE KANSAS CITY SOUTHERN RAILWAY COMPANY—ABANDONMENT AND DISCONTINUANCE EXEMPTION—WISTER BRANCH. EA available 7/19/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–389 (SUB-NO. 1X), GEORGIA GREAT SOUTHERN DIVISION—PETITION FOR EXEMPTION—ABANDONMENT OF RAILROAD LINE BETWEEN SASSER AND ALBANY AND DISCONTINUANCE OF SERVICE OVER RR. LINE BETWEEN DAWSON AND SASSER IN TERRELL, LEE AND DOUGHERTY COUNTIES, GEORGIA. EA available 7/20/94.

AB–167 (SUB-NO. 1139), CONSOLIDATED RAIL CORP.—ABANDONMENT—IN ERIE AND CRAWFORD COUNTIES, PENNSYLVANIA. EA available 7/20/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–18292 Filed 7–26–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M–94–87–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Blacksville No. 2 Mine (I.D. No. 46–01968) located in Monongalia County, West Virginia. Due to deteriorating roof and rib conditions in certain areas of the return air course, traveling the entire area would be unsafe. The petitioner proposes to establish check points 1 and 2 to monitor the methane and quantity of air in the affected area; to have a qualified person conduct these tests weekly at each check point and record the results in a book kept on the surface and made available for inspection by interested persons; and to install a door in the overcast on the mainline track haulage in order to observe the mine roof over the overcast once a day to determine whether a roof fall and possible collapse of the overcast exists. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Drummond Company, Inc.

[Docket No. M–94–94–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.800 (high-voltage circuits; circuit breakers) to its Shoal Creek Mine (I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner requests a modification of that portion of the standard that pertains to under-voltage, grounded phase, overcurrent, and ground check opening the circuit breaker. The petitioner proposes to use high-voltage contactors with an electrical rating adequate for the connected load; to use under-voltage, overload, grounded phase, and ground check protective devices that would de-energize the high-voltage contactor; to use a control circuit design for each high-voltage circuit that would preclude automatic closing of the high-voltage contactor when there is an under-voltage, overload, grounded phase, or ground check problem; to use a control circuit design for each high-voltage contactor that would preclude remote closing of the high-voltage contactor when there is an overload, grounded phase, or ground check problem; and to use a short circuit current that would trip the high-voltage circuit breaker, and a control circuit design that would preclude automatic or remote closing of the high-voltage circuit breaker. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Drummond Company, Inc.

[Docket No. M–94–95–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.803 (fail safe ground check circuits on high-voltage resistance grounded systems) to its Shoal Creek Mine (I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner requests a modification of that portion of the standard that pertains to under-voltage, grounded phase, overcurrent, and ground check opening the circuit breaker. The petitioner proposes to use high-voltage contactors with an electrical rating adequate for the connected load; to use under-voltage, overload, grounded phase, and ground check protective devices that would de-energize the high-voltage contactor; to use a control circuit design for each high-voltage circuit that would preclude automatic closing of the high-voltage contactor when there is an under-voltage, overload, grounded phase, or ground check problem; to use a control circuit design for each high-voltage contactor that would preclude remote closing of the high-voltage contactor when there is an overload, grounded phase, or ground check problem; and to use a short circuit current that would trip the high-voltage circuit breaker, and a control circuit design that would preclude automatic or remote closing of the high-voltage circuit breaker. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Dynamic Recovery, Inc.

[Docket No. M–94–96–C]

Dynamic Recovery, Inc., P.O. Box 25, Clarksville, Pennsylvania 15322 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Lazarus Mine (I.D. No. 36–08336) located in Greene County, West Virginia. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries where a monitoring system

would identify a sensor location instead of in each belt flight. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Helvetia Coal Company

[Docket No. M-94-97-C]

Helvetia Coal Company, Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1100-2(e)(2) (quantity and location of fire fighting equipment) to its Lucerne No. 6 Extension (I.D. No. 36-07691) located in Indiana County, Pennsylvania. The petitioner proposes to use two portable fire extinguishers, or one portable fire extinguisher with twice the required capacity, at each temporary electrical installation instead of using one fire extinguisher and rock dust at such installations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Keystone Coal Mining Corporation

[Docket No. M-94-98-C]

Keystone Coal Mining Corporation, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.511 (low-medium- or high-voltage distribution circuits and equipment; repair) to its Emilie No. 1 Mine (I.D. No. 36-00821) and its Jane Mine (I.D. No. 36-00823) both located in Armstrong County, Pennsylvania. The petitioner proposes to utilize non-qualified persons for changing fuses in DC pump fused disconnect boxes and fused trolley wire taps. The petitioner states that the non-qualified persons would be briefed and trained to ensure safe and proper conduct in performing fuse changes. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Keystone Coal Mining Corporation

[Docket No. M-94-99-C]

Keystone Coal Mining Corporation, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1100-2(e)(2) (quantity and location of fire fighting equipment) to its Emilie No. 1 Mine (I.D. No. 36-00821), its Emilie No. 4 Mine (I.D. No. 36-06018), its Jane Mine (I.D. No. 36-00823), and its Margaret No. 11 Mine (I.D. No. 36-08139), all located in Armstrong County, Pennsylvania; and its Urling No. 1 Mine (I.D. No. 36-04852) and its Plumcreek Mine (I.D. No. 36-08401), both located in Indiana County, Pennsylvania. The petitioner proposes to use two portable fire extinguishers, or one portable fire extinguisher with twice the required capacity, at each temporary electrical installation instead of using one fire extinguisher and rock dust at such installations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Tilden Magnetite Partnership

[Docket No. M-94-33-M]

Tilden Magnetite Partnership, P.O. Box 2000, Ishpeming, Michigan 49849 has filed a petition to modify the application of 30 CFR 56.14100 (safety defects; examination, correction and records) to its Tilden Magnetite Mine (I.D. No. 20-00422) located in Marquette County, Michigan. The petitioner proposes to provide shovel operators with supplies to clean windshields manually instead of using windshield wipers on production shovels. The petitioner states that the use of automatic windshield wipers would result in a diminution of safety to the miners.

9. Echo Bay Minerals Company

[Docket No. M-94-34-M]

Echo Bay Minerals Company, P.O. Box 1658, Battle Mountain, Nevada 89820 has filed a petition to modify the application of 30 CFR 56.6309(b) (fuel oil requirements for ANFO) to its McCoy/Cove Mine (I.D. No. 26-01925) located in Lander County, Nevada. The petitioner proposes to blend recycled, used petroleum-based oil from equipment operating at its mine with diesel fuel to create a blasting agent. The petitioner asserts that this oil would not contain any hazardous material listed in 40 CFR 261 and that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. Independent Aggregates

[Docket No. M-94-35-M]

Independent Aggregates, P.O. Box 519, Inglis, Florida 34449 has filed a petition to modify the application of 30 CFR 56.7055 (intersecting holes) to its I.A.C. Mine (I.D. No. 08-01035) located in Citrus County, Florida. The petitioner propose to load each hole as soon as it has been drilled, then move to the next hole, continue until the end of the shift, and then continue loading on subsequent shifts until the pattern is completed. Then, the round would be wired and shot as soon as possible. The petitioner states that returning to the collapsed holes to redrill would cause hazardous conditions. In addition, the petitioner states that the proposed alternate method would prevent a diminution of safety.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 26, 1994. Copies of these petitions are available for inspection at that address.

Dated: July 20, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94-18298 Filed 7-26-94; 8:45 am]

BILLING CODE 4510-43-P

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94-56; Exemption Application No. L-9412, et al.]

Grant of Individual Exemptions; Beaumont Area Pipefitters Joint Apprenticeship Committee, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of

the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Beaumont Area Pipefitters Joint Apprenticeship Committee (the Plan)
Located in Beaumont, Texas
[Application No. L–9412]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act shall not apply to the purchase of certain real property (the Property) by the Plan from Pipefitters Local 195 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (the Union), a party in interest with respect to the Plan, provided that the following conditions are met:

1. An independent fiduciary determines that the proposed transaction is in the best interests of the Plan;

2. The fair market value of the Property is established by an appraiser unrelated to the Plan or the Union;

3. The Plan pays no more than the lesser of $462,800 or the fair market value of the Property as determined at the time of purchase;

4. The purchase is a one-time transaction for cash; and

5. The Plan pays no fees or commissions in regard to the transaction.

Summary of Facts and Representations

1. The Plan is an apprenticeship training plan established and administered pursuant to the provisions of section 302 of the Labor Management Relations Act of 1947. As of January 31, 1994, the Plan had 580 participants and total assets of $1,248,499. On the same date, the number of employers contributing to the Plan totaled 21.

2. The Property consists of 2.74 acres of land and improvements located adjacent to property of the Union. The improvements include three one and two-story buildings, constructed by the Union in 1968 and 1978, designed for use as classroom and apprenticeship training facilities for the Plan and its participants. From 1968 to 1988 the Plan operated an apprenticeship program on the Property pursuant to a lease of the Property by the Union to the Plan.[1] In August 1988 the Union sold the Property to the Plan. The Plan partially financed this purchase by obtaining a loan from the Sabine Area Pipefitters Local 195 Pension Trust Fund (Local 195 Pension Plan). The Local 195 Pension Plan, which was later merged into the Plumbers and Pipefitters National Pension Fund, had interlocking trustees with the Plan and the Plan made some contributions to the Local 195 Pension Plan on behalf of its participants. The loan was repaid in June 1991.

In September 1990 the Department commenced an investigation of the Plan regarding the sale of the Property by the Union to the Plan and the loan between the Plan and the Local 195 Pension Plan.[2] Also, an application for exemption for retroactive relief from the prohibited transaction provisions of the Act was submitted to the Department for these transactions. In a letter in January 1992, the Department cited as reasons for denying the exemption application, among other factors, the lack of the review and prior approval of the transactions by an independent fiduciary. Following this exemption denial, an agreement was reached with the Department which required that the Property be sold back by the Plan to the Union. Such sale occurred in December 1992. Since that date, the Plan has utilized the Property as a training facility without charge from the Union. However, the applicant represents that because of an economic downturn in the area, the Union considers it a hardship to continue this arrangement.

3. The applicant obtained an appraisal on the Property on January 14, 1994, from Donnie M. Jones, MAI (Jones), a real estate appraiser located in Port Arthur, Texas. Jones represents that he is not related in any way to the Plan or the Union. Utilizing the income, cost and sales comparison approaches to value, Jones estimated that the Property had a fair market value of $462,800 as of the date of the appraisal. By letter dated March 1, 1994, Jones stated that he was aware, in preparing the appraisal, that the Plan was the prospective buyer of the Property and that this knowledge had no influence on his calculation of value.

4. The Plan now proposes to purchase the Property from the Union so that the Plan itself will own the training and educational facilities used to train journeymen and apprentices. Plan fiduciaries note that ownership of the Property will give the Plan full control of the buildings, grounds and parking lots and will enable the Plan to make improvements to the Property as needed. The Plan will pay no more than current fair market value for the Property, as established by an updated independent appraisal. The purchase will be a one-time transaction for cash and the Plan will pay no fees or commissions in regard to the purchase. The applicant represents that, after the purchase of the Property, the Plan will have more than enough funds for operational purposes of the training program.

5. The Plan and the Union have selected Joseph P. Connors, Sr. (Connors), an attorney with the firm of Connors Associates, Inc. in Washington, D.C. to serve as independent fiduciary in regard to the proposed transaction. The applicant represents that Connors is independent of the Plan and the Union.

Connors states that he has had extensive experience working with Taft-Hartley plans, including serving as chairman of funds of the United Mine Workers. Connors further states that he is well aware that while acting as independent fiduciary he assumes personal liability and he must act solely

[1] Prohibited transaction exemption (PTE) 78–5 (43 FR 23024, May 30, 1978) permits, under certain conditions, the leasing of real property by an apprenticeship plan from a sponsoring employee organization. The Department expresses no opinion as to whether the above lease satisfied the conditions of PTE 78–5 nor is any relief provided herein.

[2] The above described transactions may have constituted prohibited transactions under section 406 of the Act. Such section prohibits, in part, a sale or exchange of property between a plan and a party in interest, a use of plan assets for the benefit of a party in interest, and the acting of a fiduciary in a plan transaction on behalf of a party whose interests are adverse to those of the plan or its participants.

in the interest of the Plan and its participants.

Connors maintains that the proposed transaction is definitely in the best interests of the Plan. In this regard, Connors has met with officers of the Union and trustees of the Plan and has made an inspection of the Property with Russell Allen, the training director for the Plan. The Plan has operated an apprenticeship program utilizing the Property since the initial time of construction in 1968. As independent fiduciary, Connors will make certain that the Plan pays no more than fair market value for the Property and will enforce all rights of the Plan in regard to the proposed transaction.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) the purchase of the Property will give the Plan ownership of the facilities it uses for its apprenticeship training program; (2) an independent fiduciary has determined that the proposed transaction is in the best interests of the Plan and its participants; (3) the Plan will pay no more than fair market value for the Property, based on an updated independent appraisal; (4) the purchase will be a one-time transaction for cash; and (5) the Plan will pay no fees or commissions in regard to the transaction.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Novo Nordisk Bioindustrials, Inc.
401(k) Thrift Plan (the Plan)
Located in Danbury, Connecticut
[Prohibited Transaction Exemption 94–57;
Application No. D–9661]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the interest-free loan to the Plan (the Loan) by Novo Nordisk Bioindustrials, Inc. (the Employer), a party in interest with respect to the Plan, and (2) the Plan's potential repayment of the Loan upon the receipt by the Plan of payments under Guaranteed Investment Contract No. GA–4607 (the GIC) issued by Mutual Benefit Life Insurance Company (MBL); provided the following conditions are satisfied:

(A) No interest or expenses are paid by the Plan in connection with the proposed transaction;

(B) The Loan is made to reimburse the Plan for amounts invested with MBL under the terms of the GIC;

(C) The Loan will be repaid only out of amounts paid to the Plan by MBL, its successors, or any other responsible third parties; and

(D) Repayment of the Loan is waived with respect to the amount by which the Loan exceeds GIC proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 25, 1994 at 59 FR 27035.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Hollingsworth & Vose Company Savings Plan (the Plan)
Located in East Walpole, Massachusetts
[Prohibited Transaction Exemption 94–58;
Exemption Application No. D–9677]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the August 26, 1992 loan (the Loan) of $188,000 to the Plan by Hollingsworth & Vose Company, provided the following conditions were satisfied: a) no interest or expense was incurred by the Plan with respect to the Loan; b) the Loan enabled the Plan to effect the transfer of amounts held in participant accounts to new investments made available under the Plan; c) accounts transferred from the Plan's GIC Fund were credited with amounts representing the allocable principal deposit in the GIC Fund plus accrued interest at the GIC Fund rate; d) accounts which remained invested in the GIC Fund continued to receive interest at the same rate; and e) repayment of the Loan was restricted to amounts held in or allocated to the GIC Fund, and no other Plan assets were used for that purpose.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 25, 1994 at 59 FR 27036.

Effective Dates: This exemption is effective from August 26, 1992 through November 10, 1992.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 22nd day of July, 1994.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration U.S. Department Of Labor.

[FR Doc. 94–18264 Filed 7–26–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9654, et al.]

Proposed Exemptions; Profit Sharing Plan for Employees of Lewis-Gale Clinic, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Profit Sharing Plan for Employees of Lewis-Gale Clinic, Inc. (the Plan) Located in Salem, Virginia

[Exemption Application No. D–9654]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of certain shares of stock (the Shares) from certain individually-directed accounts in the Plan (the Accounts) to Lewis-Gale Clinic, Inc. (the Clinic), a party in interest with respect to the Plan.

This proposed exemption is conditioned on the following requirements: (1) the terms and conditions of the Sale are at least as favorable to the Accounts as those obtainable in an arm's-length transaction with an unrelated party; (2) the Sale is a one-time cash transaction; (3) the Accounts are not required to pay any commissions, costs or other expenses in connection with the Sale; (4) the Sales price for the Shares is based upon its fair market value as determined by a qualified, independent appraiser; and (5) within ninety days of the grant of this proposed exemption, the Clinic files Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes due with respect to past prohibited transactions.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by the Clinic, a Virginia professional corporation owned exclusively by licensed physicians engaged in the practice of medicine. The Clinic employs 837 full-time and part-time employees of which 124 are licensed physicians. The Clinic services the Greater Roanoke Valley with a central location located in Salem, Virginia. The Clinic also operates various satellite clinics in towns and counties within a fifty mile radius of its primary location.

2. As of March 31, 1994, the Plan had total assets of $58,733,461 and 690 participants. The Plan permits each participant to direct the investments of his or her account among several funds including a fund commonly referred to as Fund F. First Union National Bank of Virginia (First Union) serves as trustee of all Plan assets except those held in Fund F. The board of directors of the Clinic serves as the trustee with respect to the Plan assets held in Fund F.

3. Fund F is designed to be invested exclusively in the common stock of the Lewis-Gale Building Corporation (the Building Corporation), which was incorporated on December 22, 1970. From the time of such incorporation until 1983, all of the outstanding common stock of the Building Corporation (the Stock) was owned exclusively by the physicians and certain administrative personnel. The primary purpose of the Building Corporation is to own and operate certain real property facilities which are leased to the Clinic and other health care providers for use in rendering medical services.[1]

4. As a condition to employment, each physician is contractually required to purchase a fixed dollar amount of the Stock. In 1983, the Building Corporation and the physicians, upon the advice of

[1] The Clinic represents that the Building Corporation is a real estate operating company within the meaning of 29 CFR 2510.3–101(e). Therefore, with regard to any ownership by the Plan, the Building Corporation's assets are not considered plan assets. However, the Department expresses no opinion as to whether the underlying assets of the Building Corporation contain plan assets under 29 CFR 2510.3–101(e).

counsel, amended the Plan and the pre-existing stock restriction agreement to permit the Plan to acquire the Stock, thereby allowing the physicians to satisfy their contractual obligations to purchase the Stock by self-directing portions of their individual account balances into Fund F.[2]

Because the Stock is not publicly traded, the Building Corporation values the Stock on an annual basis using its historic valuation formula under the existing stock purchase agreement between the Building Corporation and its shareholders. The valuation formula incorporates the fair market values of the underlying assets of the Building Corporation, which are valued annually by a qualified, independent real estate appraiser. The Building Corporation has consistently utilized this valuation formula to set the price per share for all sale and purchase transactions involving the Stock.

Fund F has experienced an average annual rate of return of 11.3 percent, and investment in this fund is open to all participants in the Plan. As of May 11, 1994, Fund F held 16,413 shares (the Shares) of the Stock which represents approximately eighty-two percent of the issued and outstanding shares of the Stock. The remaining issued and outstanding shares of the Stock are owned by physicians and certain administrators. The terms of Fund F require a participant electing to invest in Stock to remain invested in Fund F until his or her death, disability, retirement or other termination of employment. Upon such occurrences, a number of shares of the Stock equal to the value of such participant's Fund F account balance will be sold back to the Building Corporation for cash and such cash proceeds distributed to the participant as a part of his or her Plan account balance.[3]

5. Between 1988 and 1990, thirteen physicians (the Physicians), upon the advice of counsel, sold their individual shares of the Stock for cash to their individually-directed accounts in the Plan indirectly through the Building Corporation. Three of the Physicians were officers of the Clinic. The Clinic states that, as an indirect result of these sales, some of the accounts of the Physicians held shares of the Stock in excess of twenty-five percent of the balance of their account at some point. Because of the party in interest/disqualified person relationships and the past purchases by the accounts from the Physicians, the Clinic is aware of the fact that prohibited transactions have occurred in violation of the Act. Accordingly, the Clinic represents that within ninety days of the grant of this proposed exemption, the Clinic will file Forms 5330 with the Internal Revenue Service and will pay all applicable excise taxes due with respect to past prohibited transactions.[4]

6. Upon discovering that certain accounts in the Plan had engaged in prohibited transactions, the board of directors, acting as trustee, froze the assets in Fund F pending resolution of the prohibited transaction issues. As a result, retiring participants are limited to receiving only a partial distribution. In order to allow participants to receive full distributions, the trustee proposes to sell the Shares to the Clinic. Accordingly, the Clinic requests an administrative exemption from the Department to permit the Sale under the terms and conditions described herein.

The Sale will be a one time cash transaction, and the Accounts will pay no fees or commissions in connection with the Sale. Prior to the Sale, First Union will become trustee with respect to the Plan assets in Fund F. At this time, First Union will have the sole investment discretion over the entire assets of the Plan. Although the initial decision to sell the Shares was made by the board of directors acting as trustee, First Union will have the ultimate authority to approve or disapprove the terms and conditions of the Sale.

7. The Clinic obtained an appraisal of the Stock dated May 13, 1994, from Dianne D. Cobb, CFA, ASA. Ms. Cobb is the Senior Vice President of Investment Managements Services of Wachovia Bank of North Carolina which provides analysis with regard to non-publicly traded securities and securities of closely held businesses. Ms. Cobb represents that both she and Wachovia Bank of North Carolina are unrelated to and independent of the Clinic and its affiliates. Relying upon the discounted future cash flow and recent trades of the Stock, Ms. Cobb placed the fair market value of the Stock at $764 per share. Based on this valuation, the value of the Shares, which represent Fund F's eighty-two percent interest in the Building Corporation, total $12,539,532.

8. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Sale will be a one-time cash transaction; (c) the Plan will not be required to pay any commissions, costs or other expenses in connection with the Sale; and (d) the Sales price for the Shares will be based upon its fair market value as determined by a qualified, independent appraiser; and (e) within ninety days of the grant of this proposed exemption, the Clinic will file Forms 5330 with the Internal Revenue Service and will pay all applicable excise taxes due with respect to past prohibited transactions.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Raytech Corporation Salaried Employees Savings Plan (the Salaried Plan) and Raytech Corporation Hourly Employee Savings Plan (the Hourly Plan; together, the Plans) Located in Shelton, Connecticut

[Application Nos. D–9722 and D–9723]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed extension of credit by Raytech Corporation (Raytech) to the Plans in the form of payments (the Makeup Payments) with respect to group annuity contract CG01274B3A (the GIC) issued by Executive Life Insurance Company (ELIC); and (2) the Plans' potential repayment of the Makeup Payments (the Repayments), provided: (a) all terms of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with an unrelated party; (b) no interest and/or expenses are paid by the Plans; (c) the Makeup Payments are

[2] The Department notes that the decisions of the fiduciaries on behalf of the Plan, in connection with the acquisition and holding of the Building Corporation Stock are governed by the fiduciary responsibility requirements of Part 4, Subpart B of Title I. In this regard, the Department herein is not proposing relief for any violations of Part 4 of the Act which may have arisen as a result of the investment in and subsequent holding of the Stock.

[3] The Department expresses no opinion as to whether the terms and conditions of Fund F violated any provision of Part 4, Subpart B of Title I of the Act.

[4] Because of the administrative difficulties involved in locating certain Physicians who were involved in these prohibited purchases by their accounts, the Clinic has represented that it will be responsible for the filing of the Forms 5330 and the payment of all applicable excise taxes resulting from these prohibited purchases.

made only in lieu of payments due from ELIC with respect to the accumulated book value of the GIC at the time of the Makeup Payments; (d) the Repayments are restricted to the amounts, if any, paid to the Plans after March 27, 1994, by ELIC or other responsible third parties with respect to the GIC (the GIC Proceeds); (e) the Repayments do not exceed the total amount of the Makeup Payments; and (f) the Repayments are waived to the extent the Makeup Payments exceed the GIC Proceeds.

Summary of Facts and Representations

1. Raytech is a multi-national manufacturer and marketer of specialty engineered products for heat resistant, inertia control, energy absorption and transmission applications. In 1988, Raytech became the sponsor of the Plans, which are defined contribution plans under section 401(k) of the Code.

2. The Salaried Plan currently has 281 participants and beneficiaries, and has assets with an approximate aggregate fair market value of $9,793,000. The Hourly Plan currently has 236 participants and beneficiaries, and has assets with an approximate aggregate fair market value of $1,051,000. Effective January 1, 1994, Charles Schwab Trust Company (the Trustee) was appointed as trustee to the Plans.

3. Investments of funds contributed under the Plans are made by the Trustee as directed by participants in accordance with provisions of the Plans. In 1988, the Plans provided two investment options: (i) a "Guaranteed Interest Fund" in which the monies were to be held under a contract or contracts issued by one or more major insurance companies providing for a stipulated minimum rate of interest, as selected by the Plans' administrative committee (the Committee) or (ii) a "Managed Securities Fund", consisting of a mutual fund managed by a bank which was selected by the Committee. Under the provisions of the Salaried Plan, Raytech's matching contributions could be delivered in cash or Raytech common stock at the direction of Raytech's Board of Directors.

4. In 1992, both Plans were amended, revising the name of the Equity Fund from "Managed Security Fund" to "Equity Fund", and the Salaried Plan was amended to add an additional investment option in a Balanced Fund as selected by the Committee. In 1993, both Plans were amended to change the Guaranteed Interest Fund option. Prior to this amendment, the Guaranteed Interest Fund provided for monies contributed in a particular year to be held by a single insurance company (e.g., ELIC). Pursuant to this amendment, the Plans now permit investments in a "pooled investment fund" that features insurance company contracts issued by multiple insurance companies. Under the terms of each of the Plans, the participants have withdrawal and transfer rights with respect to their accounts (Withdrawal Events). The circumstances triggering Withdrawal Events include severance from service, disability, retirement, death, hardship, transfer of funds and loans.

5. The GIC was issued by ELIC to the Plans in 1988. Employee savings contributions directed to the Guaranteed Interest Fund and related Raytech contributions were invested in the GIC during 1988. As of April 11, 1991, total principal deposited under the GIC plus accumulated interest under the GIC, less previous withdrawals (the Accumulated Book Value) for the Plans amounted to $1,774,779. On April 11, 1991 (the Conservation Date), ELIC was seized by the California Insurance Commissioner and its assets were frozen and its payments suspended, including the GIC.[5] Effective September 3, 1993 (the Closing Date), the California Superior Court approved a rehabilitation/liquidation plan (the Rehab Plan).[6] The Rehab Plan provides for the resolution of ELIC's contractual obligations.

6. Pursuant to the Rehab Plan, an interim benefit payment (the Interim Payment) was received by the Plans in the combined amount of $288,528 in September, 1993. In January, 1994, the Plans were provided an option to elect to participate in the Rehab Plan or to opt out. Notice was given that the contract values and terms of the original GIC had been adjusted down as required by the Rehab Plan. The Plans were advised that there was no participating state guaranty association, and thus no such source of makeup funds. The Plans' Committees elected to opt out of the Rehab Plan, and the GIC was surrendered (see rep. 8, below).

7. Under the Rehab Plan, a new insurance company, Aurora, was created to receive the ELIC assets. ELIC contractholders, however, were not forced to invest in the new company and could opt out. Upon opting out, however, the ELIC contractholders were to receive only a portion of their Accumulated Book Value, or a reduction of 31.5%. After that reduction, further amounts were to be held back to cover potential liabilities from ELIC indemnities in the sale of the assets and ongoing litigation concerning allocation of the ELIC assets, leaving the balance for the first opt out payment.

In addition to the first opt out payment, the Rehab Plan provides for future potential payments as follows: (a) distributions from enhancement trusts; and (b) release of holdbacks. These are described below.

Three enhancement trusts were created at the ELIC sale to protect certain ELIC assets that were not part of the sale, one for real estate, one for below grade stocks and bonds, and one for ELIC rights not transferred. All of these assets are to be liquidated by the enhancement trusts over time and the proceeds distributed to the ELIC contractholders. As required by the Rehab Plan, a specified amount was held back to cover the indemnity and allocation contingencies.

The holdback amounts, if any remain, will be released to the participants in the future if not used to cover the indemnities and allocation litigation result. The Rehab Plan provided no assurance that there would be distributions from enhancement trusts or releases of holdbacks.

8. The opt out provision of the Rehab Plan was equivalent to a repurchase of the GIC in return for the opt out payment. Having elected to opt out, the Plans on March 27, 1994, received the first opt out payment in the amount of $730,912. When added to the Interim Payment (see rep. 6, above) of $288,528, the Plans have received a total of $1,019,440 from ELIC. In addition, approximately $200,000 was held back by ELIC (see rep. 7, above). When the opt out payment was received, the Plans surrendered the GIC to Aurora.

9. Following the receipt of the first opt out payment and assuming no future payments from the enhancement trusts or from the holdback, each affected participant in the Plans will have lost approximately 42% of his/her account balance invested in the GIC as of the Conservation Date of April 11, 1991. The applicant represents that the realization of these losses and uncertainties surrounding the ELIC situation have caused substantial

[5] In this proposed exemption the Department expresses no opinion as to whether the acquisition and holding of the GIC violated any provisions of Part 4 of Title I of the Act.

[6] In October, 1992, the Secretary of Labor filed suit against Raymark Industries, Inc. (Raymark) and certain named fiduciaries in the U.S.District Court for Connecticut in a case now captioned *Robert B. Reich, Secretary of the U.S. Department of Labor v. Raymark Industries, Inc., et.al.*, Civil Action No. 5:92CV 614 (EBB). The suit named Raytech as a successor in liability to Raymark. The suit alleged the breach of fiduciary duties under the Act in connection with the purchase of a group annuity contract from ELIC to fund the benefits of three Raymark pension plans following an investigation that began in June, 1991. The Department notes that the exemption proposed herein is not intended to affect any cause of action by any participant of the Plans or the Department with respect to the GIC.

concern and anxiety among the Plans' participants. In order to relieve the affected participants' concerns, to protect the participants' accounts invested in the GIC, and to restore to the Plans the ability to fulfill obligations with respect to Withdrawal Events involving amounts invested in the GIC, Raytech desires to make up the losses the participants have suffered as a result of the investment in the GIC by way of the Makeup Payments. The Makeup Payments have been calculated as follows:

	Hourly	Salaried	Total
Accumulated Book Value on Conservation Date	$85,189	$1,689,590	$1,774,779
Interest Values Lost (April 11, 1991 to March 27, 1994)	23,332	463,167	486,499
Totals	108,521	2,152,757	2,261,278
Payments Made By ELIC	49,598	969,842	1,019,440
Makeup	58,923	1,182,915	1,241,838
Totals	108,521	2,152,757	2,261,278

The totals that should have been earned match the payments made by ELIC (Interim Payment plus first opt out payment) plus the Makeup Payment. (The totals will increase to account for interest at 6.19% up to the actual Makeup Payment date.)

The Makeup Payments, which are shown in the above chart, have been calculated in order to restore to the Plans the full Accumulated Book Value of the GIC as of March 27, 1994 (the date of the first opt out payment), which is $2,261,278. In addition, the applicant represents that it will pay interest to the Plans up to the actual Makeup Payment date at a rate of 6.19%, since funds invested in the GIC would have been rolled over by the Trustee into the Hartford Insurance Company GIC, having a guaranteed interest rate of 6.19% and expiring December 31, 1997.

10. Raytech is prepared and able to contribute the above-calculated Makeup Payments plus interest to the Plans to eliminate the participants' losses and future payment contingencies. The first opt out payments (including the Interim Payment) and the Raytech Makeup Payments will fully restore the participants' accounts. Immediately following the granting of the exemption proposed herein and the execution of a closing agreement with the Internal Revenue Service pursuant to Rev. Proc. 92–16, the Makeup Payment will be contributed directly to the Trustee, who is obligated under the terms of the Plans to invest the contribution directly into the Guaranteed Interest Fund. As future payments from the enhancement trusts or return of holdbacks are received, the Trustee is to pay such amounts over to Raytech to reimburse it for that portion of the Makeup Payments. The transaction can be characterized as a non-interest bearing loan by Raytech to the Plans requiring no security or collateralization.

11. The applicant represents that the losses suffered by the affected participants are known numbers since the Rehab Plan has been implemented and the payment has been made except for enhancement trusts and holdbacks. In the absence of the Makeup Payments, such participants stand to lose 42% of their account balances as of the Conservation Date of April 11, 1991 and interest since such date totaling approximately $1,242,000. To summarize, Raytech is proposing to make up the lost amounts and to cover the amounts not paid due to the enhancement trusts and the holdbacks under the Rehab Plan. Raytech is looking to recoup such amounts only to the extent that they are subsequently paid under the Rehab Plan.

12. In summary, the applicant represents that the proposed transactions will satisfy the criteria contained in section 408(a) of the Act because: (a) all terms of the transactions will be no less favorable to the Plans than those which the Plans could obtain in an arm's-length transaction with an unrelated party; (b) no interest and/or expenses will be paid by the plans; (c) the Makeup Payments will be made only in lieu of payments due from ELIC with respect to the accumulated book value of the GIC at the time of the Makeup Payments; (d) the Repayments are restricted to the GIC Proceeds; (e) the Repayments will not exceed the total amount of the Makeup Payments; and (f) the Repayments are waived to the extent the Makeup Payments exceed the GIC Proceeds.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Bally Manufacturing Corporation, Bally's Employee Savings Trust for Administrative, Employees, et al. (the Plans), Located in Chicago, IL

[Application Nos. D–9646 and D–9647]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed advance of funds (the Advances) to the master trust which was established to hold the assets of the Plans (the Master Trust) by Bally Manufacturing Corporation (the Employer), a party in interest with respect to the Plans and the Master Trust, and (2) the Master Trust's potential repayment of the Advances upon the receipt by the Master Trust of payments under two guaranteed investment contracts (the GICs) issued by Executive Life Insurance Company (Executive Life); provided the following conditions are satisfied:

(A) No interest or expenses are paid by the Plans in connection with the proposed transaction;

(B) The Advances will be repaid only out of amounts paid to the Master Trust by Executive Life, its successors, or any other responsible third party; and

(C) Repayment of the Advances is waived with respect to the amount by which the Advances exceed GIC proceeds.

Summary of Facts and Representations

1. The Employer is a Delaware Corporation with its principal place of

business located in Chicago, Illinois. The Plans are all defined contribution plans. The estimated number of participants in each of the Plans as of December 31, 1993 is:

a. Bally's Employee Savings Trust for Administrative Employees: 729

b. Bally's Employees Savings Trust for Club Employees: 4,775

c. Bally's Grand, Inc. Contributory Savings Plan: 1,269

d. Bally's Grand (GNOC Corp.) Retirement Savings Voluntary Participation Plan: 1,164

e. The Amended and Restated Bally's Park Place, Inc. Profit Sharing Plan: 2,162

2. The assets of all five Plans are held in the Master Trust. Each Plan holds units of participation representing an undivided interest in the assets of the Master Trust. As of December 31, 1993, the total amount of Plan assets held in the Master Trust was approximately $95,000,000. The terms of the Plans permit participants to direct the investment of their accounts under the Plans. Each of the Plans provides its participants the option of investing in any of six mutual funds managed by Fidelity Management and Research Company, including the Interest Income Fund. The GICs, which were acquired directly by the Master Trust, are considered part of the Interest Income Fund. The Interest Income Fund has investments in several guaranteed investment contracts. On April 4, 1989, the Master Trust acquired GIC A (#CGO 1318 A3A) from Executive Life for $4,000,000. GIC A provided for annual, guaranteed interest at the rate of 10.13%, with a maturity date of October 15, 1992. On July 3, 1989, the Master Trust acquired GIC B (#CGO 1331 A3A) from Executive Life for $3,000,000. GIC B provided for annual guaranteed interest at the rate of 9.01%, with a maturity date of October 15, 1993.

3. On April 11, 1991, Executive Life was placed into conservatorship by the Insurance Commissioner of the State of California. The Employer represents that Executive Life ceased payments on the GICs upon commencement of the conservatorship. The effect of the conservatorship has been to freeze all assets invested in the GICs. This freeze has prevented Plan participants from exercising their rights under the Plans to request distributions, loans, withdrawals and investment transfers with respect to amounts currently invested in the GICs.[7]

4. The Employer proposes to make the Advances to the Master Trust in a series of payments, pursuant to a written loan agreement (the Agreement). The total amount of Advances will not exceed the aggregate account balances of the Plans' participants attributable to the GICs as of April 11, 1991,[8] adjusted for interest, as follows: Commencing on the date the Employer and the Internal Revenue Service enter into a closing agreement pursuant to Internal Revenue Procedure 92–16,[9] interest will be credited at the rate paid on the Interest Income Fund.[10] The Employer represents that it wishes to enter into the proposed transaction in order to protect the Plan participants from the effects of a prolonged rehabilitation process and from any potential loss resulting from Executive Life's inability to meet its obligations under the GICs. In this regard, the Employer represents that the Plans' participants will benefit from the proposed transaction because the Advances will ensure that the participants receive 100% of the conservatorship date value of their accounts and such amounts will be available as soon as approval is received from the Internal Revenue Service and the Department.[11] The Employer further represents that the Advances will facilitate benefit distributions, loans, hardship withdrawals and investment transfers which would not otherwise be possible because of Executive Life's suspension of payments under the GICs. The Employer also represents that the Advances will be non-interest bearing and the Plan will not incur any expenses in connection with the proposed transaction.

5. Repayment of the Advances under the Agreement is limited to payments made to the Master Trust by or on behalf of Executive Life, or its successor, or any other responsible third parties. No other assets of the Master Trust will be available for repayment of the Advances. If the payments by or on behalf of Executive Life are not sufficient to fully repay the Advances, the Agreement provides that the Employer will have no recourse against the Plans or the Master Trust, or against any participants or beneficiaries of the Plans, for the unpaid amount. To the extent the Master Trust receives GIC proceeds in excess of the total amount of the Advances, such additional amounts will be retained by the Master Trust and allocated among the accounts of the Plans' participants.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The transaction will preserve the Plans' ability to timely fund participants' benefits, including participant loans, hardship withdrawals and participant-directed investment re-allocations; (2) The Master Trust will not incur any expenses with respect to the transaction; (3) Repayment of the Advances will be made only from amounts paid to the Master Trust by Executive Life, its successor, or any other third party; (4) If the payments by or on behalf of Executive Life are not sufficient to fully repay the Advances, the Employer will have no recourse against the Plans or the Master Trust, or against any participants or beneficiaries of the Plans, for the unpaid amount; and (5) Repayment of the Advances will be waived with respect to the amount by which the Advances exceed the amount the Master Trust receives from GIC proceeds.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the

[7] The Department notes that the decisions to acquire and hold the GICs are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GICs issued by Executive Life.

[8] The balances as of April 11, 1991 consist of contributions plus interest at the contract rate, less prior withdrawals.

[9] Internal Revenue Procedure 92–16 provides for a temporary closing agreement program to settle certain tax liabilities that arise out of transactions between an employer-sponsor and the trust of a qualified defined contribution plan.

[10] The Employer represents that the annualized rate of return on the Interest Income Fund for the period from April 1, 1993 through March 31, 1994 was 7.35%.

[11] The Department notes that the exemption, if granted, will not affect the ability of a participant or beneficiary to bring a civil action against Plan fiduciaries for breaches of section 404 of ERISA in connection with any aspect of the GIC transactions.

employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 22nd day of July 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 94–18265 Filed 7–26–94; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge and Advancement Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Dance Challenge Section) to the National Council on the Arts will be held on August 10, 1994 from 9:30 a.m. to 5:30 p.m. in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m. to 10:30 a.m. for welcome, introductions and a Challenge overview and from 5:00 p.m. to 5:30 p.m. for a policy discussion.

The remaining portions of this meeting from 10:30 to 5:00 p.m. 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 M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 21, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–18206 Filed 7–26–94; 8:45 am]

BILLING CODE 7537–01–M

Challenge and Advancement Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Local and State and Regional Arts Agency Challenge Section) to the National Council on the Arts will be held on August 3, 1994 from 10 a.m. to 5:30 p.m. This meeting will be held in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10 a.m. to 10:45 a.m. for opening remarks and a review of evaluation criteria.

The remaining portion of this meeting from 10:45 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 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 18, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–18205 Filed 7–26–94; 8:45 am]

BILLING CODE 7537–01–M

Challenge and Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Media Arts Challenge Section) to the National Council on the Arts will be held on August 17, 1994, in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506. This meeting will begin at 9 a.m. and adjourn when business is completed.

Portions of this meeting will be open to the public from 9 a.m. to 10 a.m. for introductory remarks and an overview of the Challenge Program and from 3:30 p.m. until business is completed, for a policy discussion.

The remaining portion of this meeting from 10 a.m. to 3:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, 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 21, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–18204 Filed 7–26–94; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Presenting Networks Section) to the National Council on the Arts will be held on August 22, 1994 from 9:00 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:00 p.m. to 5:30 p.m. for a policy and guidelines discussion.

The remaining portion of this meeting from 9:00 a.m. to 4:00 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment of the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 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 21, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–18207 Filed 7–26–94; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Presenting Organization A Section) to the National Council on the Arts will be held on August 23–26, 1994, 9 a.m. to 7 p.m. on August 23–25 and from 9 a.m. to 5 p.m. on August 26. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2 p.m. to 5 p.m. on August 26, for a policy discussion and guidelines review.

The remaining portion of this meeting from 9 a.m. to 7 p.m. on August 23 to 25, and from 9 a.m. to 2 p.m. on August 26, 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, TTY 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 21, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–18208 Filed 7–26–94; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

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 (Presenting Organizations B Section) to the National Council on the Arts will be held on August 30 to September 2, 1994 from 9 a.m. to 7 p.m. on August 30 to September 1 and from 9 a.m. to 5 p.m. on September 2. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 2, from 2 p.m. to 5 p.m. for a policy discussion and guidelines review.

The remaining portions of this meeting from 9 a.m. to 7 p.m. on August 30 to September 1, and from 9 a.m. to 2 p.m. on September 2 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 21, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–18209 Filed 7–26–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–139]

University of Washington; Environmental Assessment and Finding of No Significant Environmental Impact Regarding Proposed Renewal of Facility License No. R–73

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility License No. R–73 for the University of Washington Research Reactor (the licensee) located on the University campus in Seattle, Washington.

Environmental Assessment

Identification of Proposed Action

This Environmental Assessment is written in connection with the proposed renewal date of February 14, 1999, for the facility license of the University of Washington Research Reactor (UWRR) at Seattle, Washington, in response to a timely application from the licensee dated August 10 and 31, 1989, as modified on February 14 and May 2, 1994. The proposed action would authorize possession, but not operation, of the facility, for a period of five years.

Need for the Proposed Action

The license for the facility was due to expire on October 13, 1989. The licensee made a timely request for renewal as a possession only license on August 10 and 31, 1989, for a period of 20 years which was later modified on February 14, 1994 for a period of five years. The proposed action is required to authorize continued possession, but not operation, of the facility, so that the licensee can complete its decommissioning plan and ultimately decommission the reactor facility.

Alternatives to the Possession Action

An alternative to the proposed action that was considered was not renewing the license. This alternative would have led to possession of a facility and radioactive material without authorization by law. This alternative did not provide an acceptable way for the licensee to possess the facility prior to decomissioning, or for decommissioning the facility in a controlled, coordinated manner. The other alternative was to renew the license for possession only a period of one year, but this would require license renewals on an annual basis until decommissioning is completed.

Environmental Impact

The reactor is defueled and all special nuclear material and source material have been shipped offsite or transferred to the State license. The only remaining radioactivity at the facility is activated reactor components. There is no potential for generation of further radioactive materials. The extension of the facility license as a possession only license for a five year period allows the licensee time to complete its decommissioning plan and affords it a reasonable time to implement decommissioning. Further, providing additional time for the licensee to develop and implement the decommissioning plan should lessen the environmental impact, in that radioactive materials will continue to be depleted by the decay process and the licensee will have an opportunity to better plan and conduct decommissioning activities.

Alternatives Use of Resources

This action does not involve the use of any resources beyond those normally allocated for such activities.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for this proposed action.

For further details with respect to this action, see the licensee's request for a license renewal application dated August 10 and 31, 1989, as modified on February 14 and May 2, 1994. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 21st day of July 1994.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–18249 Filed 7–26–94; 8:45 am]

BILLING CODE 7590–01–M

Proposed Generic Communication; Information on NRC/Licensee Safeguards Meeting/Workshop on Revisions to 10 CFR Part 73 To Protect Against Malevolent Use of Vehicles at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: On June 30, 1994, the Commission approved a final rule revising 10 CFR Part 73 associated with protection against malevolent use of vehicles at nuclear power plants. The rule change modifies the design basis threat for radiological sabotage to include use of a land vehicle. The rule change also requires vehicle control measures, including vehicle barrier systems, to protect against the malevolent use of a land vehicle. The vehicle barrier system design requires that the system stop the forward motion of the design basis vehicle.

As part of the implementation of this rule change, the NRC staff is publishing Regulatory Guide 5.68, "Protection Against Malevolent Use of Vehicles at Nuclear Power Plants," and NUREG/CR–6190, "Protection Against

Malevolent Use of Vehicles at Nuclear Power Plants," Volumes 1 and 2. These documents were specifically developed to provide guidance acceptable to the NRC staff by which a licensee can meet the requirements of the revised 10 CFR Part 73. The Office of Nuclear Reactor Regulation will conduct one-day technical workshops in each of the NRC Regional offices to discuss Regulatory Guide 5.68 and NUREG/CR–6190, Volumes 1 and 2, and address implementation of the rule change.

DATE AND LOCATION: The NRC Region I meeting will be held on August 18, 1994, from 8:30 a.m. to 5:00 p.m. at the regional office located at 475 Allendale Road, King of Prussia, Pennsylvania.

The NRC Region II meeting will be held on August 9, 1994, from 8:30 a.m. to 5:00 p.m. at the regional office located at 101 Marietta Street, Suite 2900, Atlanta, Georgia.

The NRC Region III meeting will be held on August 16, 1994, from 8:30 a.m. to 5:00 p.m. at the regional office located at 801 Warrenville Road, Lisle, Illinois.

The NRC Region IV meeting will be held on August 11, 1994, from 8:30 a.m. to 5:00 p.m. at the regional office located at 611 Ryan Plaza Drive, Suite 400, Arlington, Texas.

DIRECT QUESTIONS TO: Robert J. Dube, United States Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555, Telephone (301) 504–2912.

SUPPLEMENTARY INFORMATION: This meeting between the NRC technical staff and licensees is closed to members of the public or other parties due to the fact that Safeguards Information will be discussed. An unclassified summary of the meeting will be prepared and will be available upon request.

The regional conference rooms can accommodate up to three representatives from each facility. It is requested that each licensee planning to send representatives to the workshop provide the names of the attendees to Elaine Koup at (301) 504–2932 or Catherine Berney at (301) 504–2933 by August 8, 1994. If a licensee desires to send more than three representatives, they may contact Ms. Koup after August 4 for additional spaces, if available.

Dated at Rockville, Maryland, this 21st day of July 1994.

Douglas V. Pickett,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulations.

[FR Doc. 94–18250 Filed 7–26–94; 8:45 am]

BILLING CODE 7590–01–M

Availability of Staff Technical Position on Consideration of Fault Displacement Hazards in Geologic Repository Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of NUREG–1494, "Staff Technical Position (STP) on Consideration of Fault Displacement Hazard in Geologic Repository Design."

ADDRESSES: Copies of NUREG–1494, including the staff disposition of comments, can be purchased from Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of NUREG–1494 is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level) NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Anne E. Garcia, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, 11545 Rockville Pike, MD 20852. Telephone: (301) 415–6631.

SUPPLEMENTARY INFORMATION: NRC regulations for the disposal of spent nuclear fuel and high-level radioactive waste in a geologic repository recognize that prohibit designing the repository against the effects of such a potentially adverse condition. The STP recognizes the acceptability of designing the geologic repository to take into account the attendant effects (e.g., displacement) of faults of regulatory concern and express the staff's views on what is needed from the U.S. Department of Energy if it chooses to locate structures, systems, and components important to safety or important to waste isolation in areas that contain faults of regulatory concern.

On March 18, 1993, NRC published the "Notice of Availability" for the draft STP in the **Federal Register** (see 58 FR 14594) and solicited public comments. As a result, more than 25 comments were received from four different parties. The NRC staff reviewed these comments and, as a result, changes and clarifications were incorporated into the STP. Staff responses to these comments are documented separately as Appendix C to NUREG–1494.

On March 24, 1994, the NRC staff briefed the Advisory Committee on Nuclear Waste (ACNW) on the revised STP following the end of the public comment period. As a result, the ACNW recommended, without additional comment, that the staff publish the STP in final form.

Dated at Rockville, Maryland, this 20th day of July 1994.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–18251 Filed 7–26–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–317 and 50–318]

Baltimore Gas & Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–53 and DPR–69, issued to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated March 23, 1994, for an exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage." The requested exemption would allow the implementation of a hand geometry biometric system of site access control in conjunction with photograph identification badges, and would allow the badges to be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55(a), the licensee is required to establish and maintain an onsite physical protection system and security organization.

The Code of Federal Regulations at 10 CFR 73.55(d), "Access Requirements," specifies in part that: "The licensee shall control all points of personnel and vehicle access into a protected area." The Code of Federal Regulations at 10 CFR 73.55(d)(5), specifies in part that: "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without

escort." It further indicates that an individual not employed by the licensee (e.g., contractors) may be authorized access to protected areas without an escort provided the individual, "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area."

Currently, unescorted access for both employee and contractor personnel into the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, is controlled through the use of picture badges. Positive identification of personnel who are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. The picture badges are issued, stored, and retrieved at the entrance/exit location to the protected area. These picture badges are not taken offsite. This current practice is in accordance with the applicable requirements of 10 CFR Part 73 discussed above.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area. The proposal would also allow all individuals, including contractors, who have unescorted access to keep their picture badges in their possession when departing the Calvert Cliffs site. Thus, an exemption is required from 10 CFR 73.55(d)(5) to allow contractors who have unescorted access to keep their picture badges in their possession when departing the Calvert Cliffs site.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed action. In addition to their picture badges, all individuals with authorized unescorted access will have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badges to gain access into the protected area, but must also have their hand geometry confirmed.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. The proposed system is only for individuals with authorized unescorted access and will not be used for individuals requiring escorts.

The underlying purpose for requiring that individuals not employed by the licensee must receive and return their picture badges at the entrance/exit is to provide reasonable assurance that the access badges could not be compromised or stolen with a resulting risk that an unauthorized individual could potentially enter the protected area. Although the proposed exemption will allow individuals to take their picture badges offsite, the proposed measures require not only that the picture badge be provided for access to the protected area, but also that verification of the hand geometry registered with the badge be performed as discussed above. Thus, the proposed system provides an identity verification process that is equivalent to the existing process.

Accordingly, the Commission concludes that the exemption to allow individuals not employed by the licensee to take their picture badges offsite will not result in an increase in the risk that an unauthorized individual could potentially enter the protected area. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed action.

The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Denial of the requested action would not significantly enhance the environment in that the proposed action will result in a process that is equivalent to the existing identification verification process.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the April 1973 Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

The NRC staff consulted with the State of Maryland, Department of Natural Resources, regarding the environmental impact of this proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated March 23, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 19th day of July 1994.

For the Nuclear Regulatory Commission.

Francis J. Williams,

Acting Project Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-18248 Filed 7-26-94; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34420; File No. SR-NASD-94-14]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Application for Membership in the National Association of Securities Dealers, Inc.

July 20, 1994.

On May 4, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to

[1] The NASD amended the proposed rule change three times subsequent to its original filing on March 11, 1994. The first amendment changed the requirement that an applicant for membership in the NASD submit a copy of its "current submission to the Securities and Exchange Commission pursuant to Rule 15b1-2(c) under the Securities Exchange Act of 1934" to require that the applicant submit "Form BD filed with the Central Registration Depository." This amendment is technical in nature in that it corrects a deficiency that arose out of the 1992 amendments to the broker-dealer registration process which deleted Rule 15b1-2(c) and requires that Form BD be submitted to the NASD. *See* Securities Exchange Act Release No. 31660 (Dec. 28, 1992), 58 FR 11 (Jan. 4, 1993) (adoption of rule

Continued

Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder.[3] The rule change amends Sections 1(b) and 1(c) to Article III of the NASD By-Laws and Schedule C to the By-Laws to clarify the process by which an applicant applies for membership in the NASD.

Notice of the proposed rule change together with its terms of substance was provided by issuance of a Commission release and by publication in the **Federal Register.**[4] No comments were received in response to the Commission release. This order approves the proposed rule change.

I. Description of the Rule Change

The NASD seeks to amend its By-Laws and Rules with respect to the procedural aspects of the membership application process. The NASD has identified instances where its By-Laws and rules are inconsistent and where its actual practices are inconsistent with its rules. This rule change corrects these aberrations and further clarifies the membership application process.

A. Amendments Concerning the Role of the District Committee in the Membership Application Process

The NASD By-Laws currently provide that any application for membership shall be referred to the District Committee of the NASD district in which the applicant has its principal place of business. The By-Laws further provide that the appropriate District Committee shall determine whether the applicant satisfies the NASD's admission requirements.[5] In contrast, the NASD's rules, Schedule C to the By-Laws, provide that the District Office staff initially determine an applicant's eligibility for membership. The rules do, however, further set forth procedures for review by the District Committee, upon request by the applicant, of the District Office's determination.[6]

According to the NASD, the actual practice is for the appropriate District Committee to determine an applicant's eligibility for membership. The NASD has determined to amend its By-Laws and Schedule C to allow each District Committee to designate a Subcommittee to act, under limited circumstances, on behalf of the District Committee. The proposed rule change, therefore, amends the NASD By-Laws and Schedule C to provide that all initial applications for membership be reviewed by either the District Committee or a Subcommittee of the District Committee, with a right of appeal to the full District Committee.[7]

B. Amendments to Schedule C

The NASD has also submitted ministerial amendments to Schedule C designed to clarify the NASD's procedures concerning the application process. These include amendments to Part I of Schedule C to the By-Laws:

Subsection (1)(a), clarifying that an applicant must provide other relevant information and documents requested by the District Office staff;

Subsection (1)(a)(6), clarifying that an applicant must provide other relevant information and documents requested by the District Office staff;

Subsection (1)(b), clarifying that the scheduling of an applicant's pre-membership interview and the determination of which responsible personnel shall appear on behalf of the applicant at such interview will be determined by the District Office staff;

Subsection (2)(a) clarifying that it is the determination of the designated Subcommittee, rather than the District Office, which will be reviewed by the District Committee upon request of the applicant;

Subsection (2)(a) clarifying that the applicant's request for review must be filed within 15 calendar days after notification of the Subcommittee's determination;

Subsection (2)(b) clarifying that, in connection with review by the District Committee, an applicant is entitled to appear before a Hearing Subcommittee of the District Committee and that no member of the District Committee who served as a member of the Subcommittee originally designated to review the applicant's submission and no member of the Hearing Subcommittee shall participate in the determination resulting from the District Committee's review;

Subsection (2)(c) clarifying that the District Committee's determination of the record developed before it shall be made independent of the determination of the Subcommittee designated by the District Committee;

Subsection (2)(d) clarifying that the District Committee's determination shall be subject to review by the National Business Conduct Committee ("NBCC") upon request made by the applicant filed within 15 calendar days after the date of notification to the applicant by the District Committee of its determination;

Subsection (2)(e) clarifying that in connection with review by the NBCC, the applicant has the right to appear before a Subcommittee of the NBCC;

Subsection (2)(f) clarifying that the NBCC's determination of the record developed before it shall be made independent of the determination of the Subcommittee designated by the District Committee, and shall constitute final action for the NASD for purposes of Subsection (2)(h) to Part I of Schedule C to the By-Laws unless called for discretionary review by the Board of Governors;

Subsection (2)(f) clarifying that a decision by the Board pursuant to its power of discretionary review shall constitute final action for purposes of Subsection (2)(h) to Part I of Schedule C to the By-Laws and that such determination and its rationale shall be communicated to the applicant in writing;

New subsection (2)(g) clarifying that review by the Board of Governors of NBCC determinations is discretionary[8] and may occur solely at the request of one or more governors and not at the request of the applicant;

Subsection (2)(h) (formerly subsection (2)(g)) clarifying that an applicant may apply for review to the Commission of any determination by the NBCC or the Board;

Subsection (2)(i) (formerly subsection (2)(h)) clarifying that it applies to determinations of restrictions placed on the applicant made by the NBCC or a Subcommittee designated by the District Committee, as well as to such determinations made by the Board or a District Committee;

Subsection (3)(a) clarifying that review and removal or modification of restrictions placed on the applicant shall be done by a Subcommittee designated by the District Committee;

Subsection (3)(b) clarifying that modifications of restrictions shall be subject to review by the District Committee and the NBCC, as well as by the Board and the Commission; and

Subsection (3)(c) clarifying that the refusal by a Subcommittee designated by the District Committee to remove or modify restrictions

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amendments to broker-dealer registration and reporting requirements).

The second amendment reflected the results of the NASD membership vote concerning the NASD's proposed rule change. The change was submitted to a vote of the NASD membership in NASD *Notice to Members* 94–22 (Apr. 1994), and was approved by the membership, as required by Article XVII, Section 1 of the NASD By-Laws, by a vote of 1,879 in favor, 161 opposed, and 6 not voting out of 2,046 ballots received.

Finally, the third amendment provided minor wording changes to Schedule C of the Schedules to the By-Laws, Part I, Section 2(f) and further clarified the NASD's basis for proposing certain other changes; this amendment was technical in nature and did not have any substantive impact.

[2] 15 U.S.C. § 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1994).

[4] Securities Exchange Act Release No. 34156 (June 3, 1994), 59 FR 29839 (June 9, 1994).

[5] *NASD Manual*, By-Laws, Art. III, Secs. 1(b) & (c), (CCH) ¶ 1311.

[6] *Id.*, Schedules to the By-Laws, Schedule C, Part I, Secs. (1) & (2), (CCH) ¶ 1783.

[7] The NASD has also amended the By-Laws by deleting the explicit requirement that determinations of the District Committee (and now Subcommittees designated by the District Committee) be made by a majority of its members. The NASD indicated that it removed this requirement because it believes that the requirement that a determination be made by a vote presumes that the vote will be a majority of the members of the District Committee or Subcommittee designated by the District Committee. File No. SR–NASD–94–14, Amendment No. 3.

[8] This discretionary review of the Board shall be in accordance with the resolutions of the Board governing the review of NBCC determinations. The Board may affirm, reverse or modify an NBCC decision. The commencement of the review shall operate as a stay of any action by the Subcommittee designated by the District Committee and any determination by the NBCC until a decision is reached by the Board.

shall also be subject to review, but only upon request of the member filed with the District Committee within ten calendar days after the date of notification of such refusal.

II. Discussion

The Commission has determined to approve the NASD's proposal. The Commission believes that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(8) of the Act.[9] Section 15A(b)(8) requires, in part, that the rules of the NASD be designed to provide a fair procedure concerning the denial of membership in the NASD and prohibiting or limiting access to services of the NASD.

This rule change clarifies the NASD's membership application process by eliminating the inconsistencies between the NASD's by-Laws and the Schedules to the By-Laws concerning the administration of this process. In addition, this rule change clarifies the procedures set forth in the Schedules to the By-Laws for accepting, denying or accepting with limitations an application for membership.

III. Conclusion

In conclusion, for the reasons stated above, the Commission finds that the rule change is designed to provide a fair procedure concerning the denial of membership in the NASD and prohibiting or limiting access to services of the NASD. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-94-14 be, and hereby is, approved.

For the Commission, by the Division of Marker Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-18252 Filed 7-26-94; 8:45 am]

BILLING CODE 8010-01-M

[9] 15 U.S.C. 78o-3(b)(8).

[10] 17 CFR 200.30-3(a)(12).

Release No. 34-34416; File No. SR-Amex-94-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Exchange, Inc., Relating to Amendments to Rule 205 (Odd-Lot Orders).

July 21, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 12, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 Amex proposes to amend Rule 205 (Manner of Executing Odd-Lot Orders) (1) to provide that no differential shall be charged on odd-lot order transactions (except for non-regular way trades); (2) to revise provisions relating to the price at which certain odd-lot limit orders shall be executed, and (3) to delete, reposition or re-number various provisions relating to specific types of odd-lot orders.

The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 205 relating to the execution of odd-lot orders (1) to eliminate the odd-lot differential for market and limit orders; (2) amend provisions relating to the price at which odd-lot limit orders are executed; and (3) delete, reposition or re-number various provisions relating to specific types of odd-lot orders in Rule 205, Section B.

Under current Exchange rules, market odd-lot orders to buy or sell, as well as marketable limit orders, are executed with no differential charged.[1] However, a differential may be charged in connection with executions of odd-lot limit orders, market orders to sell marked "short," stop orders, and other types of orders (*e.g.*, orders to buy or sell "at the close"). In order to enhance the competitiveness of Exchange odd-lot execution procedures, the Exchange has determined to require the execution of all odd-lot market or limit orders (except for non-regular way executions under proposed Section C(2) of the rule) without a differential.

Rule 205, Section A(2) would require that limited orders to buy (sell) be executed at the price of the first round lot transaction which is at or below (above) the specified limit price (the "effective transaction" price). Sell limited orders marked "short" would be executed at the price of the first round lot transaction which is at or above the specified limit and which is also higher than the last different round lot transaction price (a "plus" or "zero-plus" tick). Marketable limit orders would continue to be executed in accordance with procedures applicable to market orders.

Provisions relating to orders that are infrequently or never entered (*i.e.*, limited orders to buy an offer, sell on bid, "immediate or cancel"; buy or sell marked "or on close") would be deleted. Provisions relating to "seller's option" or cash trades in Section C would be deleted and subsumed by new Section C(2) (Non-Regular Way Trades). A differential could be charged on such executions.

2. Statutory Basis

The proposed rule change will advance the objectives of Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with

[1] Procedures for executing odd-lot market orders are currently being implemented on a pilot basis, extended until August 8, 1994. *See* Securities Exchange Act Release No. 33584 (February 7, 1994), 59 FR 6983 (February 14, 1994).

respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order 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 NW., 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 maybe 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–15 and should be submitted by August 17, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 94–18253 Filed 7–26–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Incorporated

July 21, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Fruehauf Trailer Corp.
Common Stock, $.01 Par Value (File No. 7–12698)
Signal Apparel Co.
Common Stock, $.01 Par Value (File No. 7–12699)
McDonald's Corporation
Common Stock, No Par Value (File No. 7–12700)
Telefonica de Argentina S.A.
American Depositary Shares (File No. 7–12701)
Case Equipment Corp.
Common Stock, $.01 Par Value (File No. 7–12702)
AGCO Corp.
Common Stock, $.01 Par Value (File No. 7–12703)
Daimler Benz-A.G.
Rights (exp. July 5, 1994) (File No. 7–12704)
Energy Service Co., Inc.
Common Stock, $.10 Par Value (File No. 7–12705)
New American High Income Fund, Inc.
Rights (exp. July 22, 1994) (File No. 7–12706)
Norsk Hydro A.S.
Rights (exp. July 16, 1994) (File No. 7–12707)
Revco D.S., Inc.
Rights (exp. July 7, 1994) (File No. 7–12708)
RMI Titanium Co.
Rights (exp. July 22, 1994) (File No. 7–12709)
Sunrise Medical, Inc.
Common Stock, $1.00 Par Value (File No. 7–12710)
Vastar Resources, Inc.
Common Stock, $.01 Par Value (File No. 7–12711)
Viacom, Inc.
Contingent Value Right (File No. 7–12712)
Viacom Inc.
3-Year Warrant to Purchase, Class B Common Stock, $.01 Par Value (File No. 7–12713)
Viacom, Inc.
5-year Warrant to Purchase, Class B Common Stock, $.01 Par Value (File No. 7–12714)
Viacom, Inc.
8% Exchange Sub. Debentures due 2006 (File No. 7–12715)
Santa Fe Pacific Gold Corp.
Common Stock, $.01 Par Value (File No. 7–12716)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reported system.

Interested persons are invited to submit on or before August 11, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–18217 Filed 7–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20423; 811–4936]

Investors Preference Fund for Income, Inc.; Notice of Application for Deregistration

July 21, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Investors Preference Fund for Income, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 30, 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 applicant 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 15, 1994 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 41 State Street, Albany, New York 12207.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 942–0565, or Barry D. Miller, Senior Special Counsel, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Washington corporation. On December 15, 1986, applicant registered under section 8(a) of the Act and filed a registration statement under section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective and applicant commenced its initial public offering on May 8, 1987.

2. According to applicant's Combined Proxy Statement/Prospectus dated February 16, 1994, in January 1994, First Albany Asset Management Corporation ("First Albany"), applicant's investment adviser, entered into an asset purchase agreement (the "Asset Purchase Agreement") with Key Trust Company ("Key Trust"). Pursuant to the Asset Purchase Agreement, Key Trust would acquire substantially all of the assets of First Albany related to the management of applicant.

3. Consummation of the Asset Purchase Agreement was conditioned upon applicant's Board of Directors approving the plan of reorganization described below. On January 10, 1994, applicant's Board of Directors approved a plan of reorganization whereby applicant agreed to transfer substantially all of its assets and certain of its liabilities to the Victory Fund for Income Portfolio (the "Acquiring Fund"), a newly-created series of The Victory Fund in exchange for shares of the Acquiring Fund. According to the Combined Proxy Statement/Prospectus, the Board of Directors determined that the facilities and resources of Key Trust would be a benefit to applicant and its shareholders. The Board of Directors also determined, among other things, that the opportunity to exchange shares of applicant for shares of the other 11 portfolios of the Victory Fund would be an added advantage to applicant's shareholders.

4. Proxy materials related to the reorganization were filed wit the SEC and distributed to shareholders on or about February 28, 1994. On April 22, 1994, holders of more than two-thirds of the outstanding voting shares of applicant approved the reorganization.

5. On April 30, 1994, applicant had 4,031,059 shares outstanding and total net assets of $39,440,911 and a net asset value per share of $9.78.

6. As of April 30, 1994, applicant transferred substantially all of its assets and certain of it liabilities of the Acquiring Fund in exchange for full and fractional shares of the Acquiring Fund. Each of applicant's shareholders received as a liquidating distribution shares of the Acquiring Fund in the same dollar amount as the shares of applicant held by such shareholder immediately prior to the effective date of the reorganization, plus the right to receive any unpaid dividends or distributions declared before the effective date of the reorganization.

7. The cost of preparing, filing, and distributing registration and proxy materials necessary to obtain shareholder approval of the reorganization was borne by the Acquiring Fund's and applicant's managers. No cost of the reorganization was borne by applicant.

8. As of the date of the application, applicant had retained $5,777 in cash to pay its remaining liabilities. Applicant has no shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

9. Applicant intends to file Articles of Dissolution under Washington State law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–18254 Filed 7–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20422; 811–6159]

Investors Preference NY Tax-Free Fund, Inc.; Notice of Application for Deregistration

July 21, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Investors Preference NY Tax-Free Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 30, 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 applicant 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 15, 1994 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 41 State Street, Albany, New York 12207.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 942–0565, or Barry D. Miller, Senior Special Counsel, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified open-end management investment company organized as a Washington corporation. On August 23, 1990, applicant registered under section 8(a) of the Act and filed a registration statement under section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective and applicant commenced its

initial public offering on February 7, 1991.

2. According to applicant's Combined Proxy Statement/Prospectus dated February 16, 1994, in January 1994, First Albany Asset Management Corporation ("First Albany"), applicant's investment adviser, entered into an asset purchase agreement (the "Asset Purchase Agreement") with Key Trust Company ("Key Trust"). Pursuant to the Asset Purchase Agreement, Key Trust would acquire substantially all of the assets of First Albany related to the management of applicant.

3. Consummation of the Asset Purchase Agreement was conditioned upon applicant's Board of Directors approving the plan of reorganization described below. On January 10, 1994, applicant's Board of Directors approved a plan of reorganization whereby application agreed to transfer substantially all of its assets and certain of its liabilities to the Victory NY Tax-Free Portfolio (the "Acquiring Fund"), a newly-created series of The Victory Fund in exchange for shares of the Acquiring Fund. According to the Combined Proxy Statement/Prospectus, the Board of Directors determined that the facilities and resources of Key Trust would be a benefit to applicant and its shareholders. The Board of Directors also determined, among other things, that the opportunity to exchange shares of applicants for shares of the other 11 portfolios of the Victory Fund would be an added advantage to applicant's shareholders.

4. Proxy materials related to the reorganization were filed with the SEC and distributed to shareholders on or about February 28, 1994. On April 22, 1994, holders of more than two-thirds of the outstanding voting shares of applicant approved the reorganization.

5. On April 30, 1994, applicant had 1,782,572 shares outstanding and total net assets of $22,795,947 and a net asset value per share of $12.79.

6. As of April 30, 1994, applicant transferred substantially all of its assets and certain of its liabilities to the Acquiring Fund in exchange for full and fractional shares of the Acquiring Fund. Each of applicant's shareholders received as a liquidating distribution shares of the Acquiring Fund in the same dollar amount as the shares of applicant held by such shareholder immediately prior to the effective date of the reorganization, plus the right to receive any unpaid dividends or distributions declared before the effective time of the reorganization.

7. The cost of preparing, filing, and distributing registration and proxy materials necessary to obtain shareholder approval of the reorganization was borne by the Acquiring Fund's and applicant's managers. No cost of the reorganization was borne by applicant.

8. As of the date of the application, applicant had retained $3,630 in cash to pay its remaining liabilities. Applicant has no shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

9. Applicant intends to file Articles of Dissolution under Washington State law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–18255 Filed 7–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20420; 812–9044]

SIT Mutual Funds, Inc., et al.; Notice of Application

July 21, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: SIT Mutual Funds, Inc., SIT Mutual Funds II, Inc., SIT Growth Fund, Inc., SIT Growth & Income Fund, Inc., SIT U.S. Government Securities Fund, Inc., SIT Money Market Fund, Inc., and SIT Investment Associates, Inc. ("SIT Investment").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act that would grant an exemption from section 12(d)(1)(A)(ii), under sections 6(c) and 17(b) that would grant an exemption from section 17(a), and under rule 17d–1 to permit certain transactions in accordance with section 17(d) of the Act and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit certain money markets funds to sell their shares to affiliated investment companies. Applicants request that any order also apply to other registered investment companies that are now or in the future advised by SIT Investment.[1]

FILING DATE: The application was filed on June 7, 1994, and amended on July 11, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1994, and should be accompanies by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 4600 Norwest Center, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 942–0578, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. SIT Mutual Funds, Inc., SIT Mutual Funds II, Inc., SIT Growth Fund, Inc., SIT Growth & Income Fund, Inc., SIT U.S. Government Securities Fund, Inc., and SIT Money Market Fund, Inc. (collectively, the "SIT Group") are open-end management investment companies. The SIT Group currently offers eleven series (each a "Fund"). One of the Funds is a money market fund subject to the requirements of rule 2a–7 under the Act (together with any future money market portfolios, the "Money Market Funds"). The other ten Funds are non-money markets funds (together with any future non-money market funds, the "Non-Money Market Funds").

2. SIT Investment is the investment adviser for the SIT Group. Sit/Kim International Investment Associates, Inc. serves as sub-adviser for two of the Funds (together with SIT Investment and any future sub-adviser to a Fund, the "Investment Advisers." SIA Securities Corp. serves as principal underwriter for the Funds. Norwest Bank Minnesota, N.A. serves as transfer agent and custodian to the Funds. At the present time, each of the Funds is offered without any sales charge,

[1] All existing investment companies that presently intend to rely on the requested order are named as applicants.

redemption fee, or rule 12b–1 or shareholder servicing fee.

3. The Money Market Funds seek current income, liquidity, and capital preservation by investing exclusively in short-term money market instruments, such as U.S. government securities, bank obligations, commercial paper, municipal obligations, or repurchase agreements secured by government securities. These short-term debt securities are valued at their amortized cost pursuant to the requirements of rule 2a–7. The Non-Money Market Funds invest in a variety of debt and/or equity securities in accordance with their respective investment objectives and policies. Each of the Funds has, or may be expected to have, uninvested cash in an account with the custodian. This cash either may be invested directly in individual short-term money market instruments or may not be otherwise invested in any portfolio securities.

4. Applicants seek the ability for (a) the Funds to utilize their cash reserves that have not been invested in portfolio securities to purchase shares of the Money Market Funds (each Fund, including Money Market Funds, purchasing shares of the Money Market Funds is an "Investing Fund") and (b) the Money Market Funds to sell or redeem their shares to or from each Investing Fund. By investing cash balances in the Money Market Funds as proposed, applicants believe that the Investing Fund will be able to combine their cash balances and thereby (a) reduce their transaction costs, since transaction costs currently incurred by the Investing Funds in connection with the short term investment of their uninvested cash would be avoided; (b) create more liquidity; (c) enjoy greater returns; and (d) further diversify their holdings. The policies of the Funds either permit or will be amended (pursuant to shareholder vote if required) to permit the Funds to purchase money market instruments, including shares of a Money Market Fund.

5. The shareholders of the Investing Funds would not be subject to the imposition of double management fees. Applicants would cause each Investment Adviser and its respective affiliates to remit to the respective Investing Funds or waive investment advisory and any other fees these service providers earn as a result of the Investing Funds' investments in the Money Market Funds to the extent the fees are based upon the Investing Funds' assets invested in shares of the Money Market Funds. Further, no sales charge, contingent deferred sales charge, 12b–1 fee, or other underwriting or distribution fee would be charged by the Money Market Funds with respect to the purchase or redemption of their shares. If a Money Market Fund offers more than one class of shares, each Investing Fund will invest only in the class with the lowest expense ratio at the time of the investment.

6. Several of the Funds have contractual or voluntary expense cap arrangements with SIT Investment for the purpose of keeping each Fund's total expenses below a certain predetermined percentage amount ("Expense Waiver"). To the extent actual expenses of the Funds exceed these caps, SIT Investment waives its advisory fee or reimburses a Fund in the amount of the excess. Any applicable Expense Waiver will not limit the advisory and other fee waiver or remittance discussed above.

7. Applicants also request relief that would permit the Funds to invest uninvested cash in a Money Market Fund in excess of the percentage limitations set out in section 12(d)(A)(ii) of the Act. Section 12(d)(A)(ii) prohibits a registered investment company from acquiring the securities of another investment company if, immediately thereafter, the acquiring company would have more than 5% of its total assets invested in the securities of the selling company. Applicants propose that each Fund be permitted to invest in shares of a single Money Market Fund so long as each Fund's aggregate investment in such Money Market Fund does not exceed the greater of 5% of such Fund's total net assets or $2.5 million. Applicants will comply with all other provisions of section 12(d)(1).

Applicants' Legal Analysis

1. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person, acting as principal, to sell or purchase any security to or from such investment company, Because each Fund may be deemed to be under common control with the other Funds, it may be an "affiliated person," as defined in section 2(a)(3) of the Act, of the other Funds. Accordingly, the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of such shares from the Investing Funds, would be prohibited under section 17(a).

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general policy of the Act. Section 17(b) could be interpreted to exempt only a single transaction. However, the Commission, under section 6(c) of the Act, may exempt a series of transactions that otherwise would be prohibited by section 17(a).

3. The Investing Funds will retain their ability to invest their cash balances directly into money market instruments if they believe they can obtain a higher return. Each of the Money Market Funds has the right to discontinue selling shares to any of the Investing Funds if its board of trustees determines that such sales would adversely affect the portfolio management and operations of such Money Market Fund. Therefore, applicants believe that the proposal satisfies the standards for relief.

4. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Each Investing Fund, by purchasing shares of the Money Market Funds; each Investment Adviser of an Investing Fund, by managing the assets of the Investing Funds invested in the Money Market Funds; and each of the Money Market Funds, by selling shares to the Investing Funds, could be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d)(1) and rule 17d–1.

5. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. Applicants believe that the proposal satisfies these standards.

6. Section 12(d)(1), as noted above, sets certain limits on an investment company's ability to invest in the shares of another investment company. The perceived abuses section 12(d)(1) sought to address include undue influence by an acquiring fund over the management of an acquired fund, layering of fees, and complex structures. Applicants believe that none of these concerns are

presented by the proposed transactions and that the proposed transactions meet the section 6(c) standards for relief.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, or distribution fee under a plan adopted in accordance with rule 12b–1.

2. Applicants will cause the Investment Advisers and their respective affiliates, in their capacities as service providers for the Money Market Funds, to remit to the respective Investing Fund or waive an amount equal to all fees received by them or their affiliates under their respective agreements with the Money Market Funds to the extent such fees are based upon the Investing Fund's assets invested in shares of the Money Market Funds. Any of these fees remitted or waived will not be subject to recoupment by the Funds' Investment Advisers or their respective affiliates at a later date.

3. For the purpose of determining any amount to be waived and/or expenses to be borne to comply with any Expense Waiver, the adjusted fees for an Investing Fund (gross fees minus Expense Waiver) will be calculated without reference to the amounts waived or remitted pursuant to condition 2. Adjusted fees then will be reduced by the amount waived pursuant to condition 2. If the amount waived pursuant to condition 2 exceeds adjusted fees, the Investing Fund's Investment Adviser also will reimburse the Investing Fund in an amount equal to such excess.

4. Each of the Investing Funds will be permitted to invest uninvested cash in, and hold shares of, a Money Market Fund only to the extent that the Investing Fund's aggregate investment in such Money Market Fund does not exceed the greater of 5% of the Investing Fund's total net assets or $2.5 million.

5. The Investing Funds will vote their shares of each of the Money Market Funds in the same proportion as the votes of all other shareholders in such Money Market Funds.

6. The Investing Funds will receive dividends and bear their proportionate shares of expenses on the same basis as other shareholders of such Money Market Funds. A separate account will be established in the shareholder records of each of the Money Market Funds for each of the acquiring Investing Funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–18256 Filed 7–26–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Sterling Electronics Corporation, Common Stock, $0.50 Par Value) File No. 1–5522

July 21, 1994.

Sterling Electronics Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on July 13, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for the common stock.

Any interested person may, on or before August 11, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–18218 Filed 7–26–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Watsco, Inc., Common Stock, $0.50 Par Value); File No. 1–5581

July 21, 1994.

Watsco, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on June 16, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for the common stock.

Any interested person may, on or before August 11, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–18219 Filed 7–26–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2729]

Alabama; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 8, 1994, I find that the Counties of Barbour, Coffee, Covington, Dale, Geneva, Henry, Houston, and Randolph in the State of Alabama constitute a disaster area as a result of damages caused by severe storms and flooding resulting from Tropical Storm Alberto on July 2, 1994, and continuing. Applications for loans for physical damage may be filed until the close of business on September 6, 1994, and for loans for economic injury until the close of business on April 10, 1995, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bullock, Butler, Chambers, Clay, Cleburne, Conecuh, Crenshaw, Escambia, Pike, Russell, and Tallapoosa in the State of Alabama.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.125
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	7.125
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 272906 and for economic injury the number is 829400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 14, 1994.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 94–18238 Filed 7–26–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2730]

Florida; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 10, 1994, I find that the Counties of Calhoun, Gulf, Holmes, Jackson, Walton, and Washington in the State of Florida constitute a disaster area as a result of damages caused by severe storms and flooding resulting from Tropical Storm Alberto on July 2, 1994, and continuing. Applications for loans for physical damage may be filed until the close of business on September 8, 1994, and for loans for economic injury until the close of business on April 10, 1995, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bay, Franklin, Gadsden, Liberty, and Okaloosa in the State of Florida.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.125
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	7.125
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 273006 and for economic injury the number is 829500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 14, 1994.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 94–18239 Filed 7–26–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2728]

Georgia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 7, 1994, and amendments thereto on July 8, 11, and 12, I find that the Counties of Baker, Bibb, Butts, Calhoun, Clay, Clayton, Coweta, Crawford, Crisp, Decatur, Dooly, Dougherty, Early, Fayette, Fulton, Henry, Houston, Jones, Lamar, Lee, Macon, Meriwether, Miller, Mitchell, Monroe, Peach, Pike, Pulaski, Randolph, Seminole, Spalding, Stewart, Sumter, Talbot, Taylor, Terrell, Troup, Twiggs, Upson, Webster, Wilcox, and Worth in the State of Georgia constitute a disaster area as a result of damages caused by torrential rain, high wind, tornadoes, and flooding resulting from Tropical Storm Alberto on July 3, 1994, and continuing. Applications for loans for physical damage may be filed until the close of business on September 4, 1994, and for loans for economic injury until the close of business on April 7, 1995, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Baldwin, Ben Hill, Bleckley, Carroll, Chattahoochee, Cherokee, Cobb, Colquitt, DeKalb, Dodge, Douglas, Forsyth, Grady, Gwinnett, Harris, Heard, Jasper, Laurens, Marion, Muscogee, Newton, Putnam, Quitman, Rockdale, Schley, Telfair, Thomas, Tift, Turner, and Wilkinson in the State of Georgia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.125
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	7.125
Businesses and non-profit organizations without credit available elsewhere	4.000

	Percent
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 272806 and for economic injury the number is 829300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 14, 1994.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 94–18240 Filed 7–26–94; 8:45 am]

BILLING CODE 8025–01–M

Nationwide Implementation of a Revolving Line of Credit Program

AGENCY: Small Business Administration (SBA).

ACTION: Notice.

SUMMARY: The Small Business Administration (SBA) is issuing notice to advise the public it is implementing a new revolving line of credit loan guaranty program on a national basis to be called the GreenLine Revolving Line of Credit Loan Guaranty Program (GreenLine). This program authorizes SBA to use its guaranty authority to provide the Agency's full faith and credit support to loans made by approved lenders that finance the short term, cyclical working capital needs of small businesses.

The establishment of GreenLine is in response to information obtained over a two year period demonstrating the need for a nationwide revolving line of credit loan guaranty program. Many lenders acknowledged that this type of financing was generally available in the commercial marketplace to only larger businesses with a need for larger lines of credit. Small businesses would require the guaranty from SBA in order for lenders to provide them with the same opportunity.

GreenLine shall serve as the umbrella for all the Agency's short term lending programs with the exception of the Export Revolving Line of Credit (ERLC) and the Export Co-Guaranty programs. Under GreenLine, authority to provide a revolving feature to the Agency's traditional Contract, Seasonal, and Contractors loan programs is added.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Michael J. Dowd, Chief Loan Policy & Procedures Branch, (202) 205–6490.

SUPPLEMENTARY INFORMATION: The predecessor for this program was tested on a pilot basis in selected local markets beginning on October 1, 1992 when SBA began piloting two revolving line of credit loan programs. Both Programs were designed to assist small business in obtaining cyclical working capital financing through the authority of SBA's 7(a) guaranty loan program.

The first pilot, called the Green Line Revolving Line of Credit Program (GRLC), was implemented in the Agency's South East and South Central Regions, while the second, called the Domestic Revolving Line of Credit Program (DRLC) was tested in all SBA Regions not served by the Green Line pilot. The predominant distinction between the programs dealt with the maximum maturity permitted on the loans: GRLC loans had a maturity of up to five years, while the DRLC loans had a maturity of only one year.

Case files were collected from field offices active in the two pilot programs which were reviewed in order to determine the creditworthiness of the businesses seeking this financing, as well as to identify various terms and conditions which would be prudent for inclusion in the new loan program's approval documents. The reviews and program formation meetings also revealed that the new program would need servicing guidelines designed to provide maximum assurances that the line would revolve and the losses minimized.

Since October 1, 1992, 531 loans have been approved under the GRLC pilot for a total of $130.0 million, while for the same period, 327 loans have been approved under the DRLC pilot for a total of $71.0 million. It is important to note that this volume of GRLC activity was generated in only two regions, while the DRLC volume was generated in eight. This activity indicated that a much keener interest exists for the extended terms available under Pilot GRLC than under the Pilot DRLC Program.

Under this program, advances will generally be made against a borrower's certified level of inventory and accounts receivable, while repayment will be derived from the sale of that inventory and the collection of any resulting accounts receivable. Participating lenders will be expected to monitor the disbursements of funds from the line and control the payment of funds back to the line. Primary collateral will consist of a senior lien position on the assets being financed.

Implementation

SBA will consider all applications submitted by approved GreenLine lenders which seek up to a 75% SBA guaranty of the GreenLine financing, not to exceed $750,000. Lender's desiring to participate need to complete a Lender's Qualification Survey which can be obtained from their local SBA District Office. The processing of GreenLine applications can only be done by SBA personnel from offices which have completed SBA sponsored training, and received approval from SBA's Office of Financial Assistance (OFA). Training material has been developed and the training schedule set. Once the staff in a field office completes the required training, and is designated by OFA, it will be eligible to process GreenLine applications received from approved participating lenders.

All field offices which have processed either GRLC or DRLC loans under the respective regional pilots will continue to be able to accept and process these loans under their existing pilot guidelines until training has been offered to their office by the SBA Associate Administrator for Financial Assistance (AA/FA), but in no event later than August 30, 1994. After this date, offices will only be able to accept GreenLine applications.

Additional Fees Permitted

In recognition of the additional servicing and monitoring required to adequately protect the interest of the lender and SBA, the Agency is temporarily waiving its limitations on service related fees in order to permit the lender to offset the costs associated with increased servicing required to prudently monitor the lines, and to provide a program that relates to the lending practices of the private sector.

All of SBA's Regulations presently in effect relative to 7(a) guaranteed business loans (see 13 CFR, paragraphs 120 and 122) will also govern the implementation of GreenLine, provided, however, that the limitation on processing and servicing fees as found in §§ 120.104–2(a)(3) and 120.104–2(e) of SBA regulations (13 CFR 120.104–2(a)(3) and 120.104–2(e)) will be waived for a maximum two year pilot period. Notice of this pilot is issued pursuant to § 120.1–2 of SBA regulations (13 CFR 120.1–2). In addition, SBA will ascertain whether this type of loan can be sold on the secondary market.

SBA will require that participating lenders fully disclose to both the borrower and SBA the fees they intend to charge the borrower, and that the borrower acknowledge these fees in

writing to the lender and SBA prior to the time the guaranty of the loan is authorized by SBA, and every six months thereafter.

SBA is waiving the fee restriction for GreenLine for up to two years provided the Lender charges their SBA supported borrowers the same fees and charges for services they would normally charge their non-SBA borrowers with similar types of revolving lines of credit for similar services.

Outside Servicing Contractors Permitted

GreenLine will require a greater servicing effort by lenders than the Agency's other business loan programs and two existing pilot programs. SBA recognizes that the extent of these servicing requirements may potentially inhibit the willingness of small community-based, rural, and independent banks from participating in the program. This may, in turn, have the undesirable effect of limiting access of creditworthy small businesses to the program in the areas serviced by such lenders. Therefore, the Agency is authorizing lenders to contract out for the servicing functions they do not perform themselves. Contracting does not relieve the lender of its responsibilities contained in SBA Form 750 (or 750 B) or any individual loan authorization issued by SBA. The lenders will be held responsible by SBA for the activities of their contractors. Every contractor must meet the minimum requirements, as specified below.

To assure that each GreenLine maintains its revolving feature, lenders agree to make initial and periodic examinations of the borrower's current assets which serve as collateral and forms the basis for disbursements. Lenders also agree to continually monitor the financial data and control of the cash generated by the borrower as a result of their having the use of the GreenLine proceeds. At a minimum, a borrower's generated cash must go to an operating account where the business can not make withdrawals without the concurrence of the Lender.

Considering the volatility of the collateral securing revolving lines of credit, lenders shall agree as a condition for approval that they will liquidate a GreenLine borrower's current assets prior to seeking SBA's purchase of any guaranty.

Third Party Service Providers

Minimum Requirements

The following standards have been formulated as guidelines for lenders participating in SBA's GreenLine Program for use when evaluating and selecting an outside or third party service provider (Provider) who may perform those examination, monitoring, or control functions required to prudently administer GreenLine loans guaranteed by the SBA: Experience; Competence; Character; Equal Opportunity; Financial Responsibility; Coverage; Business Authorities; and Confirmation. These standards are numerically arranged from 1 to 8. Those standards noted by an "a" after the number are required for lender approval of Providers who will perform examination services. The standards noted with a "b" are required for lender approval of Providers who will perform monitoring or control services.

The lender shall have the responsibility for providing the required examination, monitoring, or control functions. Under this program, the lender may contract with a Provider who meets these standards to assist the lender with the examination, monitoring, or control functions. SBA takes no position on the approvability or quality of any Provider.

Providers Who Will Perform Examination Services

1a. Experience

Provider must demonstrate that it has successfully been in business continuously as an individual, partnership, or corporation for not less than three (3) years. This experience must substantially consist of examining, auditing, analyzing or reviewing supporting documents and physical quantification of accounts receivable, inventory or their equivalents. Experience is not limited to accounting firms, collateral control companies or asset based lenders, provided however, the applicant's experience has been directly related to asset based lending.

2a. Competence

Provider must be capable of submitting a description or outline of services offered, methodology in delivering and documentation supporting, together with at least two (2) examples of past engagements performed in the last two (2) years.

3a. Character

Provider shall certify in writing to the lender that:

- During its business career that it or its parent organizations, partnerships or venture partners, have not been convicted of a violation of any federal or state criminal laws.
- It has never been in litigation with the SBA or with any SBA participating lender in connection with SBA lending.
- It is in compliance with Internal Revenue Service (IRS) reporting requirements and must not be subject to IRS enforcement procedures when it applies to become a Provider.

4a. Equal Opportunity

Provider must certify in writing that:

- It does not discriminate, nor will it discriminate, in its hiring practices with respect to race, creed, age, gender, or national origin.
- It is in compliance with all federal, state and local regulations governing employee safety and workman's compensation, as applicable.

5a. Financial Responsibility

Provider must furnish proof that:

- It maintains at least $500,000 of unencumbered professional liability coverage from a reputable insurance carrier, or financially provided by an equivalent source. Coverage amount must insure each incident and on an aggregate annual basis.
- Such insurance covers employees, agents and subcontractors for principal loss as a result of errors, omissions or negligence in quantifying accounts receivable, or inventory.
- Coverage extends to the geographic area Provider is requesting to service.

6a. Coverage

Provider must indicate whether it is applying for a specific state[s], region[s], or locale[s] and support this by explanation of staffing.

7a. Business Authorities

Provider must be legally permitted to conduct its services in whatever area it is applying to serve. Such legal authority may be evidenced by, but is not limited to, occupations permits, federal or state registration, or any other legal requirements.

8a. Confirmation

Provider shall submit the company names, addresses, and authorized phone contacts of not less than three (3) references which can support the Approved Examination Servicer (AES) application by offering opinions relating to present or past services rendered. The services must generally equate to those for which the applicant seeks AES status.

Providers Who Will Perform Monitoring & Control Services

1b. Experience

Provider must demonstrate that it has successfully been in business

continuously as an individual, partnership, or corporation for not less than three (3) years. The experience must substantially consist of examining, auditing, analyzing or reviewing documents supporting, and physical quantification of, accounts receivable, inventory or their equivalents. Experience is limited to providers which can further demonstrate experience in obtaining actual or contingent dominion over collateral assets including: bank lock boxes, postal block boxes, segregation of inventories and raw materials utilizing elements of, or actual use of legal bailment in connection with asset based lending. Further, applicant should also demonstrate experience in supervising movement of accounts receivable and inventory in and out of the borrowing base, independent of the borrower or its physical location.

2b. Competence

Provider must be capable of submitting a description or outline of services offered, methodology in delivering and documentation supporting, together with at least two (2) examples of past engagements performed in the last two (2) years. An Approved Monitoring & Control Servicer (AMCS) Contractor must offer examples covering: 1.) Examinations; 2.) Information Monitoring with Examinations and 3.) Collateral Control Services performed. This includes administration of lock boxes, postal block boxes, bailment, or its elements and continuous monitoring of collateral assets, independent of borrower or its physical location.

3b. Character

Provider shall certify in writing to the lender that:

• Since its inception, the Provider and its parent (if any), affiliated partnerships or venture partners, have not been convicted of a violation of any federal or state criminal laws.

• It has not been engaged in litigation with the SBA or with any SBA participating lender in connection with SBA lending.

•It is in compliance with Internal Revenue Service (IRS) reporting reqirments and must not be subject to IRS enforcement procedures when it applied to become a Provider.

4b. Equal Opportunity

Provider must certify that:

• It has not discriminated, nor will it discriminate, in its hiring practices with respect to race, creed, age, gender, or national origin.

• It is presently in compliance with all federal, state and local regulations governing employee safety and workman's compensation, as applicable.

5b. Financial Responsibility

Provider must provide proof that it maintains at least $1,000,000 of unencumbered professional liability coverage from a reputable insurance carrier, or financially provided by an equivalent source. Coverage amount would insure each incident and on an aggregate annual basis. It must cover employees, agents and subcontractors for principal loss as a result of errors, omissions, or negligence in examining, monitoring and controlling collateral assets such as accounts receivable, inventory and their equivalents. Moreover, coverage should extend to the establishment of any aspect of baliment, in controllng borrower inventories. All coverage must extend to the geographic area the Provider is requesting to service.

6b. Coverage

Provider must indicate whether it is applying for a specific state[s]. region[s], including an explanation of staffing and methods of quality control.

7b. Business Authorities

Provider must be legally permitted to conduct its services in whatever area it is applying to serve. Such legal authority may be evidenced by, but is not limited to, occupational permits, federal or state registration, or any other legal requirements to conduct business.

8b. Confirmation

Provider shall submit the company names, addresses, and authorized phone contracts of not less than three (3) references which can support the AMCS application by offering opinions relating to present or past services renderd. The services must generally equate to those for which the applicant seeks AMCS status.

Dated: July 8, 1994.

John R. Cox,

Associate Administrator for Financial Assistance.

[FR Doc. 18241 Filed 7–26–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2038]

Privacy Act of 1974; Creation of Two New Systems of Records

Notice is hereby given that the Department of State proposes to create two new systems of records, STATE–59 and STATE–60, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)) and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on July 11, 1994.

These systems principally support the Bureau of Population, Refugees, and Migration's role in the processing of applicants for the U.S. refugee program and the initial reception and placement in the United States of those who are selected. The Refugee Case Records contain information about applicants for the United States refugee program. The Refugee Data Center Processing Records contain information on applicants for the U.S. refugee program that is used by the Immigration and Naturalization Service to determine their eligibility for the U.S. refugee program. The Refugee Data Center Processing Records contain information on applicants for the U.S. refugee program which is used in the initial reception and placement of persons admitted to the U.S. as refugees and to assist in the collection of refugee travel loans.

Any persons interested in commenting on these proposed systems of records may do so by submitting comments in writing to Margaret P. Grafeld, Chief, Privacy, Plans, and Appeals Division, Office of Freedom of Information, Privacy and Classification Review, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520–1239. These systems of records will be effective 40 days from the date of publication, (September 6, 1994), unless we receive comments which will result in a contrary determination. The proposed systems, "Refugee Case Records, STATE–59" and "The Refugee Data Center Processing Records, STATE–60" will read as set forth below.

Dated: July 11, 1994.

Patrick R. Kennedy,

Assistant Secretary for the Bureau of Administration.

STATE–59

SYSTEM NAME:

Refugee Case Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Refugee processing posts, i.e., designated U.S. embassies, U.S. consulates general and consulates, and offices of voluntary agencies (i.e., voluntary agencies that assist in the

processing of applicants under cooperative agreements with the Department of State), and the Washington Processing Center (for Moscow), 1401 Wilson Blvd., Arlington, VA 22209. Locations may change at the discretion and depending on the needs of the U.S. Department of State. (A list of refugee processing posts is available from the Bureau of Population, Refugees, and Migration, Room 5824, Department of State, Washington, DC 20520.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for admission to the United States under the U.S. refugee program, including individuals who seek and may be denied admission as refugees but are ultimately approved for admission as non-refugees (e.g., immigrants or parolees).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1522(b) (Authorization for Programs for Initial Domestic Resettlement of and Assistance to Refugees); 22 U.S.C. 1157 (Annual Admission of Refugees and Admission of Emergency Situation Refugees); Letter of President Carter of January 13, 1981, 17 Weekly Compilation of Presidential Documents, Pg. 2880 (Refugee Resettlement Grants Program).

CATEGORIES OF RECORDS IN THE SYSTEM:

Registration logbooks/cards; refugee applications and related forms and interview worksheets; letters of approval/denial; fingerprint cards; biographic and demographic information such as family trees and documents of identity; affidavits of relationship; sponsorship assurance forms; medical examination and immunization reports; communications from U.S. embassies, U.S. consulates general and consulates, voluntary agencies, U.S. Government agencies, international organizations, foreign missions, members of Congress, relatives and other interested parties; and International Organization for Migration (IOM) loan notes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Bureau of Population, Refugees, and Migration, the Immigration and Naturalization Service (INS), overseas voluntary agencies' employees and contractors; participating domestic voluntary agencies; international organizations that assist applicants; consumer reporting agencies (31 U.S.C. 7311(f)) and debt collection contractors (31 U.S.C. 3718); members of Congress; and other federal, state, and local government agencies having statutory or other lawful authority will use this information to:

(1) Provide necessary background information to the INS and the Department of State refugee and consular officers to determine the eligibility of an applicant for admission to the United States;

(2) Provide selected information to participating voluntary agencies to ensure appropriate resettlement in the United States;

(3) Collect case status and processing statistics concerning such individuals; and

(4) Assist in the collection of indebtedness owed to IOM and/or the United States Government. Also see "Routine Uses" paragraph of the Prefatory Statement published in the **Federal Register** (42 FR 49699, September 27, 1977).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media; hard copy; microfilm.

RETRIEVABILITY:

By case number, alien number, and applicant name.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel of the Department of State, voluntary agencies, INS and its contractors, and others specifically authorized under the "Guidelines for the Treatment of Refugee Records Maintained by Joint Voluntary Agencies." Where the records are computerized, access it under the direct supervision of the system manager.

RETENTION AND DISPOSAL:

Retention of these records varies depending upon the specific kind of record involved. Files of closed and unprocessed cases are retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. Files of approved refugees and denied applicants are transferred to the INS, and subject to its disposition schedules. More specified information may be obtained by writing to the Director, Office of Freedom of Information, Privacy, and Classification Review, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520–1239.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Bureau of Population, Refugees, and Migration, SA–1, Room 1251, Department of State, 2401 E Street NW., Washington, DC 20522. At specific overseas locations, the on-site system manager may be the Refugee Coordinator, the Consular Officer responsible for refugee processing or the voluntary agency representative.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe the Department of State might have Refugee Case Records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520–1239. The individual must specify that he/she wishes the Refugee Case Records of a specific processing post to be checked. At a minimum, the individual must include: Name, date and place of birth, the approximate date of arrival in the U.S., his/her INS "A" number; current mailing address and zip code, and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from the individual who is the subject of these records and relatives, sponsors, members of Congress, U.S. Government agencies, voluntary agencies, international organizations, and local sources at overseas posts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

STATE—60

SYSTEM NAME:

Refugee Data Center Processing Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Refugee Data Center, 200 Park Avenue South, Room 801, New York, NY 10003. (The Refugee Data Center is a project of the International Catholic Migration Commission (ICMC) authorized under a cooperative agreement with the Department of State.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been approved for admission to the United States under the U.S. refugee program. Also included may be certain individuals who sought and were denied admission as refugees but were ultimately approved for admission as non-refugees (e.g., immigrants or parolees).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1522(b) (Authorization for Programs for Initial Domestic Resettlement of and Assistance to Refugees); 22 U.S.C. 1157 (Annual Admission of Refugees and Admission of Emergency Situation Refugees); Letter of President Carter of January 13, 1981, 17 Weekly Compilation of Presidential Documents, Pg. 2880 (Refugee Resettlement Grants Program).

CATEGORIES OF RECORDS IN THE SYSTEM:

Refugee biographic registration forms; interest cards; sponsorship assurance forms; change of status forms; International Organization for Migration (IOM) arrival information; and communications from U.S. embassies, U.S. consulates general consulates; voluntary agencies, U.S. Government agencies, international organizations, foreign missions, members of Congress, relatives and other interested parties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Bureau of Population, Refugees, and Migration; Refugee Data Center employees and contractors; participating voluntary agencies and international organizations that assist applicants; consumer reporting agencies (31 U.S.C. 7311(f)) and debt collection contractors (31 U.S.C. 3718); members of Congress; private individuals or companies requesting general statistical data on applicants; relatives seeking information about a particular applicant; and other federal, state, and local government agencies having statutory or other lawful authority will use or maintain such information to:

(1) Locate relatives or friends of applicants as potential backup sponsors;

(2) Track an applicant from the time of Immigration and Naturalization Service (INS) approval until arrival in the United States;

(3) Achieve initial reception and placement of individuals admitted into the U.S. as refugees;

(4) Collect statistics concerning applicants; and

(5) Assist in the collection of indebtedness owed to IOM and/or the United States Government.

Also see "Routine Uses" paragraph of the Prefatory Statement published in the **Federal Register** (42 FR 49699, September 27, 1977).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media; hard copy; microfilm.

RETRIEVABILITY:

By case number, alien number, and applicant name.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or in restricted areas access to which is limited to Department of State personnel and contractors; Refugee Data Center personnel and contractors; participating voluntary agency representatives; and others specifically authorized under the "Guidelines for the Treatment of Refugee Records Maintained by Refugee Data Center" which are incorporated in the cooperative agreement between the International Catholic Migration Commission and the Department of State. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of these records varies depending upon the specific kind of record involved. They are retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specified information may be obtained by writing to the Director, Office of Freedom of Information, Privacy, and Classification Review, Room 1239, Department of State, 2201 C Street, NW, Washington, DC 20520–1239.

SYSTEM MANAGER AND ADDRESS:

Executive Director, Bureau of Population, Refugees, and Migration, SA–1, Room 1251, Department of State, 2401 E Street NW., Washington, DC 20522. The on-site system manager is the Systems Manager, Refugee Data Center, 200 Park Avenue South, Room 801, New York, NY 10003.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Refugee Data Center might have records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review, Room 1239, Department of State, 2201 C Street, NW, Washington, DC 20520–1239. The individual must specify that he/she wishes the records of the Refugee Data Center to be checked. At a minimum, the individual must include: Name, date and place of birth, the approximate date of arrival in the U.S., his/her INS "A" number; current mailing address and zip code, and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from individual who is the subject of these records and relatives, sponsors, members of Congress, U.S. Government agencies, voluntary agencies, international organizations, and local sources at overseas posts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–18299 Filed 7–26–94; 8:45 am]
BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

In the matter of U.S.-Germany; Third/Fourth/Fifth Freedom Frequency Allocations for the 1994–95 Winter Season; Docket 49673

SUMMARY: By this notice, we invite interested U.S. carriers to apply for allocation of the available frequencies for third/fourth/fifth freedom combination-service operations in the U.S.-Germany market for the upcoming winter season (*i.e.* November 1, 1994—March 31, 1995).[1]

BACKGROUND: On May 24, 1994, representatives of the United States and the Federal Republic of Germany signed a new Agreement for Transitional Arrangements for Air Transport Services. Under provisions of this Agreement, scheduled combination

[1] This notice addresses only the services for third/fourth/and fifth freedom operations. Third-country code-share designation/frequency applications is being addressed in a separate notice.

services are subject to seasonal frequency limitations. For the upcoming winter season, U.S. scheduled combination carriers may operate a total of 253 weekly round-trip frequencies for U.S.-Germany (third/fourth freedom) services and 120 weekly round-trip frequencies for Germany-third country (fifth freedom) services.[2] The Agreement further provides that thirty days prior to each traffic season, each Party shall notify the other Party through diplomatic channels of the initial allocation of the frequencies among its airlines.[3]

Applications

To facilitate our allocation of these frequencies, we invite all U.S. carriers interested in using the third/fourth/fifth freedom frequencies to file their applications with the Department in Docket 49673.

Applications should include the following information (identify separately for third/fourth and fifth freedom frequencies): (a) the overall number of frequencies requested; (b) the markets to be served; (c) distribution of the requested frequencies by market; (d) aircraft to be used (per market) and (e) manner of operation (i.e., direct service/own aircraft or code share; if code share, identify with which carrier and over what third country point, if applicable).

Applicant carriers that have previously been allocated and operated flights in third/fourth/fifth freedom markets for the 1993/94 winter season should also provide the following information with respect to those operations (identify separately for third/fourth and fifth freedom allocations): (a) the number of flights previously allocated; (b) markets served; (c) frequencies operated per market and period of operation for each market; (d) aircraft type per market; and (e) manner of operation (i.e., direct service/own aircraft or code share; if code share, identify with which carrier and over what third country point, if applicable).[4]

Applicants are also free to submit any additional information that they believe will help us in making our decision.

An original and 12 copies of each application should be filed with the Department's Docket Section, Room 4107, 400 Seventh Street S.W., Washington, D.C., in Docket 49673 and served on all parties on the attached list.

Procedural Schedule

In light of the 30-day advance notice requirements set forth in the Agreement, it is important that we complete the allocation process as quickly as possible. Therefore, we will require that applications and responsive pleadings be filed according to the following schedule:

Applications: August 4, 1994.
Answers: August 11, 1994.
Replies: August 18, 1994.

We will serve this notice on all U.S. air carriers holding authority to operate foreign scheduled combination air transportation with large aircraft, and will publish this Notice in the **Federal Register**.

Dated: July 21, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

R. Tenney Johnson, Counsel for Air Micronesia Inc, Suite 600, 2300 N Street NW, Washington DC 20037
John Gillick, Counsel for America West Airlines, Wintrhop Stimson Putnam &, Suite 1200, 1133 Connecticut Ave NW, Washington DC 20036
Russell E. Pommer, Counsel for Business Express Inc, Verner Liipfert Bernhard, Suite 700, 901 15th Street NW, Washington, DC 20005–2301
Lorraine B. Halloway, Counsel for Continental, Micronesia D/B/A, Continental/Air Micronesia, Crowell & Moring, 1001 Pennsylvania Ave., NW., Washington, DC 20004–2595
Richard P. Taylor, Counsel for Evergreen Intl. Airlines, Steptoe & Johnson, 1330 Connecticut Ave. NW, Washington, DC 20036
Nathaniel Breed, Counsel for Federal Express, Shaw Pittman Potts &, 2300 N Street NW, Washington, DC 20036
Marshall S. Sinick, Counsel for Alaska Airlines Inc. Suite 500, 1201 Pennsylvania, Ave., NW, Washington, DC 20004
Carl B. Nelson Jr., Assoc. General Counsel, American Airlines Inc., 1101 17th Street, NW, Washington, DC 20036
Robert N. Duggan, Counsel for Carninval Air Lines Inc., Mercer Moore & Assoc., Suite 502, 700 S Royal Poinciana Bl., Miami Springs, FL 33166
Robert E. Cohn, Counsel for Delta Air Lines, Inc. Shaw Pittman Potts &, 2300 N Street NW, Washington, DC 20037
Carl B Nelson, Jr., Counsel for Executive Airlines, D/B/A American Eagle, 1101 17th Street NW, Washington, DC 20036
Jonathan B. Hill, Counsel for Hawaiian Airlines, Dow Lohnes & Albertson, 1255 23rd St., NW, Washington, DC 20037
Marshall S. Sinick, Counsel for Aloha Airlines Inc., Suite 500, 1201 Pennsylvania Ave., NW, Washington, DC 20004
Mark W. Atwood, Counsel for American Trans Air, Galland Kharasch Morse &, 1054 31st Street, NW, Washington, DC 20007
R. Bruce Keiner, Jr., Counsel for Continental Airlines, Crowell & Moring, 1001 Pennsylvania Ave., NW, Washington, DC 20004–2595
R. Tenney Johnson, Counsel for DHL Airways, Suite 600, 2300 N Street, NW, Washington, DC 20037
Johathan B. Hill, Counsel for Express one Intl., Dow Lohnes & Albertson, 1255 23rd St. NW., Washington, DC 20037
John R. Degregorio, Counsel for MGM Grand Air Inc., Galland Kharasch Morse &, 1054 31st Street, NW, Washington, DC 10007–4492
Peter B. Kenney, Jr., Assoc General Counsel, Northwest Airlines Inc., 901 15th Street, NW, Washington, DC 10005
Carl B. Nelson Jr., Counsel for Simmons Airlines Inc, D/B/A American Eagle, 1101 17th Street, NW, Washington, DC 20036
Stephen L. Gelband, General Counsel to Tower Air, Hewes Moreles Gelband &, Suite 300, The Flour Mill, 1000 Potomac St., NW, Washington, DC 20007
Nathaniel Breed, Counsel for USAfrica Airways Inc., 11180 Sunrise Valley Dr., Reston, VA 22091
Robert E. Cohn/Sheryl Israel, Counsel for Worldwide Airlines Serv., Shaw Pittman Potts &, 2300 N. Street, NW., Washington, DC 20037
Jim Marquez, Counsel for Private Jet Expeditions, McNair & Sanford, Madison Office Blg., Ste., 400, 1155 15th Street, NW, Washington, DC 20005
Mark W. Atwood, Counsel for Spirit Airlines Inc., Galland Kharasch Morse &, 1054 31st Street, NW, Washington, DC 20007–4492
Michael G. Whitaker, Asst. General Counsel, Reg. & Intl. Affairs, Trans

[2] Article 6, Section 1 (A)(1) provides that airlines designated by the United States may operate 106 weekly round-trip fifth freedom frequencies during the upcoming winter season. Furthermore, under the Section 1 (A)(2), an additional 14 weekly round-trip fifth freedom frequencies are available provided that the United/Lufthansa rights in the London-Germany market noted in Appendix B to the Agreement have been effectuated. Since United and Lufthansa are operating these services, the additional 14 frequencies are available to U.S. carriers this winter season.

[3] Article 6, Section 5 A.

[4] If there was a cessation of service, no matter how short, in any market for any period during the past winter season, such interruption of service should be noted. If services were changed from one market to another during the past winter season, this also should be indicated.

World Airlines, Suite 520, 808 17th Street, NW, Washington, DC 20006
Frank Cotter, Asst. General Counsel, USAir Inc., Crystal Park Four, 2345 Crystal Drive, Arlington, VA 22227
Mark S. Kahan, Counsel for Renown Aviation Inc., Galland Kharasch Morse, 1054 31st Street, NW Washington, DC 20007–4492
Dennis N. Barnes, Counsel for Sun Country Airlines, Morgan Lewis Bockius, 1800 M Street NW #600N, Washington, DC 20036
Joel Stephen Burton, Counsel for United Air Lines Inc., Ginsburg Feldman & Bress, Suite 800, 1250 Connecticut Ave., NW., Washington, DC 20036
Vance Fort, Senior VP–Govt/Legal World Airways Inc., 13873 Park Center Rd., Herndon, VA 22071

[FR Doc. 94–18266 Filed 7–26–94; 8:45 am]

BILLING CODE 4910–62–P

[Docket 49674]

In the Matter of U.S.-Germany; Third Country Code-Share Designations and Frequency Allocations

Summary

By this notice, we invite interested U.S. carriers to apply for the two available designations and available frequencies for operation of third-country code-sharing services in the U.S.-Germany market for the period November 1, 1994–October 31, 1996.

Background

On May 24, 1994, representatives of the United States and the Federal Republic of Germany signed a new Agreement for Transitional Arrangements for Air Transport Services (Agreement). Under the provisions of this Agreement, for the period November 1, 1994–October 31, 1996, two U.S. carriers may be designated to serve Germany pursuant to code-share arrangements with two airlines of third countries.[1] In holding out these services each airline may serve a single point in the respective intermediate country, and no two airlines designated by the same Party may serve the same intermediate point. In addition, these operations are limited to a total of 1428 weekly one-way frequencies.[2]

The Agreement further provides that thirty days prior to each traffic season, each Party shall notify the other Party through diplomatic channels of the initial allocation of the frequencies among its airlines.[3]

The U.S. previously was entitled to authorize only one carrier to operate on a third-country code-share basis for U.S.-Germany services. Northwest Airlines has been designated for this service since November 1993. When Northwest was last authorized (March 24, 1994) to use the third-country code-share designation, it had requested that its designation be effective through October 31, 1995. The Department, in extending Northwest's designation through this summer season (i.e., October 31, 1994), deferred on a decision concerning which carriers would be authorized to use available rights after November 1, and stated that further procedures regarding these designations would be announced at a later date.[4]

Applications

Given the provisions of Article 6, Section 4 B(1)(b) of the new U.S.-Germany Agreement, we invite U.S. carriers interested in using the available designations and frequencies for third-country code-share operations in the U.S.-Germany market to file such applications in Docket 49674.[5]

Applications should include, at a minimum, the following information: (a) the number of frequencies requested; (b) the code-share partner involved and the country over which the services will be provided; (c) existing authority held to conduct the operations, if applicable;[6] (d) proposed startup date; of service in each market; and (f) type of aircraft to be used in each market.

Applicants are also free to submit any additional information that they believe will help us in making our decision.

An original and 12 copies of each application should be filed with the Department's Docket Section, Room 4107, 400 Seventh Street SW, Washington, D.C. 20590, in Docket 49674 and should be filed on all parties on the attached list.

Procedural Schedule

In light of the 30-day advance notice requirements set forth in the Agreement, it is important that we complete the designation/allocation process as quickly as possible. Therefore, we will require that applications and responsive pleadings be filed in accordance with the following schedule:

Applications: August 4, 1994
Answers: August 11, 1994
Replies: August 18, 1994

We will serve this notice upon all U.S. air carriers licensed to conduct scheduled foreign combination services with large aircraft, and will publish this Notice in the **Federal Register**.

Dated: July 21, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

R Tenney Johnson, Counsel for Air Micronesia Inc, Suite 600, 2300 N Street NW, Washington DC 20037
John Gillick, Counsel for America West Airlines, Winthrop Stimson Putnam &, Suite 1200, 1133 Connecticut Ave NW, Washington DC 20036
Russell E Pommer, Counsel for Business Express Inc, Verner Liipfert Bernhard, Suite 700, 901 15th Street NW, Washington DC 20005–2301
Lorraine B Halloway, Counsel for Continental Micronesia, D/B/A Continental/Air Micronesia, Crowell & Moring, 1001 Pennsylvania Ave NW, Washington DC 20004–2595
Richard P Taylor, Counsel for Evergreen Intl Airlines, Steptoe & Johnson, 1330 Connecticut Ave NW, Washington DC 20036
Nathaniel Breed, Counsel for Federal Express, Shaw Pittman Potts &, 2300 N Street NW, Washington DC 20037
Marshall S Sinick, Counsel for Alaska Airlines Inc, Suite 500, 1201 Pennsylvania Ave NW, Washington DC 20004
Carl B Nelson Jr, Assoc General Counsel, American Airlines Inc, 1101 17th Street NW, Washington DC 20036

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[1] Eligible third-country code-share partners are limited to any member of the European Union (except the Federal Republic of Germany), Liechtenstein, Sweden, Norway, Finland, Iceland, Austria, Canada, and Mexico. (Article 5 D(1).)

[2] Article 6, Section 4 B(1)(b). The Agreement also provides that the frequency level increases to a total of 1848 weekly one-way frequencies during the period November 1, 1996—October 31, 1997. *Id.*, Section 4 B(1)(c).

[3] Article 6, Section 5 A.

[4] See Notice served March 24, 1994 (not published in **Federal Register**).

[5] Northwest currently has an undocketed application on file for this designation for the period through October 31, 1995. By this notice, however, we are extending the period for which the authorization will be effective pursuant to the terms within the new Agreement. Therefore, rather than supplementing its previous application, we will require Northwest to file a new application in the established docket following the requirements set forth in this notice. Northwest is free to attach and incorporate by reference its previous application for this designation. In addition, since Northwest is the only carrier that has used the third-country code-share opportunity, we will require that its application also contain the following information regarding its operations since November 1, 1993: (a) a statement of number of flights previously allocated, (b) the markets served and frequencies per market and period of operation for each market and (c) the aircraft types used for each market.

[6] Applicant carriers without the requisite underlying authority to serve Germany should file certificate and/or exemption applications to serve the affected markets no later than August 4, 1994. Response dates to such applications will correspond to those set forth in this notice for applications for frequency applications. (e) markets to be served, frequencies per market, and duration

Robert N Duggan, Counsel for Carnival Air Lines Inc, Mercer Moore & Assoc, Suite 502, 700 S Royal Poinciana Bl., Miami Springs Fl 33166
Robert E Cohn, Counsel for Delta Air Lines Inc, Shaw Pittman Potts &, 2300 N Street NW, Washington DC 20037
Carl B Nelson Jr, Counsel for Executive Airlines, D/B/A American Eagle, 1101 17th Street NW, Washington DC 20036
Jonathan B Hill, Counsel for Hawaiian Airlines, Dow Lohnes & Albertson, 1255 23rd St NW, Washington DC 20037
Marshall S Sinick, Counsel for Aloha Airlines Inc, Suite 500, 1201 Pennsylvania Ave NW, Washington DC 20004
Mark W Atwood, Counsel for American Trans Air, Galland Kharasch Morse &, 1054 31st Street NW, Washington DC 20007
R Bruce Keiner Jr, Counsel for Continental Airlines, Crowell & Moring, 1001 Pennsylvania Ave NW, Washington DC 20004–2595
R Tenney Johnson, Counsel for DHL Airways, Suite 600, 2300 N Street NW, Washington DC 20037
Jonathan B Hill, Counsel for Express One Intl, Dow Lohnes & Albertson, 1255 23rd St NW, Washington DC 20037
John R Degregorio, Counsel for MGM Grand Air Inc, Galland Kharasch Morse &, 1054 31st Street NW, Washington DC 20007–4492
Peter B Kenney Jr, Assoc General Counsel, Northwest Airlines Inc, 901 15th Street NW, Washington DC 20005
Carl B Nelson Jr, Counsel for Simmons Airlines Inc, D/B/A American Eagle, 1101 17th Street NW, Washington DC 20036
Stephen L Gelband, General Counsel to Tower Air, Hewes Moreles Gelband &, Suite 300, The Flour Mill, 1000 Potomac St NW, Washington DC 20007
Nathaniel Breed, Counsel for USAfrica Airways Inc, 11180 Sunrise Valley Dr, Reston VA 22091
Robert E Cohn/Sheryl Israel, Counsel for Worldwide Airlines Serv, Shaw Pittman Potts &, 2300 N Street NW, Washington DC 20037
Jim Marquez, Counsel for Private Jet Expeditions, McNair & Sanford, Madison Office Bldg, Ste 400, 1155 15th Street NW, Washington DC 20005
Mark W Atwood, Counsel for Spirit Airlines Inc, Galland Kharasch Morse &, 1054 31st Street NW, Washington DC 20007–4492
Michael G Whitaker, Asst General Counsel, Reg & Intl Affairs, Trans World Airlines, Suite 520, 808 17th Street NW, Washington DC 20006
Frank Cotter, Asst General Counsel, USAIR Inc, Crystal Park Four, 2345 Crystal Drive, Arlington VA 22227
Mark S Kahan, Counsel for Renown Aviation Inc, Galland Kharasch Morse &, 1054 31st Street, Washington DC 20007–4492
Dennis N Barnes, Counsel for Sun Country Airlines, Morgan Lewis Bockius, 1800 M Street NW, #600N, Washington DC 20036
Joel Stephen Burton, Counsel for United Air Lines Inc, Ginsburg Feldman & Bress, Suite 800, 1250 Connecticut Ave NW, Washington DC 20036
Vance Fort, Senior VP–Govt/Legal, World Airways Inc, 13873 Park Center Rd, Herndon VA 22071

[FR Doc. 94–18267 Filed 7–26–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement: Barbour County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Barbour County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117–2018, Telephone (205) 223–7370.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alabama Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve a segment of U.S. Highway 431 in Barbour County, Alabama. The purpose of the proposed project is to provide a safe, efficient, cost-effective, multi-lane facility, capable of handling existing and future traffic demands. The EIS will evaluate the realigning of a portion of U.S. 431 to function as a bypass around the City of Eufaula, Alabama. The proposed project will begin on U.S. Highway 431, south of the City of Eufaula near Cheneghatchee Creek.

The route will extend to the northeast, passing around the City, and terminating with the intersection of U.S. 431 near Hoboken. The length of the proposal is approximately 6.4 kilometers (4 miles). Alternatives under consideration include: (1) alternate route locations, (2) taking no action, and (3) postponing the action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public involvement meeting and a public hearing will be held in the City of Eufaula. Public notice will be given of the time and the place of the meeting and hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 19, 1994.

Joe D. Wilkerson,

Division Administrator Montgomery, Alabama.

[FR Doc. 94–18300 Filed 7–26–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Lee County, et al; Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Lee, Macon, and Russel Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117–2018, Telephone (205) 223–7370.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alabama Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve a segment of U.S. Highway 80 in Lee, Macon, and Russell Counties, Alabama. The proposed project begins at Interstate Highway 85 (I–85) and

extends to the east for approximately 58 kilometers (36 miles). The proposal would serve as the primary connecting route between the Phenix City metropolitan area and the Interstate highway system. It is anticipated that improvements will generally be made along the existing alignment of U.S. 80. The improvements to the travel corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include: (1) alternate route locations, (2) improving the existing roadway, (3) taking no action, and (4) postponing the action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public involvement meeting will be held when sufficient information is available. Public notice will be given of the time and the place of the meeting and hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 19, 1994.

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 94–18301 Filed 7–26–94; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket P–008]

Waterman Steamship Corporation

Notice of Request for Secretarial Directive to the Department of Agriculture Concerning the Ocean Transportation of Title II Preference Cargoes

By letter dated July 1, 1994, and accompanying brief, Waterman Steamship Corporation (Waterman) requests that the Secretary of Transportation (Secretary) require the Department of Agriculture (Agriculture) to comply with the Maritime Administration's June 16, 1986, Prioritization letter; require the allocation of preference cargoes by destination; and require the elimination of bidding procedures which compel U.S.-flag dry cargo liner vessels to bid, against foreign competitors and/or non-liner U.S.-flag vessels for the carriage of preference cargoes generated by the Pub. L. 480 program, 7 U.S.C. 1721 et seq., Title II of the Agricultural Trade Development and Assistance Act of 1954, (Pub. L. 480).

Waterman alleges that Agriculture is improperly administering its cargo preference program in three critically important respects, thereby impeding Waterman's participation in the cargo preference program.

(1) Waterman alleges that Agriculture is violating the Maritime Administration's "prioritization rule" issued June 16, 1986, in that Agriculture is allocating preference cargo to ports where all U.S.-flag service is not available and is then fixing the cargo on mixed service, *i.e.* U.S.-flag vessels with foreign-flag feeder vessels.

(2) Waterman alleges that Agriculture is violating the Cargo Preference Act of 1954, as amended, 46 App. U.S.C. 1241, (the 1954 Act) by failing to administer its Pub. L. 480 program in such manner as to insure fair and reasonable participation of U.S.-flag vessels by geographic destination areas.

(3) Waterman alleges that Agriculture is violating the 1954 Act through bidding procedures which require U.S.-flag dry cargo liner vessels to bid against foreign-flag and/or non-liner U.S.-flag vessels for preference cargoes which should be reserved for U.S.-flag liner vessels.

This request may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on August 17, 1994. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the request, as filed or as may be amended.

By Order of the Maritime Administrator.

Dated: July 21, 1994.

Joel C. Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 94–18268 Filed 7–26–4; 8:45 am]

BILLING CODE 4910–81–P

Research and Special Programs Administration

International Standards on the Transport of Radioactive Materials; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to discuss issues to be considered at the International Atomic Energy Agency (IAEA) Technical Committee Meeting (TCM) to be held August 29–September 2, 1994. A TCM is a meeting of experts from member nations assembled to address the technical aspects of a particular proposal.

DATES: August 23, 1994 at 9:30 a.m.

ADDRESSES: Room 6244, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rick Boyle, Radioactive Materials Branch, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–4545.

SUPPLEMENTARY INFORMATION: This meeting will be held to discuss proposed regulations governing the air transport of radioactive material in large quantities or with high activity. The IAEA meeting will be held in Vienna, Austria, August 29–September 2, 1994. Topics to be covered include:

1. A review of the IAEA Technical Document on "The Air Transport of Radioactive Material In Large Quantities Or With High Activities" and the regulations it proposes.

2. A review of how proposed regulations should be applied to nondispersable form materials, low specific activity materials, surface contaminated objects.

3. A review of proposed conveyance limits and post-accident radiation limits for Type C packages.

The public is invited to attend without prior notification.

Documents: Copies of documents relating to the issues to be covered at the TCM discussing the air transport of radioactive material in large quantities or with high activity may be obtained

from RSPA. Documents may be ordered by contacting RSPA's Dockets Unit (202–366–4453). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5:00 p.m. Central time.

Issued in Washington, DC, on July 20, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–18269 Filed 7–26–94; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Customs Service

Public Meeting on Customs "MOD ACT"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the scheduling of a final public meeting in Washington, DC, on portions of the Customs "Mod Act." The purpose of this meeting is to (1) give Customs managers an opportunity to share revised implementation proposals relating to carrier manifest requirements and entry and clearance procedures, and (2) give participants an opportunity to ask questions, make suggestions, and provide the Customs Service with informal input relative to implementing the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. To control attendance, those planning to attend are requested to notify Customs in advance.

DATES: The meeting is scheduled on August 26, 1994, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Renaissance Hotel, 999 9th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Debra Rutter, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Phone: (202) 927–0510; FAX: (202) 927–1356.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act. The Customs modernization portion of this Act (Title VI of Public Law 103–182, 107 Stat. 2057, codified at 19 U.S.C. 3301 note), popularly known as the Customs Modernization Act or "Mod Act," became effective when it was signed. In order to share "straw man" implementation proposals specific to carrier manifest requirements and entry and clearance procedures, remote filing, and general order procedures, and to invite informal dialogue relative to implementation plans and issues, the Office of Inspection and Control conducted a series of public meetings throughout the country. These meetings were announced in other **Federal Register** notices, *e.g.*, 59 FR 15498, dated April 1, 1994, and 59 FR 27306, dated May 26, 1994. Comments and suggestions received on the "straw man" proposals have been reviewed, analyzed, and, in some cases, incorporated into the revised proposals that will be presented at a final public meeting scheduled to be held on August 26, 1994, in Washington, DC, at the Renaissance Hotel, located at 999 9th Street, NW., from 8:30 a.m. to 5:00 p.m.

The meeting will begin with a general briefing covering the Office of Inspection and Control's progress to date, including a review of the discussions from previous public meetings and future plans to implement "Mod Act" provisions. Following this general briefing, staff members from the Office of Inspection and Control will present revised proposals concerning vessels, air, truck and rail, general orders, and remote entry filing (for release purposes). Among the topics to be discussed at this session will be: carrier manifest requirements, electronic transmission of data, carrier entry and clearance procedures, and carrier liability issues. Presentations on the status of the In-bond Task Force and the Automated Export System Development Team will be provided by members of those teams. Participants will be given ample opportunity to ask questions and provide suggestions. In addition, the Director of the "Mod Act" Task Force will report on the present status of implementing provisions of the "Mod Act."

Persons planning to attend are requested to pre-register by FAX at (202) 927–1356. Individuals not having access to facsimile equipment may pre-register by telephoning the Office of Cargo Enforcement and Facilitation at (202) 927–0510.

Attendees are encouraged to arrive approximately 15 minutes in advance of the meeting.

Dated: July 22, 1994.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 94–18244 Filed 7–26–94; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 143
Wednesday, July 27, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 1, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Proposed acquisition of computer equipment within the Federal Reserve System.
3. Proposals regarding two Federal Reserve Bank renovation projects.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 22, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–18328 Filed 7–22–94; 4:58 pm]

BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION

Board of Directors Audit and Appropriations Committee Meeting Notice

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on August 5–6, 1994. The meeting will commence at 1:00 p.m. on August 5, 1994, and at 9:00 a.m. on August 6, 1994.

PLACE: The Fairmont Hotel, 123 Baronne, BAYOU III Room, New Orleans, LA 70140, (504) 529–7111.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of July 15, 1994 Meeting.
   a. Open Session.
   b. Closed Session.
3. Presentation of June 30, 1994 Expenses with Administrative Expenses Allocated to each Cost Center.
4. Consideration and Review of Expense Projections for the period of July 1, 1994 through September 30, 1994.
   a. Consideration of Recommended COB Modifications.
   b. Consideration of Recommended COB Internal Budgetary Adjustments.
5. Discussion of the Management and Administration Budget for Fiscal Year 1995.
6. Consideration of and Possible Action on the Fiscal Year 1996 Budget Mark.
7. Report on the Revenue Audit Conducted By the Office of the Inspector General.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: July 25, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–18471 Filed 7–25–94; 3:58 pm]

BILLING CODE 7050–01–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 10:00 a.m., Thursday, August 4, 1994.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Open to public observation.

MATTERS TO BE CONSIDERED: Mail Ballots.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated, Washington, D.C., July 25, 1994.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 94–18394 Filed 7–25–94; 11:19 am]

BILLING CODE 7445–01–M

federal register

Wednesday
July 27, 1994

Part II

Department of Defense

Department of the Army

32 CFR Part 516
Litigation; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 516

Litigation

AGENCY: Office of the Judge Advocate General, Litigation Division, DOD.

ACTION: Final rule.

SUMMARY: This final rule revises 32 CFR Part 516, Litigation, Army Regulation 27–40, Litigation, previously published in the **Federal Register** as a proposed rule (57 FR 31852). This rule devotes a separate subpart to service of process (subpart B). The former "investigative report" is replaced by "litigation report" reflecting current usage (subpart C). A separate subpart is devoted to individual liability (subpart D). This rule also treats environmental litigation (subpart F), deletes coverage of criminal prosecutions in U.S. Magistrate and District Courts, delegates more authority to the installation level to determine release of information and appearance of witnesses (subpart G); and updates procedures to obtain release from local or state jury duty (subpart J).

EFFECTIVE DATE: This final rule is effective July 27, 1994.

ADDRESS: Office of the Judge Advocate General, ATTN: Litigation Division (DAJA-LT), 901 North Stuart Street, Arlington, VA 22203–1837.

FOR FURTHER INFORMATION CONTACT: MAJ Kelly Wheaton, (703) 696–1638.

SUPPLEMENTARY INFORMATION: This part prescribes policy and procedures for litigation in civilian court proceedings, including the following: providing representation of the Army and its personnel in Federal and state court proceedings; remedies for procurement fraud; environmental litigation; bankruptcy; prosecution in Federal court of offenses in which the Army has an interest; release of information and appearance of witnesses in criminal and civil court actions; procedures to follow when soldiers are summoned for jury duty; and, procedures for cooperation with the Office of Special Counsel. This part does not apply to DA or DOD proceedings such as courts-martial or administrative boards.

Executive Order 12291

This final rule has been classified as nonmajor. The effect of the this rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980. This final rule does not have a significant impact on small entities.

Paperwork Reduction Act

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

Kenneth L. Denton,

Army Federal Register Liaison Officer.

Accordingly, 32 CFR Part 516 is revised as follows:

PART 516—LITIGATION

Subpart A—General

Sec.
§ 516.1 Purpose.
§ 516.2 References.
§ 516.3 Explanation of abbreviations and terms.
§ 516.4 Responsibilities.
§ 516.5 Restriction on contact with DOJ.
§ 516.6 Appearance as counsel.
§ 516.7 Mailing addresses.

Subpart B—Service of Process

§ 516.8 General.
§ 516.9 Service of criminal process within the United States.
§ 516.10 Service of civil process within the United States.
§ 516.11 Service of criminal process outside the United States.
§ 516.12 Service of civil process outside the United States.
§ 516.13 Assistance in serving process overseas.
§ 516.14 Service of process on DA or Secretary of Army.

Subpart C—Reporting Legal Proceedings to HQDA

§ 516.15 General.
§ 516.16 Individual and supervisory responsibilities upon commencement of legal proceedings.
§ 516.17 SJA or legal adviser responsibilities.
§ 516.18 Litigation alleging individual liability.
§ 516.19 Injunctive relief.
§ 516.20 Habeas corpus.
§ 516.21 Litigation against government contractors.
§ 516.22 Miscellaneous reporting requirements.
§ 516.23 Litigation reports.
§ 516.24 Preservation of evidence.
§ 516.25 DA Form 4.
§ 516.26 Unsworn declarations under penalty of perjury.

Subpart D—Individual Liability

§ 516.27 Scope.
§ 516.28 Policy.
§ 516.29 Federal statutes and regulations.
§ 516.30 Procedures for obtaining certification and DOJ representation.
§ 516.31 Private counsel at government expense.
§ 516.32 Requests for indemnification.

Subpart E—Legal Proceedings Initiated by the United States Medical Care and Property Claims

§ 516.33 General.
§ 516.34 Referral of medical care and property claims for litigation.
§ 516.35 Preparation of claims for litigation.

Assertion of Other Claims

§ 516.36 Referral to Litigation Division.
§ 516.37 Proceedings to repossess government real property or quarters or to collect delinquent rent.

Subpart F—Environmental Litigation

§ 516.38 Scope.
§ 516.39 Duties and procedures.

Subpart G—Release of Information and Appearance of Witness Scope

§ 516.40 General.
§ 516.41 Policy.
§ 516.42 Reference to HQDA.

Release of Records in Connection with litigation

§ 516.43 Release of Army and other agency records.
§ 516.44 Determination of release authorization.
§ 516.45 Records determined to be releasable.
§ 516.46 Records determined not to be releasable.

DA Personnel as Witnesses in Private Litigation

§ 516.47 Response to subpoenas, orders, or requests for witnesses.
§ 516.48 Official information.
§ 516.49 Expert witnesses.
§ 516.50 Interference with mission.

Litigation in Which the United States Has an Interest

§ 516.51 Response to subpoenas, orders, or requests for witnesses.
§ 516.52 Expert witnesses.
§ 516.53 News media and other inquiries.

Status, Travel, and Expenses of Witnesses

§ 516.54 Witnesses for the United States.
§ 516.55 Witnesses for a state or private litigant.
§ 516.56 Witnesses before foreign tribunals.

Subpart H—Remedies in Procurement Fraud and Corruption

§ 516.57 Purpose.
§ 516.58 Policies.
§ 516.59 Duties and procedures.
§ 516.60 Procurement fraud and irregularities programs at MACOMs.
§ 516.61 Reporting requirements.
§ 516.62 PFD and HQ USACIDC coordination.
§ 516.63 Coordination with DOJ.
§ 516.64 Comprehensive remedies plan.
§ 516.65 Litigation reports in civil recovery cases.
§ 516.66 Administrative and contractual actions.
§ 516.67 Overseas cases of fraud or corruption.

§ 516.68 Program Fraud Civil Remedies Act (PFCRA).

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Appendix E to Part 516—Department of Defense Directive 5505.5, Implementation of the Program Fraud Civil Remedies Act.
Appendix F to part 516—Glossary.
Appendix G to Part 516—Figures.

Authority: 5 U.S.C. 552; 10 U.S.C. 218, 1037, 1089, 1552, 1553, 2036; 18 U.S.C. 219, 3401; 28 U.S.C. 50, 513, 515, 543; 31 U.S.C. 3729 and 41 U.S.C. 51; 42 U.S.C. 290, 2651; 43 U.S.C. 666

Subpart A—General

§ 516.1 Purpose.

(a) This part prescribes policies and procedures for the following:

(1) Defensive and affirmative litigation in Federal and state civilian courts where the Army or DOD has an interest in the matter.

(2) Proceedings before Federal or state administrative bodies, such as utility rate commissions.

(3) Release of official information and testimony by DA personnel with regard to litigation.

(4) Remedies for procurement fraud and corruption.

(5) Environmental civil litigation and administrative proceedings.

(6) Proceedings before the Office of Special Counsel.

(b) This regulation does not apply to DA or DOD proceedings such as courts-martial or administrative boards.

§ 516.2 References.

Applicable publications and forms are listed in Appendix A to this part.

§ 516.4 Explanation of abbreviations and terms.

(a) The Glossary contains explanations of abbreviations and terms.

(b) The masculine gender has been used throughout this regulation for simplicity and consistency. Any reference to the masculine gender is intended to include women.

§ 516.4 Responsibilities.

(a) United States Department of Justice (DOJ). DOJ will defend litigation in domestic and foreign courts, against the United States, its agencies and instrumentalities, and employees whose official conduct is involved. The various U.S. Attorney Offices, under the oversight of the Attorney General, will conduct much of the representation.

(b) The Judge Advocate General (TJAG). Subject to the ultimate control of litigation by DOJ (including the various U.S. Attorney Offices), and to the general oversight of litigation by the Army General Counsel, TJAG is responsible for litigation in which the Army has an interest. Only TJAG (or Chief, Litigation Division) will communicate to DOJ the Army's position with regard to settlement of a case.

(c) Assistant Judge Advocate General For Civil Law and Litigation (AJAG–CL). Responsible to TJAG for litigation issues; supervises Chief, Litigation Division.

(d) Chief, Litigation Division. Reports to AJAG–CL and is responsible for the following:

(1) Supervising litigation in which the Army has an interest.

(2) Acting for TJAG and Secretary of the Army on litigation issues, including the authority to settle or compromise cases, subject to the supervision of TJAG and AJAG–CL.

(3) Delegating cases if appropriate.

(4) Serving as primary contact with DOJ on litigation.

(5) Accepting service of process for DA and for the Secretary of the Army in his official capacity. See 32 CFR § 257.5).

(e) Special Assistant U.S. Attorneys (SAUSAs) and DOJ Special Attorneys. Army judge advocates and civilian attorneys, when appointed as SAUSAs under 28 U.S.C. 543, will represent the Army's interests in either criminal or civil matters in Federal court under the following circumstances:

(1) Felony and misdemeanor prosecutions in Federal court. Army attorneys, at the installation level, after being duly appointed (See AR 27–10), will prosecute cases, in which the Army has an interest, in Federal court. Army attorneys who prosecute criminal cases will not represent the United States in civil litigation without authorization from Chief, Litigation Division.

(2) SAUSAs for civil litigation. By assignment of TJAG and upon the approval of the U.S. Attorney, Judge Advocates will serve within a U.S. Attorney's office to represent the government in litigation in which the Army or DOD has an interest. These Judge Advocates have the same general authority and responsibility as an Assistant U.S. Attorney.

(3) Special Attorneys assigned to DOJ. By assignment of TJAG and with the concurrence of the appropriate DOJ official, Judge Advocates will work as Special Attorneys for DOJ. Special Attorneys are authorized to represent the United States in civil litigation in which the Army or DOD has an interest.

(f) Attorneys at Army activities or commands. SJAs or legal advisers, or attorneys assigned to them, will represent the United States in litigation only if authorized by this regulation or delegated authority in individual cases by the Chief, Litigation Division.

(g) Commander, U.S. Army Claims Service (USARCS). The Commander, USARCS, and USARCS attorneys, subject to AR 27–20, Chapter 4, will maintain direct liaison with DOJ in regard to administrative settlement of claims under the Federal Tort Claims Act.

(h) Chief, Contract Law Division, OTJAG. The Chief, Contract Law Division, attorneys assigned to the Contract Law Division, and other attorneys designated by the Chief, Contract Law Division, in litigation involving taxation, will represent DA in negotiation, administrative proceedings, and litigation, and maintain liaison with DOJ and other governmental authorities.

(i) Legal Representatives of the Chief of Engineers. The Office of Chief Counsel, attorneys assigned thereto, and other attorneys designated by the Chief Counsel will maintain direct liaison with DOJ in litigation and administrative proceedings arising from the navigation, civil works, Clean Water Act 404 permit authority, environmental response activities, and real property functions of the U.S. Army Corps of Engineers.

(j) Chief Trial Attorney, Contract Appeals Division, USALSA. The Chief Trial Attorney, attorneys assigned to the Contract Appeals Division, and attorneys designated by the Chief Trial Attorney will represent the government before the Armed Services Board of Contract Appeals and the General Services Board of Contract Appeals. They will maintain direct liaison with DOJ concerning appeals from ASBCA

and GSBCA decisions. The Chief Trial Attorney has designated COE attorneys to act as trial attorneys in connection with COE contract appeals.

(k) Chief, Regulatory Law Office, USALSA. The Chief, Regulatory Law Office, attorneys assigned to the Regulatory Law Office, and other attorneys designated by the Chief, will represent DA consumer interests in regulatory matters before state and Federal administrative agencies and commissions, including but not limited to proceedings involving rates and conditions for the purchase of services for communications (except long-distance telephone), transportation, and utilities (gas, electric, water and sewer). They will maintain direct liaison with DOJ for communications, transportation, and utilities litigation.

(l) Chief, Intellectual Property Law Division, USALSA. The Chief, Intellectual Property Law Division, and the attorneys assigned thereto will represent DA in matters pertaining to patents, copyrights, and trademarks. They will maintain direct liaison with DOJ concerning intellectual property issues.

(m) Chief, Labor and Employment Law Office, OTJAG. The Chief, Labor and Employment Law Office, attorneys assigned thereto, and attorneys identified as labor counselors will represent DA in matters pertaining to labor relations, civilian personnel, and Federal labor standards enforcement before the following: Federal Labor Relations Authority; Merit Systems Protection Board; Equal Employment Opportunity Commission; Department of Labor; National Labor Relations Board; and, state workmen's compensation commissions. In the event any individual mentioned in this subparagraph intends to make a recommendation to DOJ concerning an appeal of any case to a U.S. Court of Appeals, such recommendation will first be coordinated with Litigation Division.

(n) Chief, Procurement Fraud Division, USALSA. The Chief, Procurement Fraud Division, attorneys assigned thereto, and other attorneys designated by the Chief will represent DA in all procurement fraud and corruption matters before the Army suspension and debarment authority and before any civil fraud recovery administrative body. They will maintain liaison and coordinate remedies with DOJ and other agencies in matters of procurement fraud and corruption.

(o) Chief, Environmental Law Division, USALSA. The Chief, Environmental Law Division, attorneys assigned thereto, and other attorneys designated by the Chief, ELD, will maintain direct liaison with DOJ in all environmental and natural resources civil litigation and administrative proceedings involving missions and functions of DA, its major and subordinate commands, installations presently or previously managed by DA, and other sites or issues in which DA has a substantial interest, except as otherwise specifically provided in this regulation.

(p) Chief, Criminal Law Division, OTJAG. The Chief, Criminal Law Division, will have general oversight of felony and magistrate court prosecutions conducted by Army lawyers acting as Special Assistant U.S. Attorneys. (See subpart G of this part). The Chief will coordinate with DOJ and other governmental agencies concerning the overall conduct of these prosecutions.

§ 365.5 Restriction on contact with DOJ.

(a) General rule. Except as authorized by TJAG, the General Counsel, the Chief of Litigation Division, or this regulation, no Army personnel will confer or correspond with DOJ concerning legal proceedings in which the Army has an interest.

(b) Exceptions. This prohibition does not preclude contact with DOJ required by the Memorandum of Understanding between DOJ and DOD relating to the investigation and prosecution of certain crimes. (See AR 27–10, para 2–7). In addition, an installation SJA or legal adviser is expected to maintain a working relationship with the U.S. Attorney in each district within his geographical area. An SJA or legal adviser should request the U.S. Attorney to advise him immediately when litigation involving DA or its personnel is served on the U.S. Attorney.

§ 516.6 Appearance as counsel.

(a) General. Military personnel on active duty and DA civilian personnel will not appear as counsel before any civilian court or in any preliminary proceeding, for example, deposition, in litigation in which the Army has an interest without the prior written approval of TJAG, except under the following conditions:

(1) The appearance is authorized by this regulation.

(2) The individual is a party to the proceeding.

(3) The appearance is authorized under an expanded legal assistance program (See AR 27–3).

(4) The individual is a judge advocate assigned or detailed by TJAG to DOJ to represent the United States in civil or criminal cases, for example, a Special Assistant U.S. Attorney, or an attorney assigned to Litigation Division.

(b) Procedure. All requests for appearance as counsel will be made through Litigation Division to the Personnel, Plans and Training Office, OTJAG. Requests for DA military or civilian attorneys to appear in any civilian court or proceeding on behalf of a soldier who is also facing UCMJ action will be delivered to the SJA, legal adviser, or Regional Defense Counsel, as appropriate. The SJA or legal adviser will forward the request to Litigation Division with an evaluation of the case and recommendation. Regional Defense Counsel should send requests for USATDS counsel to Chief, USATDS, who will forward the request to Litigation Division. Privileged or otherwise sensitive client information should only be submitted through USATDS channels.

§ 516.7 Mailing addresses.

Mailing addresses for organizations referenced in this regulation are in Appendix B to this part.

Subpart B—Service of Process

§ 516.8 General.

(a) Defined. Process is a legal document that compels a defendant in an action to appear in court or to comply with the court's demands, for example, in a civil case a summons or subpoena, or in a criminal case, a warrant for arrest, indictment, contempt order, subpoena, or summons. Service of process is the delivery of the document to a defendant to notify him of a claim or charge against him.

(b) Policy. DA personnel will follow the guidance of this chapter when civil officials attempt to serve civil or criminal process on individuals on Federal property.

(c) Procedures. Provost marshals shall ensure that installation law enforcement personnel are adequately trained to respond to situations which arise with regard to service of civil and criminal process. SJAs or legal advisers shall provide guidance to law enforcement personnel in these matters.

§ 516.9 Service of criminal process within the United States.

(a) Surrender of personnel. Guidance for surrender of military personnel to civilian law enforcement officials is in Chapter 7 of AR 630–10 and AR 190–9. Army officials will cooperate with civilian law enforcement authorities who seek the surrender of a soldier in connection with criminal charges. Special rules apply when a bail bondsman or other surety seeks custody of a soldier.

(b) Requests for witnesses or evidence in criminal proceedings. See subpart H to this part.

§ 516.10 Service of civil process within the United States.

(a) Policy. DA officials will not prevent or evade the service or process in legal actions brought against the United States or against themselves in their official capacities. If acceptance of service of process would interfere with the performance of military duties, Army officials may designate a representative to accept service. DA personnel sued in their individual capacity should seek legal counsel concerning voluntary acceptance of process.

(b) Requests for witnesses or evidence in civil proceedings. See subpart H to this part.

(c) Process of Federal courts. Subject to reasonable restrictions imposed by the commander, civil officials will be permitted to serve Federal process. (See Fed. R. Civ. P. 4, 45).

(d) Process of state courts.

(1) In areas of exclusive Federal jurisdiction that are not subject to the right to serve state process, the commander or supervisor will determine whether the individual to be served wishes to accept service voluntarily. A JA or other DA attorney will inform the individual of the legal effect of voluntary acceptance. If the individual does not desire to accept service, the party requesting service will be notified that the nature of the exclusive Federal jurisdiction precludes service by state authorities on the military installation.

(2) On Federal property where the right to serve process is reserved by or granted to the state, in areas of concurrent jurisdiction, or where the United States has only a proprietary interest, Army officials asked to facilitate service of process will initially proceed as provided in the preceding subparagraph. If the individual declines to accept service, the requesting party will be allowed to serve the process in accordance with applicable state law, subject to reasonable restrictions imposed by the commander.

(e) Process of foreign courts. A U.S. District Court may order service upon a person who resides in the judicial district of any document issued in connection with a proceeding in a foreign or international tribunal. (28 U.S.C. 1696). In addition, the U.S. State Department has the power to receive a letter rogatory issued by a foreign or international tribunal, to transmit it to a tribunal, officer or agency in the United States, and to return it after execution. (28 U.S.C. 1781). Absent a treaty or agreement to the contrary, these provisions will govern.

(f) Seizure of personal property. State and Federal courts issue orders (for example, writ of attachment) authorizing a levy (seizure) of property to secure satisfaction of a judgment. DA personnel will comply with valid state or Federal court orders commanding or authorizing the seizure of private property to the same extent that state or Federal process is served.

§ 516.11 Service of criminal process outside the United States.

Army Regulation 630–10 and international treaties, such as status of forces agreements, govern the service of criminal process of foreign courts and the surrender of soldiers to foreign civilian law enforcement officials.

§ 516.12 Service of civil process outside the United States.

(a) Process of foreign courts. In foreign countries service of process issued by foreign courts will be made under the law of the place of service, as modified by status of forces agreements, treaties or other agreements. In foreign areas under exclusive U.S. jurisdiction, service of process issued by foreign courts will be made under the law specified by appropriate U.S. authority.

(b) Process of Federal courts. Service of process on U.S. citizens or residents may be accomplished under the following provisions: The Hague Convention, reprinted in 28 USCA Federal Rules of Civil Procedure, following Rule 4; Fed. R. Civ. P. 4(i); 28 USC 1781 and 1783; and, the rules of the Federal court concerned. If a DA official receives a request to serve Federal process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned.

(c) Process of state courts. If a DA official receives a request to serve state court process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned. (See, for example, The Hague Convention, reprinted in 28 USCA Federal Rules of Civil Procedure, following Rule 4).

(d) Suits against the United States. DA personnel served with foreign civil process will notify the appropriate SJA or legal adviser, who will return the document to the issuing authority explaining the lack of authority to accept service for the United States. Service on the United States must be made upon DOJ through established diplomatic channels.

§ 516.13 Assistance in serving process overseas.

(a) Europe. For information and assistance concerning service of process of persons assigned to or accompanying U.S. Forces in Europe, contact the Foreign Law Branch, International Law Division, Office of The Judge Advocate, Headquarters U.S. Army, Europe, and Seventh Army, Unit 29351, (Heidelberg, Germany) APO AE 09014.

(b) Korea. For information and assistance concerning service of process of persons assigned to or accompanying U.S. Forces in Korea, contact Staff Judge Advocate, US Forces Korea (Seoul, Republic of Korea), APO AP 96205.

(c) Panama, Central and South America. For information and assistance concerning service of process of persons assigned to or accompanying forces in the U.S. Army Southern Command, contact Staff Judge Advocate, HQ, US Army South, Fort Clayton, Panama, APO AA 34004–5000.

§ 516.14 Service of process on DA or Secretary of Army.

The Chief, Litigation Division, shall accept service of process for Department of the Army or for the Secretary of the Army in his official capacity.

Subpart C—Reporting Legal Proceedings to HQDA

§ 516.15 General.

(a) Legal proceedings requiring reporting. Actions must be taken upon commencement of litigation or administrative proceedings in which the United States has an interest. Typically, the Secretary of the Army, DA, the United States, or DA personnel are named as defendant in a lawsuit or as respondent in an administrative proceeding. A nonexclusive listing of cases in which the United States has an interest include the following:

(1) Suits for damages, injunctive relief, or other action filed against the government or against DA personnel in their official capacity.

(2) Suits alleging individual liability arising from performance of official duties by DA personnel.

(3) Actions affecting DA operations or activities or which might require official action by DA personnel.

(4) Actions arising out of DA contracts, subcontracts, or purchase orders wherein the government might be required to reimburse a contractor for litigation expenses.

(5) Bankruptcy proceedings in which the United States or its instrumentalities may have an interest, including bankruptcies involving government contractors.

(b) Command and agency responsibility. Commanders and supervisors of Army units, installations, or organizations will ensure reports required by this section are promptly submitted.

(c) Reports to HQDA. Reports required by this regulation will be made telephonically or mailed to the responsible organization at DA. Appendix B to this part contains mailing addresses for these offices. Except in the situations described below, reports required by this chapter will be made to Litigation Division:

(1) Actual or potential litigation (or administrative infringement claims) involving patents, copyrights, or trademarks will be made to Intellectual Property Law Division.

(2) Reports of pending or prospective litigation involving taxation will be made to Contract Law Division.

(3) Communications, transportation, and utility services reports will be made to Regulatory Law Office.

(4) Reports involving environmental and natural resource litigation and administrative proceedings will be made to Environmental Law Division.

(5) Potential civil recovery reports in cases of procurement fraud and corruption will be made to Procurement Fraud Division.

(6) Reports involving the felony prosecution program and magistrate court prosecutions will be made to Criminal Law Division, OTJAG.

(7) Cases before the Armed Services Board of Contract Appeals and the General Services Board of Contract Appeals will be made to Contract Appeals Division.

(d) Classified information. Information required by this regulation will be submitted in an unclassified form if possible. If downgrading or declassification is not feasible, the classified material should be separated from the report and forwarded under separate cover.

(e) Other reporting requirements. Reports required by this chapter are in addition to and do not satisfy any other reporting requirement, such as the following: notifying the FBI of offenses pursuant to AR 27–10; submitting serious incident reports pursuant to AR 190–40; reporting procurement fraud or other irregularities per Defense Federal Acquisition Regulation Supplement, section 209.406–3 (48 CFR 209.406–3); reporting the exercise of criminal jurisdiction by foreign tribunals over U.S. personnel pursuant to AR 27–50; or, reporting bankruptcies per AR 37–103.

(f) Reports control exemption. The reports required herein are exempt from reports control under AR 335–15, paragraphs 3–3a(5) and 5–2e(4).

§ 516.16 Individual and supervisory procedures upon commencement of legal proceedings.

(a) Individual procedures. DA personnel served with civil or criminal process concerning a proceeding in which the United States has an interest (§ 516.15) will immediately inform their supervisor and furnish copies of process and pleadings. There is no requirement to notify supervisors of purely private litigation.

(b) Supervisory procedures. When supervisors learn that legal proceedings in which the United States has an interest have commenced, the supervisor will forward a copy of all process and pleadings, along with other readily available information, to the SJA or legal adviser. If no legal officer is available locally, the documents will be forwarded to the SJA or legal adviser of the next higher headquarters.

§ 516.17 SJA or legal adviser procedures.

(a) Immediate notice to HQDA. When an SJA or legal adviser learns of litigation in which the United States has an interest, and it appears that HQDA is not aware of the action, the SJA or legal adviser will telephonically notify the responsible HQDA office. (See § 516.15(c)). Immediate notice is particularly important when litigation involves one of the following: a lawsuit against an employee in his individual capacity; a motion for a temporary restraining order or preliminary injunction; a habeas corpus proceeding; a judicial or administrative proceeding involving less than 60 days to file an answer; and, actions with possible Congressional, Secretarial, or Army Staff interest. For legal proceedings instituted in foreign tribunals, the SJA or legal adviser will also notify the major overseas commander concerned and the appropriate U.S. Embassy or Legation. A telephonic report to HQDA should include the following:

(1) Title or style of the proceeding.

(2) Full names and addresses of the parties.

(3) Tribunal in which the action is filed, date filed, docket number, when and on whom service of process was made, and date by which pleading or response is required.

(4) Nature of the action, amount claimed or relief sought.

(5) Reasons for immediate action.

(b) Transmission of process, pleadings, and related papers. Unless instructed otherwise by HQDA, the SJA or legal adviser will FAX or mail HQDA a copy of all process, pleadings, and related papers. Use of express mail or overnight delivery service is authorized.

(c) Notice to U.S. Attorney. If the legal proceeding is instituted in the United States, the SJA or legal adviser, unless instructed otherwise by HQDA, will notify the appropriate U.S. Attorney and render assistance as required.

§ 516.18 Litigation alleging individual liability.

See Subpart D for procedures to follow when DA personnel, as a result of performance of official duties, are either sued in their individual capacities or face criminal charges.

§ 516.19 Injunctive relief.

(a) General. Plaintiffs may attempt to force government action or restraint in important operational matters or pending personnel actions through motions for temporary restraining orders (TRO) or preliminary injunctions (PI). Because these actions can quickly impede military functions, immediate and decisive action must be taken.

(b) Notification to HQDA and U.S. Attorney. The SJA or legal adviser will immediately notify Litigation Division or other appropriate office at HQDA when a motion for TRO or PI has been, or is about to be, filed. The SJA or legal adviser will also notify the responsible U.S. Attorney.

(c) Actions by SJA or legal adviser. The SJA or legal adviser will assist the DOJ or DA attorney responsible for the litigation. Installation attorneys or support personnel should begin accumulating relevant documentary evidence and identifying witnesses. If requested, installation attorneys will prepare a legal memorandum concerning the motion, giving particular attention to the following issues relevant to a court granting injunctive relief:

(1) Plaintiff's likelihood of success on the merits.

(2) Whether plaintiff will be irreparably harmed if injunctive relief is not granted.

(3) Harm to defendant and other parties if injunctive relief is granted.

(4) The public interest.

§ 516.20 Habeas Corpus.

(a) General. A soldier may file a writ of habeas corpus to challenge his

continued custody (usually in a post court-martial situation) or retention in the Army. As is the case with injunctive relief in the preceding paragraph, installation SJAs and legal advisers must take immediate action.

(b) Notification to Litigation Division and U.S. Attorney. The SJA or legal adviser will notify Litigation Division and the responsible U.S. Attorney's Office immediately upon learning that a petition for writ of habeas corpus has been filed. All relevant documentary evidence supporting the challenged action should be assembled immediately.

(c) Procedures in habeas corpus. Upon the filing of a petition for a writ of habeas corpus, the court will dismiss the petition, issue the writ, or order the respondent to show cause why it should not be granted. If a writ or order to show cause is issued, the SJA or legal adviser should be prepared to assist the responsible Litigation Division or DOJ attorney in preparing a return and answer. If so directed, the SJA will also prepare a memorandum of points and authorities to accompany the return and answer. The government's response should cover the following: whether the Army has custody of petitioner; whether respondent and petitioner are within the judicial district; and, whether appellate or administrative remedies have been exhausted.

(d) Writs or orders issued by state courts. No state court, after being judicially informed that a petitioner is in custody under the authority of the United States, should interfere with that custody or require that petitioner be brought before the state court. A deserter, apprehended by any civil officer having authority to apprehend offenders under the laws of the United States or of any state, district, territory, or possession of the United States, is in custody by authority of the United States. If a writ of habeas corpus is issued by a state court, the SJA or legal adviser will seek guidance from Litigation Division.

(e) Foreign court orders. A foreign court should not inquire into the legality of restraint of a person held by U.S. military authority. If a foreign court issues any process in the nature of a writ of habeas corpus, the SJA or legal adviser will immediately report the matter to the appropriate U.S. forces commander and to Litigation Division.

§ 516.21 Litigation against government contractors.

(a) General. A contract might require that the government reimburse a contractor (or subcontractor) for adverse judgments or litigation expenses. Unless a contractor or subcontractor facing a lawsuit requests representation by DOJ, the Army presumes the contractor will obtain private counsel to defend the case. If the contract so allows, however, the contractor may request and HQDA may recommend that DOJ represent the contractor if it is in the best interests of the United States.

(b) Actions by SJA or legal adviser. If a contractor or subcontractor faces litigation and the underlying contract with the government requires reimbursement for adverse judgments or costs of the litigation, the SJA or legal adviser, through the contracting officer, should determine if the contractor desires representation by DOJ. If so, the contractor or authorized agent will sign a request for representation. (See Figure D–3, Appendix G, of this part.) The SJA or legal adviser will determine whether, in his opinion, representation by DOJ should be granted. He will prepare a memorandum to support his recommendation, especially concerning any issue regarding the government's obligation to reimburse the contractor under the contract. The SJA or legal adviser will forward his memorandum, along with the contractor's request, to Litigation Division.

(c) Actions by Litigation Division. The Chief, Litigation Division, will evaluate the submission and decide if it is in the Army's best interest that the request be granted. He will prepare a memorandum supporting his decision and send the packet to DOJ. The Chief's decision constitutes the final DA position on the matter. If DOJ grants the contractor's request, the Chief, Litigation Division, will ensure that the contractor is notified through the SJA or legal adviser and the contracting officer.

(d) Private Counsel. A contractor represented by DOJ may ask that private counsel assist the DOJ attorney in the litigation. The DOJ attorney will remain in control of the litigation, and the fees for private counsel will not be reimbursable except under unusual circumstances. The contractor must seek both DOJ and DA approval to employ private counsel when DOJ representation has been granted. Even if DOJ and DA grant authority to employ private counsel, the contracting officer will determine whether a contractor will be reimbursed under the contract for private counsel.

(e) Settlement. The contractor, unless the contract specifies otherwise, will ultimately decide whether to compromise a suit. Reimbursement under the contract is determined by the contracting officer, with the advice of his attorney.

§ 516.22 Miscellaneous reporting requirements.

SJAs or legal advisers will comply with the directives cited below concerning actual or prospective litigation involving the following types of cases:

(a) Taxation.

(1) Contractor transactions. (FAR and DFARS, 48 CFR parts 29 and 229).

(2) Army and Air Force Exchange Service (AAFES) activities. (AR 60–20).

(3) Purchase or sale of alcoholic beverages. (AR 215–2).

(4) Nonappropriated fund and related activities. (AR 215–1).

(b) Tort and contract claims, insurance and litigation involving nonappropriated fund activities. (AR 215–1).

(c) Annexation of Army lands. (AR 405–25).

(d) Communications, transportation, and utility services administrative proceedings. Any contracting officer or other Army official responsible for the acquisition of communications, transportation, utilities (gas, electric, water and sewer), or military mail services, who becomes aware of any action or proceeding of interest to the Army, will promptly refer the matter to the SJA or legal adviser, who will take the actions prescribed in § 516.17 of this part. Examples of actions requiring referral follow: new or amended rates, regulations, or conditions of service; applications for authority to discontinue or initiate service; changes in electromagnetic patterns causing adverse communications interference; or, zoning proposals affecting historic or aesthetic preservation. In addition, the SJA or legal adviser will transmit the following to Regulatory Law Office:

(1) The names and addresses of any parties intervening and the substance of their positions.

(2) Names of government users affected by any change.

(3) Copy of any proposed rates, rules, or regulations.

(4) A recommendation whether the Army should intervene in the action or proceeding. If intervention is recommended, provide a memorandum to support the recommendation.

(e) Legal proceedings overseas. Foreign communications, transportation, and utility service proceedings need not be reported. In other legal proceedings instituted in a foreign country, the SJA or legal adviser will take the actions prescribed in § 516.17 of this part.

(f) Maritime claims. Admiralty and maritime claims within the purview of Chapter 8, AR 27–20, which have been investigated and processed under AR

55–19 or other applicable regulations, will be referred to USARCS.

(g) Army and Air Force Exchange Service litigation. The SJA or legal adviser will send a copy of all documents relating to litigation against AAFES to General Counsel, AAFES, P.O. Box 660202, Dallas, TX 75266–0202.

(h) Bankruptcy. Reports of bankruptcy or insolvency proceedings shall be made in accordance with this regulation and AR 37–103.

§ 516.23 Litigation reports.

The SJA or legal adviser will prepare a litigation report when directed by HQDA. The report will contain the following sections: Statement of Facts; Setoff or Counterclaim; Responses to Pleadings; Memorandum of Law; Witness List; and, Exhibits.

(a) Statement of Facts. Include a complete statement of the facts upon which the action and any defense thereto are based. Where possible, support facts by reference to documents or witness statements. Include details of previous administrative actions, such as the filing and results of an administrative claim. If the action is predicated on the Federal Tort Claims Act, include a description of the plaintiff's relationship to the United States, its instrumentalities, or its contractors. Also include a statement whether an insurance company or other third party has an interest in the plaintiff's claim by subrogation or otherwise and whether there are additional claims related to the same incident.

(b) Setoff or Counterclaim. Discuss whether setoff or counterclaim exists. If so, highlight the supportive facts.

(c) Responses to Pleadings. Prepare a draft answer or other appropriate response to the pleadings. (See Figure C–1, to this part). Discuss whether allegations of fact are well-founded. Refer to evidence that refutes factual allegations.

(d) Memorandum of Law. Include a brief statement of the applicable law with citations to legal authority. Discussions of local law, if applicable, should cover relevant issues such as measure of damages, scope of employment, effect of contributory negligence, or limitations upon death and survival actions. Do not unduly delay submission of a litigation report to prepare a comprehensive memorandum of law.

(e) Potential witness information. List each person having information relevant to the case and provide an office address and telephone number. If there is no objection, provide the individual's social security account number, home address, and telephone number. This is "core information" required by Executive Order No. 12778 (Civil Justice Reform). Finally, summarize the information or potential testimony that each person listed could provide.

(f) Exhibits.

(1) Attach a copy of all relevant documents. This is "core information" required by Executive Order No. 12778 (Civil Justice Reform). Unless otherwise directed by HQDA, each exhibit should be tabbed and internally paginated. References to exhibits in the litigation report should be to page numbers of particular exhibits.

(2) Copies of relevant reports of claims officers, investigating officers, boards or similar data should be attached, although such reports will not obviate the requirement for preparation of a complete litigation report.

(3) Prepare an index of tabs and exhibits.

(4) Where a relevant document has been released pursuant to a FOIA request, provide a copy of the response, or otherwise identify the requestor and the records released.

(g) Distribution and number of copies. Unless HQDA directs otherwise, SJAs or legal advisers will mail (first class) an original and one copy of the litigation report to the responsible HQDA office (See § 516.15 of this part) and one copy to the U.S. Attorney's Office handling the case. If possible, record the litigation report onto a magnetic diskette, using either WordPerfect, Enable, or ACSII, and send it to Litigation Division.

§ 516.24 Preservation of evidence.

Because documents needed for litigation or administrative proceedings are subject to routine destruction, the SJA or legal adviser will ensure that all relevant documents are preserved.

§ 516.25 DA Form 4.

(a) General. The DA Form 4 (See Figure C–2, Appendix G, of this part) is used to authenticate Army records or documents. Documents attached to a properly prepared and sealed DA Form 4 are self-authenticating. (See Fed. R. Evid. 902).

(b) Preparation at the installation level. A DA Form 4 need not be prepared until the trial attorney presenting the government's case identifies documents maintained at the installation level which he will need at trial. Once documents are identified, the custodian of the documents will execute his portion of the DA Form 4. (See Figure C–2, Appendix G, of this part). The custodian certifies that the documents attached to the DA Form 4 are true copies of official documents. Documents attached to each form should be generally identified; each document need not be mentioned specifically. Only the upper portion of the form should be executed at the local level.

(c) Actions at HQDA. Upon receipt of the DA Form 4 with documents attached thereto, HQDA will affix a ribbon and seal and deliver it to the Office of the Administrative Assistant to the Secretary of the Army. That office will place the official Army seal on the packet.

§ 516.26 Unsworn declarations under penalty of perjury.

(a) General. Under the provisions of 28 U.S.C. 1746, whenever any matter is required or permitted to be established or proven by a sworn statement, oath or affidavit, such matter may also be established or proven by an unsworn written declaration under penalty of perjury. Because such declaration does not require a notary or other official to administer oaths, individuals preparing statements for use in litigation should consider using this format. (See Figure C–3, Appendix G, of this part).

(b) When executed within the United States. Place the following at the end of the witness statement:

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746).
Executed on

(Date) (Signature)

(c) When executed outside the United States. Place the following at the end of the witness statement:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. 1746).
Executed on

(Date) (Signature)

Subpart D—Individual Liability

§ 516.27 Scope.

This subpart guidance when DA personnel, as a result of the performance of their official duties, are either sued in their personal capacity, or are charged in a criminal proceeding. Examples of civil actions alleging individual liability include the following: a medical malpractice lawsuit against health care providers; suits resulting from motor vehicle accidents; constitutional torts; or, common law torts such as assault, libel, or intentional infliction of emotional distress. Likewise, state or Federal criminal charges can arise from the performance of official duties, including environmental crimes or motor vehicle accidents.

§ 516.28 Policy.

(a) General. Commanders, supervisors, and SJAs or legal advisers will give highest priority to compliance with the requirements of this chapter with regard to current or former DA personnel who face criminal charges or civil litigation in their individual capacity as a result of performance of their official duties.

(b) DOJ policy on representation. If in the best interest of the United States, upon request of the individual concerned, and upon certification by his agency that he was acting within the scope of his employment, DOJ may represent present and former DA personnel sued individually as a result of actions taken within the scope of their employment. Representation can be declined for a variety of reasons, including but not limited to the following: the employee was not acting within the scope of his office; there is a conflict of interest; or, actions were not taken in a good faith effort to conform to law.

§ 516.29 Federal statutes and regulations.

(a) Federal Tort Claims Act (FTCA). (28 U.S.C. 1346(b), 2671–2680). A waiver of sovereign immunity which, with certain exceptions, makes the United States liable for tort claims in the same manner as a private individual.

(b) Federal Employees Liability Reform and Tort Compensation Act of 1988 (FELRTCA or the Westfall Act, Pub. L. No. 100–694, 102 Stat. 4563 (1988) (codified at and amending 28 U.S.C. 2671, 2674, 2679). FELRTCA, by amending the Federal Tort Claims Act, makes the FTCA the exclusive remedy for common law tort claims arising from actions taken by Federal employees acting within the scope of employment. The law was passed to eliminate problems caused by *Westfall* v. *Erwin*, 484 U.S. 292 (1988).

(c) 10 U.S.C. 1089 (Defense of certain suits arising out of medical malpractice). This provision, commonly referred to as the Gonzales Act, makes the FTCA the exclusive remedy for suits alleging medical malpractice against a military health care provider.

(d) 28 CFR 50.15 (Representation of Federal officials and employees by Department of Justice attorneys [. . .] in civil, criminal, and congressional proceedings in which Federal employees are sued, subpoenaed, or charged in their individual capacities). These DOJ regulations set out the policy and procedures for requesting representation in individual liability cases. See also 28 CFR part 15 (Defense of Certain Suits Against Federal Employees, etc.).

(e) 28 CFR 50.16 (Representation of Federal employees by private counsel at Federal expense).

§ 516.30 Procedures for obtaining certification and DOJ representation.

(a) SJA or legal adviser procedures. When an SJA or legal adviser learns of a criminal charge or of a lawsuit alleging individual liability against DA personnel as a result of performance of official duties, he will take the following actions:

(1) Immediately notify Litigation Division and the appropriate U.S. Attorney and FAX or express deliver copies of process and pleadings to each office. Where time for response is limited, request that the U.S. Attorney either petition the court for an extension of time, or provide temporary counsel and representation pending formal approval.

(2) Investigate whether the employee was acting within the scope of his office or employment. Obtain, if possible, statements from the defendant, supervisors, and witnesses.

(3) Advise the individual defendant of the rights and conditions set out in 28 CFR 50.15, which include the following:

(i) His right to request representation by a DOJ attorney and, in appropriate cases, certification that he was acting within the scope of employment. (See 28 U.S.C. 2679; 28 CFR 50.15).

(ii) The right to request private counsel at government expense, subject to the availability of funds. (See 28 CFR 50.16).

(iii) That the United States is not obligated to pay or indemnify defendant for any judgment rendered against him in his individual capacity.

(4) If the defendant desires certification or DOJ representation, have him sign a request. (See Figure D–1, Appendix G, of this part). Obtain a signed scope of employment statement from the defendant's supervisor. (Figure D–2, Appendix G, of this part).

(5) Prepare a report with, at a minimum, the following information: facts surrounding the incident for which defendant is being sued and those relating to scope of employment; the SJA's or legal adviser's conclusions concerning scope of employment; and, a recommendation whether certification by the Attorney General or representation by a DOJ attorney should be granted.

(6) In cases involving National Guard personnel, address also the following: whether defendant was acting in a state (Title 32 U.S.C.) or Federal (Title 10 U.S.C.) capacity during relevant periods (include orders); if defendant was acting under state authority, is it nevertheless in the interest of the United States to represent the individual; any impact on policies or practices of DA, the National Guard Bureau, or DOD; whether the relief requested can be granted only by a Federal officer or agency; and, whether Federal law or regulation required actions by state officials.

(7) Send the report, request for representation, and scope of employment statements to Chief, Litigation Division.

(b) Chief, Litigation Division, procedures. The Chief, Litigation Division, will review the report and evidence regarding representation and scope of employment and will determine whether certification and representation are appropriate. He will send his recommendation to the appropriate U.S. Attorney or office within DOJ. The Chief, Litigation Division, will notify the defendant of DOJ's decision.

§ 516.31 Private counsel at government expense.

(a) General. DA personnel, sued in their individual capacity or facing criminal charges as a result of performance of official duties, have no right to employ a private sector counsel at government expense or to expect reimbursement for the same. For proceedings in the United States, a request for employment of counsel at government expense may be approved by DOJ, contingent among other things upon availability of funds and a determination that employment of private counsel at government expense is in the best interests of the United States. (See 28 CFR 50.16). Special rules apply in overseas areas. (See paragraph (e) of this section).

(b) Individual request procedures. The individual will prepare a request that private counsel be employed for him at government expense. The request must also contain the following statement: "I understand that the United States is not required to employ private counsel on my behalf, and that I may be responsible for expenses incurred prior to proper authorization by the Department of the Army or the Department of Justice."

(c) Supervisory and legal adviser procedures. The request will be submitted through the individual's supervisors, who will make a recommendation and forward the packet to the local SJA or legal adviser. The SJA or legal adviser will prepare his own recommendation and forward the matter to Litigation Division.

(d) Chief, Litigation Division, procedures. If the Chief, Litigation Division, determines that the request for private counsel is meritorious, he will

prepare an appropriate recommendation and forward the packet to Civil Division, DOJ, for final approval.

(e) Special actions in foreign countries. Employment of private counsel in foreign proceedings is governed by AR 27–50 (Status of Forces Policies, Procedures, and Information). Under the authority of 10 U.S.C. 1037, soldiers, as well as employees or those accompanying the armed forces overseas, may be granted individual counsel in civil and criminal proceedings, under the criteria of AR 27–50.

§ 516.32 Requests for indemnification.

(a) Policy. An individual liable for a judgment rendered against him in his individual capacity has no right to reimbursement from DA. DA will consider, however, a request for indemnification from DA personnel where conduct within the scope of official duties has resulted in personal liability and indemnification is in the best interests of the United States. Indemnification is strictly contingent upon an appropriation to pay the judgment, as well as availability of such funds.

(b) Individual request procedures. An individual against whom an adverse judgment has been rendered may request indemnification. The request must include, at a minimum, the following: how the employee was acting within the scope of his employment; whether the requestor has insurance or any other source of indemnification; and, how reimbursement is in the best interests of the United States. The request must also contain the following statements: "I understand that acceptance of this request for indemnification for processing by DA does not constitute an acceptance of any obligation to make such a payment. I also understand that payment is contingent on availability of funds and that it will only be made if such is determined to be in the best interests of the United States." The individual should attach a copy of relevant documents, for example, court's opinion, judgment, and other allied papers.

(c) Supervisory and SJA procedures. The request for indemnification will be submitted through supervisory channels to the local SJA or legal adviser. Each supervisor will make a recommendation on the propriety of reimbursement.

(d) Chief, Litigation Division, procedures. Requests for indemnification will be forwarded to Chief, Litigation Division. The Chief, Litigation Division, will examine the submission and, after consultation with DOJ or other agencies, forward the packet with his recommendation to the Army General Counsel. The General Counsel will obtain a final decision by the Secretary of the Army or his designee on the matter. There is no administrative appeal of the Secretary's (or his designee's) decision.

Subpart E—Legal Proceedings Initiated by the United States Medical Care and Property Claims

§ 516.33 General.

(a) Authorities.

(1) Federal Medical Care Recovery Act (42 U.S.C. 2651). The act provides for the recovery of medical care expenses incurred because of a tortfeasor's actions.

(2) Federal Claims Collection Act (31 U.S.C. 3711). The act provides for the collection of claims for money or property arising from the activities of Federal agencies.

(3) Third-party Collection Program (10 U.S.C. 1095). The statute provides for collection of reasonable costs of health-care services, provided in facilities of the uniformed services to covered beneficiaries, from private insurers or third-party payers. In accordance with DOD Instruction 6010.15, "Third Party Collection (TPC) Program," 7 March 1991, the authority to settle or waive a DOD claim under the act is delegated to TJAG or to his designee.

(4) Executive Order No. 12778, (56 FR 55195; 3 CFR, 1991 Comp. p. 359), Civil Justice Reform. This order establishes several requirements on Federal agencies involved in litigation or contemplating filing an action on behalf of the United States.

(5) AR 27–20, Claims. Chapter 14 (Affirmative Claims) contains comprehensive guidance for Recovery Judge Advocates (RJAs) in the administrative determination, assertion, collection, settlement, and waiver of claims in favor of the U.S. for property damage and for medical care claims.

(b) Duties and Procedures. In accordance with Chapter 14, AR 27–20, Commander, USARCS, has supervisory responsibility over the administrative processing of property and medical care claims by RJAs. The Commander, U.S. Army Health Services Command (HSC), has supervisory responsibility over the Third Party Collection Program (TPCP). The HSC TPCP Implementation Plan effects DOD Instruction 6010.15 and establishes procedures for processing TPC claims. Litigation Division, in conjunction with DOJ and U.S. Attorneys, is responsible for pursuing, through litigation, claims not resolved administratively. DOJ is ultimately responsible for initiating litigation for the United States. (28 U.S.C. 515).

(c) Assertion of claims on behalf of the United States by private attorneys. The Army incurs potentially recoverable expenses when it provides medical care to soldiers or dependents injured by tortfeasors (for example, a soldier is hospitalized after an automobile accident). When injured personnel employ a private attorney to sue the tortfeasor, it may be in the Government's best interests to enter into an agreement with the private attorney to include the Army's medical care claim.

(d) Statute of limitations. There is a three year statute of limitations for actions in favor of the U.S. for money damages founded upon tort. (28 U.S.C. 2415(b)). Limitations periods can vary, however, depending upon the theory of liability and the jurisdiction involved. RJAs must be alert to the applicable period of limitations. A case referred for litigation should arrive at Litigation Division at least 6 months before the expiration of the limitations period.

(e) Reporting of recoveries. Amounts recovered through litigation will be reported to USARCS by Tort Branch, Litigation Division, or, where referred directly to a U.S. Attorney or the Nationwide Central Intake Facility (NCIF), by the responsible RJA.

§ 516.34 Referral of medical care and property claims for litigation.

(a) Criteria for referral. The RJA will forward the claims file and a litigation report (See § 516.35 of this part) through USARCS to Litigation Division when the claim has not been resolved administratively and any of the following conditions exist:

(1) The claim exceeds $5,000;

(2) It involves collection from the injured party or his attorney;

(3) The claim raises an important question of policy; or,

(4) There is potential for a significant precedent.

(b) Alternative methods. When none of the conditions cited in the preceding subparagraph are present, the RJA may refer the claim directly to the U.S. Attorney for the district in which the prospective defendant resides. Similar property claims may be referred through USARCS to DOJ's Nationwide Central Intake Facility (NCIF) rather than directly to the U.S. Attorney. Notice of all such referrals shall be provided through USARCS to Tort Branch, Litigation Division. The RJA should be ready to provide support to the U.S. Attorney if requested.

(c) Closing Files. A file referred directly to the U.S. Attorney will be

closed if the U.S. Attorney determines further action is unwarranted. If the RJA disagrees, the file should be forwarded with the RJA's recommendation through USARCS to Litigation Division.

§ 516.35 Preparation of claims for litigation.

(a) General. In preparing a referral for litigation the RJA will ensure the file contains at least the following:

(1) A litigation report (See § 516.23 of this part) that demonstrates a factual basis for the claim and a theory of recovery under applicable state law. (See Fed. R. Civ. P. 11)

(2) Copies of all medical records and bills reflecting the reasonable value of the medical care furnished to the injured party, including DA Form 2631–R (Medical Care-Third Party Liability Notification), and DA Form 3154 (MSA Invoice and Receipt). These documents should be authenticated as necessary on a DA Form 4.

(3) Copies of all documents necessary to establish the value of lost or damaged property.

(b) Transmittal letter. The letter of transmittal referring the claim for litigation should briefly summarize the facts giving rise to the claim and the collection actions previously taken by the Army and the injured party.

Assertion of Other Claims

§ 516.36 Referral to Litigation Division.

(a) General. The majority of cases filed on behalf of the United States will fall under this subpart E. All other civil cases which cannot be resolved administratively or by direct referral to DOJ will be forwarded through channels to Litigation Division with a litigation report. (See § 516.23 of this part).

(b) Government contractors. It may be in the Government's best interest to authorize a Government contractor, whose contract provides for the reimbursement of necessary legal expenses, to employ private counsel to initiate legal proceedings against a third party. To obtain authorization to employ private counsel in such instances the contractor should follow the procedures in § 516.21(c) of this part.

§ 516.37 Proceedings to repossess Government real property or quarters or to collect delinquent rent.

(a) General. U.S. Attorneys are authorized to accept a Federal agency's request for the following purposes: to initiate an action to recover possession of real property from tenants, trespassers, and others; to enjoin trespasses on Federal property; and, to collect delinquent rentals or damages for use and occupancy of real property for amounts less than $200,000.

(b) Procedures. When eviction or an action to collect delinquent rent is necessary, the SJA or legal adviser will notify General Litigation Branch, Litigation Division, of the situation. If approved by Litigation Division, the SJA or legal adviser may ask the U.S. Attorney to file suit. A copy of the complaint will be sent to Litigation Division. DOJ can take action to evict the occupants for violation of the terms of occupancy and collect delinquent rent or other charges. Once the matter has been referred to the U.S. Attorney, payments for rent should be sent to the U.S. Attorney. (See AR 210–50, chap 2.)

Subpart F—Environmental Litigation

§ 516.38 Scope.

This subpart contains guidance, policies, and procedures applicable to all environmental and natural resources civil litigation and administrative proceedings involving missions and functions of DA, its major and subordinate commands, all installations presently or previously managed by DA, and all other sites or issues in which DA has a substantial interest. In this chapter, "litigation" includes civil administrative proceedings.

§ 516.39 Duties and procedures.

(a) Water rights. Environmental Law Division will conduct direct liaison with DOJ and will represent DA in State and Federal litigation relating to availability and allocation of surface and ground water and the establishment and protection of water rights for Army military installations and activities. This will include litigation in State general adjudications of water rights under the McCarran Amendment, 43 U.S.C. 666, for Army military installations and activities. Such litigation relating solely to COE civil works projects or activities will be handled by attorneys under the technical supervision of the Chief Counsel, COE. With respect to any general adjudication which could affect the civil works or real property functions of COE, The Judge Advocate General, acting through the Chief, Environmental Law Division, and Chief Counsel, COE, will jointly determine which office should maintain primary direct liaison with DOJ and will scope and execute appropriate coordination with each other and with the General Counsel with respect to that litigation.

(b) Navigable waters. The Chief Counsel, COE, will conduct direct liaison with DOJ and represent DA in civil litigation involving activities in or across navigable waters of the United States or other activities regulated under the Rivers and Harbors Act of 1899, 33 U.S.C. 401 et seq.

(c) Waters of the United States. The Chief Counsel, COE, will conduct direct liaison with DOJ and represent DA in civil litigation involving The Clean Water Act section 404 (See 33 U.S.C. 1344) permit authority of COE over the discharge of dredged or fill material into waters of the United States.

(d) Enforcement. Environmental Law Division will conduct direct liaison with DOJ and represent DA in all civil litigation involving citizen or State enforcement of applicable State, Federal and local requirements respecting the control or abatement of pollution and involving the management of hazardous wastes, with respect to the missions and functions of, and Federal facilities owned or controlled by, DA, except for civil works facilities.

(e) Environmental response.

(1) Except as provided in (a)(2) of this section. Environmental Law Division will conduct direct liaison with DOJ and represent DA in all civil litigation seeking declaratory or injunctive relief or involving claims of Army liability for the costs of response at Federal facilities currently owned or controlled by DA and at other sites where the Army is a potentially responsible party.

(2) The Chief Counsel, COE, will conduct direct liaison with DOJ and represent DA in all civil litigation seeking declaratory or injunctive relief or involving claims of Army liability for the costs of response at civil works facilities, at former defense sites or at other sites where the Army is a potentially responsible party due to the response actions of the COE or its contractors.

(f) Fish and Wildlife, and Plants. Environmental Law Division will conduct direct liaison with DOJ and represent DA in civil litigation involving citizen or State enforcement of applicable State, Federal, and local laws governing conservation of plant, fish, and wildlife resources at Federal facilities owned or controlled by DA, except that such litigation relating solely to the real estate, civil works, navigation and Clean Water Act section 404 (See 33 U.S.C. 1344) permit functions and activities of the COE will be handled by attorneys under the technical supervision of the Chief Counsel, COE.

(g) Toxic torts.

(1) Except as otherwise provided in this part, Environmental Law Division will conduct direct liaison with DOJ and represent DA in all civil litigation involving claims of tort liability for exposure to environmental

contamination emanating from Federal facilities owned or controlled by DA.

(2) Litigation Division will conduct liaison with DOJ and represent DA in civil litigation involving claims of tort liability for singular and discrete incidents of exposure to environmental contamination emanating from any Federal facility owned or controlled by DA.

(3) The Chief Counsel, COE, will conduct direct liaison with DOJ and will represent DA in civil litigation involving claims of tort liability for exposure to environmental contamination (including singular and discrete incidents) emanating from any civil works activities under the jurisdiction of the Secretary of the Army.

(4) The Chief Counsel, COE, and Chief, Environmental Law Division, will confer and jointly determine which office will conduct direct liaison with DOJ and represent DA in civil litigation involving all other claims of toxic tort liability.

Subpart G—Release of Information and Appearance of Witnesses Scope

§ 516.40 General.

(a) Introduction. This subpart implements DOD Directive 5405.2 (See Appendix C to this part and 32 CFR part 97). It governs the release of official information and the appearance of present and former DA personnel as witnesses in response to requests for interviews, notices of depositions, subpoenas, and other requests or orders related to judicial or quasi-judicial proceedings. Requests for records, if not in the nature of legal process, should be processed under AR 25–55 (The Department of the Army Freedom of Information Act Program) or AR 340–21 (The Army Privacy Program). This subpart pertains to any request for witnesses, documents, or information for all types of litigation, including requests by private litigants, requests by State or U.S. attorneys, requests by foreign officials or tribunals, subpoenas for records or testimony, notices of depositions, interview requests, civil cases, criminal proceedings, private litigation, or litigation in which the United States has an interest.

(b) Definitions. (See Appendix F to this part).

§ 516.41 Policy.

(a) General Rule. Except as authorized by this subpart, present or former DA personnel will not disclose official information (See Appendix F—Glossary) in response to subpoenas, court orders, or requests.

(b) Exception. Present or former DA personnel may disclose official information if they obtain the written approval of the appropriate SJA, legal adviser, or Litigation Division.

(c) Referral to deciding official. If present or former DA personnel receive a subpoena, court order, request for attendance at a judicial or quasi-judicial proceeding, or request for an interview related to actual or potential litigation, and it appears the subpoena, order, or request seeks disclosures described in a above, the individual should immediately advise the appropriate SJA or legal adviser. If the SJA or legal adviser cannot informally satisfy the subpoena, order, or request in accordance with §§ 516.43 through 516.50 of this subpart, he should consult with Litigation Division.

(d) Requesters' responsibilities. Individuals seeking official information must submit, at least 14 days before the desired date of production, a specific written request setting forth the nature and relevance of the official information sought. (Requesters can be referred to this Subpart G). Subject to § 516.47(a), present and former DA personnel may only produce, disclose, release, comment upon, or testify concerning those matters specified in writing and properly approved by the SJA, legal adviser, or Litigation Division. (See United States ex. rel. Touhy v. Ragen, 340 U.S. 462 (1951)).

(e) Litigation in which the United States has an interest. If a subpoena, order, or request relates to litigation in which the United States has an interest and for which litigation responsibility has not been delegated, the SJA or legal adviser will coordinate with Litigation Division under § 516.42.

(f) Motions to stay or quash subpoenas. A subpoena should never be ignored, and an SJA or legal adviser should seek assistance from Litigation Division or the U.S. Attorney's office whenever necessary. If a response to a subpoena or order is required before a release determination can be made or before Litigation Division or the U.S. Attorney can be contacted, the SJA or legal adviser will do the following:

(1) Furnish the court or tribunal a copy of this regulation (32 CFR part 516, Subpart G) and applicable case law (See United States ex. rel. Touhy v. Ragen, 340 U.S. 462 (1951));

(2) Inform the court or tribunal that the requesting individual has not complied with this Chapter, as set out in 32 CFR 97 & 516, or that the subpoena or order is being reviewed;

(3) Seek to stay the subpoena or order pending the requestor's compliance with this chapter or final determination by Litigation Division; and,

(4) If the court or other tribunal declines to quash or stay the subpoena or order, inform Litigation Division immediately so a decision can be made whether to challenge the subpoena or order. If Litigation Division decides not to challenge the subpoena or order, the affected personnel will comply with the subpoena or order. If Litigation Division decides to challenge the subpoena or order, it will direct the affected personnel to respectfully decline to comply with the subpoena or order. (See United States ex. rel. Touhy v. Ragen, 340 U.S. 462 (1951)).

(g) Classified or sensitive information. Only Litigation Division may authorize the release of official information or appearance of DA personnel as witnesses in litigation involving terrorism, espionage, nuclear weapons, or intelligence sources and methods.

(h) Requests for Inspector General records or testimony. IG records, and information obtained through performance of IG duties, are official information under the exclusive control of the Secretary of the Army. (See AR 20–1, Chapter 3.) IG records frequently contain sensitive official information that may be classified or obtained under guarantees of confidentiality. When justification exists, DA attorneys will seek court protection from disclosure of IG records and information. No DA personnel will release IG records or disclose information obtained through performance of IG duties without the approval of The Secretary of the Army, The Inspector General, TIG Legal Advisor, or Chief, Litigation Division. When IG personnel receive a subpoena, court order, request for attendance at a judicial or quasi-judicial proceeding, or a request for an interview which the IG reasonably believes is related to actual or potential litigation concerning IG records or related information, they should immediately notify the Inspector General Legal Adviser or the Chief, Litigation Division. IG personnel will follow the guidance of this subpart concerning actions to be taken regarding disclosure and testimony.

§ 516.42 Reference to HQDA.

(a) General. If the SJA or legal adviser is unable to resolve the matter, it will be referred for approval or action by Litigation Division under this chapter, by the most expeditious means, to General Litigation Branch, Litigation Division, with the following exceptions:

(1) Those involving a case assigned to another branch of Litigation Division will be submitted to that branch (Appendix B to this part).

(2) Those involving affirmative litigation (for example, medical care recovery or Army property damage or loss cases) under subpart E will be submitted to Tort Branch.

(3) Those involving patents, copyrights, privately developed technical information, or trademarks will be submitted to Intellectual Property Law Division.

(4) Those involving taxation will be submitted to Contract Law Division.

(5) Those involving communication, transportation, or utility service proceedings will be submitted to the Regulatory Law Office.

(6) Those involving environmental matters will be submitted to the Environmental Law Division.

(7) Those involving contract appeals cases before the ASBCA will be submitted to the Contract Appeals Division.

(8) Those involving procurement fraud, including Qui Tam cases, will be submitted to the Procurement Fraud Division.

(b) Information to be submitted. When referring matters pursuant to paragraph (a) of this section, the following data should be provided:

(1) Parties (named or prospective) to the proceeding, their attorneys, and case number, where appropriate.

(2) Party making the request (if a subpoena, indicate moving party) and his attorney.

(3) Name of tribunal in which the proceeding is pending.

(4) Nature of the proceeding.

(5) Date of receipt of request or date and place of service of subpoena.

(6) Name, grade, position, and organization of person receiving request or served with subpoena.

(7) Date, time, and place designated in request or subpoena for production of information or appearance of witness.

(8) Nature of information sought or document requested, and place where document is maintained.

(9) A copy of each document requested. Contact the appropriate office at HQDA if this would be burdensome and unnecessary to a decision whether to release, redact, or withhold a particular document.

(10) Name of requested witness, expected testimony, requested appearance time and date, and whether witness is reasonably available.

(11) Analysis of the problem with recommendations.

Release of Records in Connection With Litigation

§ 516.43 Release of Army and other agency records.

(a) Preservation of originals. To preserve the integrity of DA records, DA personnel will submit properly authenticated copies rather than originals of documents or records for use in legal proceedings, unless directed otherwise by Litigation Division. (See 28 U.S.C. 1733.)

(b) Authentication of copies. Copies of DA records approved for release can be authenticated for introduction in evidence by use of DA Form 4. (See § 516.25 for instructions.)

(1) Records maintained in U.S. Army Engineer Districts and Divisions will be forwarded to HQDA(CECC–K), WASH DC 20314–1000.

(2) All other records will be forwarded to the appropriate office at HQDA (See § 516.42).

(c) Fees and charges. AR 37–60 prescribes the schedule of fees and charges for searching, copying, and certifying Army records for release in response to litigation-related requests.

(d) Release of records of other agencies. Normally an individual requesting records originating in agencies outside DA (that is, FBI reports, local police reports, civilian hospital records) that are also included in Army records should be advised to direct his inquiry to the originating agency.

§ 516.44 Determination of release authorization.

(a) Policy. DA policy is to make official information reasonably available for use in Federal and state courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure.

(b) Releasability factors. In deciding whether to authorize release of official information, the deciding official should consider the following:

(1) Has the requester complied with DA policy governing the release of official documents in § 516.41(d) of this part.

(2) Is the request unduly burdensome or otherwise inappropriate under the applicable court rules?

(3) Is the disclosure appropriate under the rules of procedure governing the matter in which the request arose?

(4) Would the disclosure violate a statute, executive order, regulation, or directive?

(5) Is the disclosure appropriate under the relevant substantive law concerning privilege?

(6) Would the disclosure reveal information properly classified pursuant to the DOD Information Security Program under AR 380–5, unclassified technical data withheld from public release pursuant to 32 CFR § 250, or other matters exempt from unrestricted disclosure?

(7) Would disclosure interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or confidential commercial or financial information, or, otherwise be inappropriate under the circumstances?

(8) Would the disclosure violate any person's expectation of confidentiality or privacy?

§ 516.45 Records determined to be releasable.

If the deciding official, after considering the factors set forth in § 536.44, determines that all or part of requested official records are releasable, copies of the records should be furnished to the requester.

§ 516.46 Records determined not to be releasable.

(a) General. If the deciding official, after considering the factors in § 516.44, determines that all or part of requested official records should not be released, he will promptly communicate directly with the attorney or individual who caused the issuance of the subpoena, order, or request and seek to resolve the matter informally. If the subpoena or order is invalid, he should explain the basis of the invalidity. The deciding official should also explain why the records requested are privileged from release. The deciding official should attempt to obtain the agreement of the requester to withdraw the subpoena, order, or request or to modify the subpoena, order, or request so that it pertains only to records which may be released. (See Figure G–1, Appendix G, of this part.)

(b) Information protected by the Privacy Act.

(1) A subpoena duces tecum or other legal process signed by an attorney or clerk of court for records protected by the Privacy Act, 5 U.S.C. 552a, does not justify the release of the protected records. The deciding official should explain to the requester that the Privacy Act precludes disclosure of records in a system of records without the written consent of the subject of the records or "pursuant to the order of a court of competent jurisdiction." (See 5 U.S.C. 552a(b)(11)). An "order of the court" for the purpose of subsection 5 U.S.C. 552a(b)(11) is an order or writ requiring the production of the records, signed by a judge or magistrate.

(2) Unclassified records otherwise privileged from release under 5 U.S.C. 552a may be released to the court under either of the following conditions:

(i) The subpoena is accompanied by an order signed by a judge or magistrate,

or such order is separately served, that orders the person to whom the records pertain to release the specific records, or that orders copies of the records be delivered to the clerk of court, and indicates that the court has determined the materiality of the records and the nonavailability of a claim of privilege.

(ii) The clerk of the court is empowered by local statute or practice to receive the records under seal subject to request that they be withheld from the parties until the court determines whether the records are material to the issues and until any question of privilege is resolved.

(iii) Subpoenas for alcohol abuse or drug abuse treatment records must be processed under 42 U.S.C. 290dd-3 and 290ee-3, and Public Health Service regulations published at 42 CFR 2.1—2.67.

(iv) Upon request, SJAs and legal advisers may furnish to the attorney for the injured party or the tortfeasor's attorney or insurance company a copy of the narrative summary of medical care that relates to a claim under Subpart E of this part. If additional medical records are requested, only those that directly pertain to the pending action will be furnished. If furnishing copies of medical records would prejudice the cause of action, the matter will be reported to Litigation Division.

(c) Referral to Litigation Division. If the SJA or legal adviser is not able to resolve a request for Army records informally, he should contact Litigation Division.

(1) Litigation Division may respond to subpoenas or orders for records privileged from release by informing the local U.S. Attorney about the subpoena and requesting that office file a motion to quash the subpoena or a motion for a protective order. The records privileged from release should be retained by the custodian pending the court's ruling upon the government's motion.

(2) When a motion to quash or for a protective order is not filed, or the motion is unsuccessful, and the appropriate DA official has determined that no further efforts will be made to protect the records, copies of the records (authenticated if necessary) will be submitted to the court (or to the clerk of court) in response to the subpoena or order.

(d) Classified and privileged materials. Requests from DOJ, U.S. Attorneys, or attorneys for other governmental entities for records which are classified or otherwise privileged from release will be referred to Litigation Division. (See § 516.41(g).

DA Personnel as Witnesses in Private Litigation

§ 516.47 Response to subpoenas, orders, or requests for witnesses.

(a) Policy. The involvement of present or former DA personnel in private litigation is solely a personal matter between the witness and the requesting party, unless one or more of the following conditions apply:

(1) The testimony involves official information. (See Appendix F—Glossary to this part).

(2) The witness is to testify as an expert.

(3) The absence of the witness from duty will seriously interfere with the accomplishment of a military mission.

(b) Former DA personnel. Former DA personnel may freely respond to requests for interviews and subpoenas except in instances involving official information (paragraph (a)(1) of this section) or concerning expert testimony prohibited by § 516.49. In those instances, the subject of the request or subpoena should take the action specified in §§ 516.41(c) and 516.42.

(c) Present DA personnel. Present DA personnel will refer all requests for interviews and subpoenas for testimony in private litigation through their supervisor to the appropriate SJA or legal adviser.

(d) Discretion to testify. Any individual not wishing to grant an interview or to testify concerning private litigation may seek the advice of an Army attorney concerning the consequences, if any, of refusal. Any individual not authorized to consult with Army counsel should consult with private counsel, at no expense to the government.

§ 516.48 Official information.

(a) In instances involving § 516.47(a)(1), the matter will be referred to the SJA or legal adviser serving the organization of the individual whose testimony is requested, or to HQDA pursuant to § 516.47(a). The deciding official will determine whether to release the information sought under the principles established in § 516.44. If funding by the United States is requested, see § 516.55(d).

(b) If the deciding official determines that the information may be released, the individual will be permitted to be interviewed, deposed, or to appear as a witness in court provided such interview or appearance is consistent with the requirements of §§ 516.49 and 516.50. (See, for example, Figure G–2, Appendix G, to this part). A JA or DA civilian attorney should be present during any interview or testimony to act as legal representative of the Army. If a question seeks information not previously authorized for release, the legal representative will advise the witness not to answer. If necessary to avoid release of the information, the legal representative will advise the witness to terminate the interview or deposition, or in the case of testimony in court, advise the judge that DOD directives and Army regulations preclude the witness from answering without HQDA approval. Every effort should be made, however, to substitute releasable information and to continue the interview or testimony.

§ 516.49 Expert witnesses.

(a) General rule. Present DA personnel will not provide, with or without compensation, opinion or expert testimony either in private litigation or in litigation in which the United States has an interest for a party other than the United States. Former DA personnel will not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities either in private litigation or in litigation in which the United States has an interest for a party other than the United States. (See Figure G–3, Appendix G of this part). An SJA or legal adviser is authorized to deny a request for expert testimony, which decision may be appealed to Litigation Division.

(b) Exception to the general prohibition. If a requester can show exceptional need or unique circumstances, and the anticipated testimony will not be adverse to the interests of the United States, Litigation Division may grant special written authorization for present or former DA personnel to testify as expert or opinion witnesses at no expense to the United States. In no event may present or former DA personnel furnish expert or opinion testimony in a case in which the United States has an interest for a party whose interests are adverse to the interests of the United States.

(c) Exception for AMEDD personnel. Members of the Army medical department or other qualified specialists may testify in private litigation with the following limitations (See Figure G–4, Appendix G, of this part):

(1) The litigation involves patients they have treated, investigations they have made, laboratory tests they have conducted, or other actions taken in the regular course of their duties.

(2) They limit their testimony to factual matters such as the following: their observations of the patient or other operative facts; the treatment prescribed

or corrective action taken; course of recovery or steps required for repair of damage suffered; and, contemplated future treatment.

(3) Their testimony may not extend to expert or opinion testimony, to hypothetical questions, or to a prognosis.

(d) Court-ordered expert or opinion testimony. If a court or other appropriate authority orders expert or opinion testimony, the witness will immediately notify Litigation Division. If Litigation Division determines it will not challenge the subpoena or order, the witness will comply with the subpoena or order. If directed by Litigation Division, however, the witness will respectfully decline to comply with the subpoena or order. (See *United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951)).

(e) Expert witness fees. All fees tendered to present DA personnel as an expert or opinion witness, to the extent they exceed actual travel, meals, and lodging expenses of the witness, will be remitted to the Treasurer of the United States.

§ 516.50 Interference with mission.

If the absence of a witness from duty will seriously interfere with the accomplishment of a military mission, the SJA or legal adviser will advise the requesting party and attempt to make alternative arrangements. If these efforts fail, the SJA or legal adviser will refer the matter to Litigation Division.

Litigation in Which the United States Has an Interest

§ 516.51 Response to subpoenas, orders, or requests for witnesses.

(a) Referral to a deciding official. Requests, subpoenas, or orders for official information, interviews or testimony of present or former DA personnel in litigation or potential litigation in which the United States has an interest, including requests from DOJ, will be resolved by the SJA or legal adviser pursuant to the principles of this subpart. Litigation Division will be consulted on issues that cannot be resolved by the SJA or legal adviser.

(b) Reassignment of witnesses. When requested by the U.S. Attorney, the SJA or legal adviser will ensure that no witnesses are reassigned from the judicial district without advising the DOJ attorney. If a witness is vital to the government's case and trial is imminent, the SJA or legal adviser should make informal arrangements to retain the witness in the command until trial. If this is not feasible, or if a satisfactory arrangement cannot be reached with the DOJ attorney, the SJA or legal adviser should notify Litigation Division.

§ 516.52 Expert witnesses.

Requests for present or former DA personnel as expert or opinion witnesses from DOJ or other attorneys representing the United States will be referred to Litigation Division unless the request involves a matter that has been delegated by Litigation Division to an SJA or legal adviser. In no event, may present or former DA personnel furnish expert or opinion testimony in a case in which the United States has an interest for a party whose interests are adverse to the interests of the United States.

§ 516.53 News media and other inquiries.

News media inquiries regarding litigation or potential litigation will be referred to the appropriate public affairs office. DA personnel will not comment on any matter presently or potentially in litigation without proper clearance. Local public affairs officers will refer press inquiries to HQDA (SAPA), WASH DC 20310–1500, with appropriate recommendations for review and approval by the Office of the Chief of Public Affairs. All releases of information regarding actual or potential litigation will be coordinated with Litigation Division prior to release.

Status, Travel, and Expenses of Witnesses

§ 516.54 Witnesses for the United States.

(a) Status of witness. A military member authorized to appear as a witness for the United States, including those authorized to appear under § 516.55(d), will be placed on temporary duty. If USAR or NG personnel are requested as witnesses for the United States, and if their testimony arises from their active duty service, they should be placed on active duty to testify. The status of a civilian employee will be determined under Federal Personnel Manual 630, subchapter 10. DA personnel who appear as necessary witnesses for a party asserting the government's claim for medical care expenses are witnesses for the United States.

(b) Travel arrangements. Travel arrangements for witnesses for the United States normally are made by DOJ through Litigation Division for other than local travel. Litigation Division will issue instructions for this travel, including fund citation, to the appropriate commander. A U.S. Attorney, or an attorney asserting the government's medical care claim under Subpart E, may make arrangements for local travel through the SJA or legal adviser for attendance of a witness who is stationed at an installation within the same judicial district, or not more than 100 miles from the place where testifying. Other requests, including those under § 516.55(d), will be referred to Litigation Division. The instructions from Litigation Division, or the request from the U.S. Attorney or the attorney asserting the government's claim, will serve as a basis for the issuance of appropriate travel orders by the local commander.

(c) Travel and per diem expenses. The witness' commander or supervisor should ensure the witness has sufficient funds to defray expenses. The SJA or legal adviser will provide assistance.

(1) Where local travel is performed at the request of a U.S. Attorney and the testimony does not involve information acquired in the performance of duties, transportation arrangements and any per diem expenses are the responsibility of the U.S. Attorney.

(2) An attorney asserting the government's medical care or property claim may be required to advance local travel expense money to the witness requested and to include these in recoverable costs where the government's claim is not large enough to justify expenditures of government travel funds.

(3) Other local travel and per diem expense for cases involving Army activities or claims are proper expenses of the command issuing the orders.

(4) Litigation Division will furnish travel expense and per diem funds for other than local travel and will receive reimbursement from DOJ or other government agencies as appropriate.

§ 516.55 Witnesses for a state or private litigant.

(a) Status of witness. If authorized to appear as a witness for a state or private litigant, and the testimony to be given relates to information obtained in the performance of official duties, a military member will attend in a permissive TDY status. If authorized to appear as a witness, but the testimony does not relate to information obtained in the performance of official duties, a military member may be granted a pass or permissive TDY under AR 630–5, or be required to take ordinary leave. The status of a civilian employee will be determined under 5 CFR Chapter I.

(b) Travel arrangements. The requesting party or state agency will make all travel arrangements for attendance of DA personnel authorized to appear as witnesses for a state or private litigant. The local commander may issue appropriate orders when necessary.

(c) Travel expenses. The United States may not pay travel, meals, and lodging expenses of the witness, other than normal allowances for subsistence pursuant to the DOD Military Pay and Allowances Entitlements Manual. These expenses are solely a matter between the witness and the party seeking his appearance. Witnesses ordinarily should be advised to require advance payment of such expenses. Military personnel authorized to appear in a pass or permissive TDY status are not entitled to receive witness attendance fees, but may accept travel, meals, and lodging expense money from the requesting litigant. All witness fees tendered the military member, to the extent they exceed such actual expenses of the member, will be remitted to the Treasurer of the United States. A civilian employee authorized to appear in his or her official capacity will accept the authorized witness fees, in addition to the allowance for travel and subsistence, and make disposition of the witness fees as instructed by his or her personnel office.

(d) Funding by the United States. Requests for DA personnel to appear at government expense as witnesses in state or local proceedings for a party other than the United States, including cases involving domestic violence or child abuse, will be referred to Litigation Division. Litigation Division may authorize travel and per diem expenses under § 516.54 when the case is one in which the United States has a significant interest.

§ 516.56 Witnesses before foreign tribunals.

(a) Referral to the SJA. Requests or subpoenas from a foreign government or tribunal for present DA personnel stationed or employed within that country to be interviewed or to appear as witnesses will be forwarded to the SJA of the command exercising general court-martial jurisdiction over the unit to which the individual is assigned, attached, or employed. The SJA will determine the following:

(1) Whether a consideration listed in § 516.47(a)(1) through (a)(3) applies.

(2) Whether the information requested is releasable under the principles established in § 516.43 through § 516.46.

(3) Whether the approval of the American Embassy should be obtained because the person is attached to the Embassy staff or a question of diplomatic immunity may be involved.

(b) United States has an interest in the litigation. If the SJA determines that the United States has an interest in the litigation, the commander may authorize the interview or order the individual's attendance in a temporary duty status. The United States will be deemed to have an interest in the litigation if it is bound by treaty or other international agreement to ensure the attendance of such personnel.

(c) United States has no interest in the litigation. If the SJA determines that the United States does not have an interest in the litigation, the commander may authorize the interview or the appearance of the witness under the principles established in § 516.47 through § 516.50.

(d) Witnesses located outside the requester's country. If the requested witness is stationed in a country other than the requester's, the matter will be referred to Litigation Division.

Subpart H—Remedies in Procurement Fraud and Corruption

§ 516.57 Purpose

This subpart delineates the policies, procedures, and responsibilities for reporting and resolving allegations of procurement fraud or irregularities (PFI) within DA. It implements DOD Directive 7050.5. (See Appendix D to this part.)

§ 516.58 Policies

(a) Procurement fraud and irregularities will be promptly and thoroughly addressed whenever encountered. Reports will be initiated in a timely manner and will be supplemented as appropriate.

(b) Investigations will be monitored to see that interim corrective action is taken and that final action is taken as expeditiously as possible.

(c) This regulation establishes the Procurement Fraud Division (PFD), U.S. Army Legal Services Agency, as the single centralized organization within the Army to coordinate and monitor criminal, civil, contractual, and administrative remedies in significant cases of fraud or corruption relating to Army procurement.

(d) The key elements of the Army's procurement fraud program follow: centralized policy making and program direction; fraud remedies coordination; decentralized responsibility for operational matters, such as reporting and remedial action; continuous case monitorship by PFD from the initial report until final disposition; and, command-wide fraud awareness training.

(e) Remedies for PFI will be pursued in a timely manner and properly coordinated with other agencies. Every effort will be made to support criminal investigation and prosecution of fraudulent activity.

(f) A specific remedies plan will be formulated for each significant case of fraud or corruption involving procurement.

(g) Coordination on the status and disposition of cases will be maintained between PFD, OTJAG, PFI Coordinators at MACOMs, and Procurement Fraud Advisers at subordinate commands. Coordination of procurement and personnel actions will be accomplished with investigative agencies as required by those agencies.

(h) Training which relates to fraud and corruption in the procurement process is a significant element of this program.

§ 516.59 Duties and procedures.

(a) TJAG has overall responsibility for the coordination of remedies in procurement fraud and corruption within the Army. This responsibility has been delegated to PFD. Functions of PFD will include the following:

(1) Serving as the single centralized organization in the Army to monitor the status of, and ensure the coordination of, criminal, civil, contractual, and administrative remedies for each significant case of fraud or corruption.

(2) Receiving reports of procurement fraud and corruption from any source including, but not limited to the following: DOD criminal investigative organizations; audit agencies; contracting officers; inspectors general of the executive branch; correspondence from the public; and, commanders. This provision does not repeal any other reporting requirement but establishes PFD as a recipient of PFI information at the earliest possible time.

(3) Establishing a monitoring system within OTJAG for all cases of fraud and corruption that relate to Army procurement.

(4) Discussing regularly with the U.S. Army Criminal Investigation Command (USACIDC) or the assigned DOD criminal investigative organization the current status of significant fraud or corruption cases and their coordination with prosecutive authorities.

(5) Ensuring that all criminal, civil, contractual, and administrative remedies are considered in each significant fraud or corruption case and that timely and applicable remedies are undertaken by commanders, contracting officers, and suspension and debarment authorities. For example, consideration of suspension or debarment of a contractor or individual should normally be initiated within 30 days of indictment or conviction.

(6) Coordinating, as appropriate, with other DOD components affected by a

significant fraud or corruption case being monitored by the Army.

(7) Developing, with the responsible DOD investigative organization, Procurement Fraud Coordinators and Advisers, and other involved agencies, a specific comprehensive remedies plan for each significant fraud or corruption case.

(8) Coordinating remedies with DOJ. In the case of ongoing criminal investigations, coordinate remedies through, or with the prior knowledge of, the DOD criminal investigative organization responsible for the case.

(9) In significant fraud or corruption cases, identifying and documenting any known adverse impact on a DOD mission, and including the information in any remedies plan.

(10) Providing the appropriate DOD criminal investigative organization with information concerning final remedies as a result of an investigation by that organization.

(11) Receiving notifications from criminal investigative agencies concerning substituted, defective, and counterfeit hardware in which a serious hazard to health, safety or operational readiness is indicated; ensuring that appropriate safety, procurement and program officials are informed in accordance with enclosure 3 of DOD Directive 7050.5. PFD will specifically ensure that contract reviews (DD 350 reports) and adverse impact statements (See § 516.64(c)(2) are prepared, and that such information is used to determine if further inquiry is warranted to prevent reoccurrence and to detect other possible fraud. Impact statements will not be released to prosecutive agencies until reviewed by PFD. When appropriate, PFD will coordinate with other DOD agencies to establish a lead agency for victim impact statements in multi-DOD agency cases.

(b) The Commanding General, USACIDC, will take the following actions:

(1) Notify PFD of any investigations involving fraud or corruption related to procurement activities.

(2) Notify other DOD component criminal investigative organizations when investigations involving fraud or corruption affect that component. This includes evidence of fraud by a contractor, subcontractor, or employee of either, on current or past contracts with, or affecting, that component.

(3) Notify the Defense Investigative Service of any investigations that develop evidence which affects DOD cleared industrial facilities or personnel.

(4) Determine the effect on any ongoing investigations or prosecutions of any criminal, civil, contractual, or administrative actions being considered by a centralized organization and advise of any adverse impact.

(5) Promptly provide commanders, contracting officers, Procurement Fraud Advisers, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption from ongoing or completed criminal investigations. In cases of indictment or conviction of a contractor or individual, the information will be provided in time for initiation, if appropriate, of suspension or debarment action within 30 days of the indictment or conviction.

(6) Provide prosecutive authorities and centralized organizations with timely information on the adverse impact on a DOD mission of fraud or corruption that relates to DOD procurement activities. This information will be obtained from individuals such as the head of the contracting agency, appropriate commanders, and staff agencies. Some examples of adverse impact on a DOD mission are endangerment of personnel or property, monetary loss, compromise of the procurement process, or reduction or loss of mission readiness.

(7) Discuss regularly with Procurement Fraud Advisers the status of significant investigations of fraud or corruption and their coordination with prosecutive authorities and provide documents and reports resulting from the investigations.

(c) Commanders of service schools conducting procurement or procurement-related training (such as The Judge Advocate General's School, the U.S. Military Police School, and the U.S. Army Logistics Management Center) will ensure the following:

(1) All procurement and procurement-related training includes a period of instruction on fraud and corruption in the procurement process. The length of the period of instruction will be appropriate to the duration and nature of the training.

(2) Training materials are developed to support that training.

(3) Training materials developed will be sent to MACOM PFI Coordinators.

(d) MACOM commanders and heads of contracting activities will ensure the following:

(1) Substantial indications of fraud or corruption relating to Army contracts or Army administered contracts are reported promptly to the supporting USACIDC element and the Procurement Fraud Division.

(2) Information provided includes reports by contracting officers under DFARS 209.406–3.

§ 516.60 Procurement fraud and irregularities programs at MACOMs.

(a) Command counsel and SJAs at MACOMs will develop a program and appoint an attorney as PFI Coordinator for their command. Chief counsel and SJAs at commands with procurement advisory responsibility will appoint an attorney as a Procurement Fraud Adviser (PFA) to manage the PFI program at their installations as well.

(b) Provision may be made for activities not having sufficient attorney assets to obtain assistance from nearby installations that have a PFA.

(c) Reports and recommendations will be transmitted through command channels to the PFI coordinator for the affected MACOM.

(d) Command counsel, chief counsel, and SJAs will exercise supervisory authority to ensure effective operation of the fraud program and coordination of remedies within their organizations.

(e) The MACOM PFI Coordinator will have overall responsibility for the design and implementation of the MACOM's procurement fraud program.

(f) PFAs and PFI Coordinators will coordinate with the appropriate local CID or Defense Criminal Investigative Service (DCIS) activity to assure the prompt notification and coordination of all Procurement Fraud cases.

§ 516.61 Reporting requirements.

(a) Typical fraud indicators during the procurement cycle are listed in Figure D–1, Appendix G, to this part. The mere presence of one or more of these indicators does not, by itself, require reporting under paragraph b of this section. Reports should be submitted if there is a reasonable suspicion of procurement fraud or irregularity or the procuring agency refers the matter for investigation.

(b) "Procurement Flash Reports" will be transmitted by FAX directly to PFD whenever a PFI Coordinator or PFA receives notice of a PFI involving the Army. To facilitate filing, a separate sheet should be used for each case reported. These reports will provide a succinct summary of the following available information:

(1) Name and address of contractor.

(2) Known subsidiaries of parent firms.

(3) Contracts involved in potential fraud.

(4) Nature of potential fraud.

(5) Summary of pertinent facts.

(6) Possible damages.

(7) Investigative agencies involved.

(8) Local PFAs (name and phone numbers).

Any of the above categories that cannot be completed will be annotated as "unknown at present."

(c) When a report is required by DFARS or is requested by PFD, the provisions of DFARS 209.406–3 (48 CFR 209.406–3) will be followed. That paragraph provides the basic content and format for PFI reports.

(d) All personnel will cooperate to ensure that investigations and prosecutions of procurement fraud are completed in a timely and thorough manner. Requests for assistance from federal prosecutors should be processed through the local PFA whenever possible. Requests for federal investigators will be processed through the supporting USACIDC and the PFA will be notified. When the conduct of criminal investigations and prosecutions conflict with the progress of procurements, reasonable deference will be given to criminal investigators and prosecutors whenever possible. Any serious conflict that cannot be resolved at a local level will be immediately reported to the PFI Coordinator or PFD for action.

(e) PFI Coordinators and PFAs may request access to information obtained during criminal investigations that is not protected by Fed. R. Crim. P. 6(e) and use this information to assist them in taking appropriate administrative, contractual, and civil remedies. Requests for this information should be made directly to the appropriate federal investigative agency. The investigative organization may withhold requested information if release would compromise an investigation. Difficulties in obtaining information which cannot be resolved locally will be referred to PFD for appropriate action.

(f) USACIDC will notify, in writing, local PFAs as well as PFD within 30 days, of initiation of a significant investigation of fraud or corruption related to Army procurement activities. Such notification will include the following:

(1) Case title.

(2) USACIDC Report of Investigation number.

(3) Responsible investigative agency or agencies.

(4) Office of primary responsibility.

(5) Date opened.

(6) Summary of facts.

(7) Suspected offense.

(g) The transmission of the information in f above may be delayed if the Commanding General, USACIDC, or the head of another DOD criminal investigation organization determines the transmission would compromise the success of any case or its prosecution. The prosecutive authorities dealing with the case will be consulted, when appropriate, in making such determinations.

(h) USACIDC will obtain the following information at the earliest possible point in an investigation of fraud or corruption that relates to DOD procurement activities, whenever possible without reliance on grand jury subpoenas:

(1) The individuals suspected to be responsible.

(2) The suspected firm's organizational structure.

(3) The firm's financial and contract history.

(4) The firm's organizational documents and records.

(5) Statements of witnesses.

(6) Monetary loss to the government.

(7) Other relevant information.

This information will be provided to PFD or other cognizant DOD centralized organization.

(i) PFD will provide written notification to the Defense Investigative Service of all suspension or debarment actions taken by the Army.

§ 516.62 PFD and HQ USACIDC coordination.

PFD and HQ USACIDC will coordinate as follows:

(a) Discuss the status of significant procurement fraud or corruption investigations being conducted by USACIDC and possible remedies. These discussions should take place on a regular basis.

(b) Discuss the coordination of possible criminal, civil, contractual, or administrative remedies with prosecutive authorities.

(c) PFD will maintain liaison with other DOD centralized organizations and will coordinate remedies with those centralized organizations affected by a significant investigation of fraud or corruption that relates to DOD procurement activities.

(d) Ascertain the effect on any ongoing investigation of the initiation of civil, contractual, or administrative remedies as follows:

(1) PFD will maintain liaison with USACIDC and other DOD criminal investigative organizations in order to determine the advisability of initiating any civil, contractual, or administrative actions.

(2) USACIDC will advise PFD of any adverse effect on an investigation or prosecution by the initiation of civil, contractual, or administrative actions.

§ 516.63 Coordination with DOJ.

(a) PFD will establish and maintain liaison with DOJ and the Defense Procurement Fraud Unit on significant fraud and corruption cases to accomplish the following:

(1) Monitor criminal prosecutions.

(2) Initiate litigation for civil recovery.

(3) Coordinate administrative or contractual actions while criminal or civil proceedings are pending.

(4) Coordinate settlement agreements or proposed settlements of criminal, civil, and administrative actions.

(5) Respond to DOJ requests for information and assistance.

(b) In cases where there is an ongoing criminal investigation, coordination with DOJ by any member of the Army normally will be accomplished by or through USACIDC or the cognizant DOD criminal investigative organization, or with the investigative organization's advance knowledge. This does not apply to the routine exchange of information between government attorneys in the course of civil litigation or the routine referral of cases to DOJ for civil recovery.

(c) Initial contact by any attorney associated with the U.S. Army with a U.S. Attorney's office or DOJ, whether initiated by the Army attorney or not, will be reported to PFD. Activity after the initial contact will only be reported to PFD when the Army attorney feels there has been a significant event in the case. If the Army attorney is not a PFI Coordinator or a PFA, the matter should be referred to one of these two attorneys as soon as possible. Routine exchanges between Army attorneys and U.S. Attorney's offices or DOJ do not need to be brought to the attention of PFD.

§ 516.64 Comprehensive remedies plan.

(a) A specific, comprehensive remedies plan will be developed in each significant investigation involving fraud or corruption that relates to Army procurement activities. When possible, these plans should be forwarded with the DFARS 209.406–3 reports. In no case, however, should the report be delayed an appreciable time pending completion of the plan. The format for a remedies plan is at Figure H–2, Appendix G, to this part.

(b) The plan will be developed initially by the PFA with the participation of the appropriate criminal investigators and other relevant personnel such as the contracting officer. In significant cases the PFA should also coordinate a remedies plan early with PFD. Defective product/product substitution remedies plans must comply with the requirements of Appendix D to this part.

(c) A comprehensive remedies plan will include at a minimum the

following information and considerations:

(1) Summary of allegations and investigative results.

(2) Statement of any adverse impact on a DOD mission. DOD investigative organizations, commanders, or procurement officials will also provide this information to prosecutive authorities to enhance prosecution of offenses or to prepare a victim impact statement pursuant to Fed. R. Crim. P. 32(c)(2).

(3) The impact upon combat readiness and safety.

(4) Consideration of each criminal, civil, contractual, and administrative remedy available, and documentation of those remedies, either planned, in progress, or completed.

(5) Restrictions on the pursuit of any remedies such as grand jury information or possible compromise of the investigation.

(d) When remedies plans are received by PFD they will be coordinated with the headquarters of the appropriate DOD criminal investigative organization involved.

(e) Testing necessary to support the investigation and remedies plan should comply with Figure H–3, Appendix G, to this part.

§ 516.65 Litigation reports in civil recovery cases.

(a) All substantiated PFI cases will be evaluated by PFAs to determine whether it is appropriate to recommend civil recovery proceedings.

(b) Recovery should be considered under both statutory and common law theories, including but not limited to the following:

(1) False Claims Act, 31 USC 3729.

(2) Anti-Kickback Act, 41 USC 51.

(3) Sherman Act, 15 USC 1–7.

(4) Racketeer Influenced and Corrupt Organizations Act, 18 USC 1961–1968.

(5) Common law fraud.

(6) Unjust enrichment.

(7) Constructive trust.

(8) Cases where contracts have been procured in violation of the conflict of interest statute, 18 USC 218. See *K&R Engineering Co.* v. *United States*, 616 F.2d 469 (Ct. Cl., 1980).

(c) When civil recovery appears possible, PFD should be consulted to determine if a litigation report is necessary. If requested by PFD, the report should summarize the available evidence and applicable theories of recovery and be prepared under § 516.23 of this part. To avoid unnecessary duplication of effort, recovery reports may include and make liberal references to other reports previously prepared on a given case such as the DFARS 209.406–3 (48 CFR 209.406–3) report.

(d) The MACOM PFI coordinator and PFA will monitor all civil fraud recovery efforts throughout the command and will provide training and technical assistance as required. Status reports of all civil fraud recovery efforts will be provided through channels as required by PFD.

§ 516.66 Administrative and contractual actions.

(a) The following remedial options should be considered in response to confirmed fraudulent activity:

(1) Contractual.

(i) Termination of contract for default.

(ii) Nonaward of contract based upon a finding of contractor nonresponsibility. (If this appears to be a valid option, a DFARS 209.406–3 (48 CFR 209.406–3) report must be prepared where contractor nonresponsibility is based on lack of integrity).

(iii) Rescission of contract.

(iv) Revocation of acceptance.

(v) Use of contract warranties.

(vi) Withholding of payments to contractor. In the case of withholding pursuant to DFARS 2032.173, the Chief, PFD, is the Army Remedy Coordinating Official.

(vii) Offset of payments due to contractor from other contracts.

(viii) Revocation of facility security clearances.

(ix) Increased level of quality assurance.

(x) Refusal to accept nonconforming goods.

(xi) Denial of claims submitted by contractors.

(xii) Removal of contract from automated solicitation or payment system.

(2) Administrative.

(i) Change in contracting forms and procedures.

(ii) Removal or reassignment of government personnel.

(iii) Review of contract administration and payment controls.

(iv) Revocation of warrant of contracting officer.

(v) Suspension of contractor.

(vi) Debarment of contractor.

(b) In cases which are pending review or action by DOJ, PFAs should coordinate with the DOJ attorney handling the case prior to initiating any contractual or administrative remedy. In the case of ongoing criminal investigations, this coordination will be accomplished through the appropriate DOD criminal investigation organization.

§ 516.67 Overseas cases of fraud or corruption.

(a) Commanders of overseas major commands will establish procedures, similar to this regulation and consistent with the DFARS, and regulations and directives of their respective unified commands, for reporting and coordination of available remedies in overseas procurement fraud and corruption cases involving foreign firms and individuals. Overseas major commands will also maintain liaison with PFD and provide periodic reports of remedies coordination results.

(b) Overseas suspension and debarment actions are governed by DFARS 209.403 (48 CFR 209.403). The names of all firms and individuals suspended or debarred will be expeditiously forwarded to PFD for inclusion on the List of Parties Excluded From Federal Procurement or NonProcurement Programs.

(c) Overseas cases of fraud or corruption related to the procurement process that involve U.S. firms or U.S. citizens may be referred to PFD for coordination of remedies under this regulation.

§ 516.68 Program Fraud Civil Remedies Act (PFCRA).

(a) PFCRA was enacted on 21 October 1986 (Public Law 99–509) and implemented by DOD on 30 August 1988 (DOD Directive 5505.5). (See Appendix E to this part.)

(b) PFCRA expands the capability of the government to deter and recover losses from false, fictitious or fraudulent claims and statements. It is also applicable to program fraud and provides an administrative remedy in addition to those otherwise available to the Army in procurement fraud or pay and entitlements fraud cases.

(c) As part of the Army implementation, the Secretary of the Army's duties and responsibilities under PFCRA as Authority Head are delegated to the Army General Counsel. The Chief, Intellectual Property Law Division, is the Army's Reviewing Official within the meaning of PFCRA. Army implementation also requires DA to follow the policies and procedures prescribed in enclosure 2 of DOD Directive 5505.5. (See Appendix E to this part.)

(d) The DOD Inspector General (IG) is the Investigating Official within DOD. The duties of this position will be performed by the Assistant IG For Investigations. This individual is vested with the authority to investigate all allegations of liability under PFCRA. That authority includes the power to task subordinate investigative agencies

to review and report on allegations that are subject to PFCRA. If the Investigative Official concludes that an action under PFCRA is warranted in an Army case, the official will submit a report containing the findings and conclusions of such investigation through PFD to the Army Reviewing Official.

(e) Pursuant to DOD IG guidance, USACIDC will forward appropriate cases that appear to qualify for resolution under PFCRA to the Investigating Official in a timely manner. Additionally, USACIDC will forward current information regarding the status of remedies pending or concluded. USACIDC may obtain remedies information by coordinating with PFD and the cognizant command.

(f) In pay and entitlement or transportation operation fraud cases, USACIDC will coordinate with the Office of the Secretary of the Army, Financial Management, Review and Oversight Directorate (SAFM–RO), to determine the status of any pending or proposed action under the Debt Collection Act. This information, in addition to information obtained under § 517.68(e), will be forwarded with appropriate cases to the Investigating Official.

(g) In those cases where the Investigating Official has submitted a report to the Army Reviewing Official for action under PFCRA, PFD will, at the direction of the Reviewing Official, prepare all legal memoranda as necessary to transmit the Reviewing Official's intention to issue a complaint. As part of this responsibility PFD will do the following: coordinate with the affected command or agency to ensure that all appropriate remedies have been considered; evaluate the overall potential benefits to the Army; and, ensure that action under PFCRA is not duplicative of other remedies already taken. In order to fully supplement the Reviewing Official's file, PFD may request a litigation report.

(h) PFD will coordinate all cases involving transportation operations emanating from Military Traffic Management Command (MTMC) activity, under the military transportation exception to the FAR, and all cases involving pay and entitlements fraud with SAFM–RO, for comments and recommendations. These matters will be forwarded with the case file to the Reviewing Official.

(i) If the Attorney General approves the issuance of a complaint, PFD, at the direction of the Army Reviewing Official, shall prepare the complaint and all necessary memoranda as required. PFD shall also designate attorneys to represent the Authority in hearings under PFCRA.

Subpart I—Cooperation With the Office of Special Counsel

§ 516.69 Introduction.

This subpart prescribes procedures for cooperation with the Office of Special Counsel (OSC) when OSC is investigating alleged prohibited personnel practices or other allegations of improper or illegal conduct within DA activities.

§ 516.70 Policy.

(a) DA policy follows:

(1) Civilian personnel actions taken by management officials, civilian and military, will conform to laws and regulations implementing established merit system principles and will be free of any prohibited personnel practices.

(2) Management officials will take vigorous corrective action when prohibited personnel practices occur. Disciplinary measures under AR 690–700, Chapter 751, may be initiated after consultation and coordination with appropriate civilian personnel office and labor counselor.

(b) DA activities will cooperate with OSC in the following ways:

(1) Promoting merit system principles in civilian employment programs within DA.

(2) Investigating and reporting allegations of improper or illegal conduct forwarded to the activity by HQDA.

(3) Facilitating orderly investigations by the OSC of alleged prohibited personnel practices and other matters assigned for investigation to the OSC, such as violations of the Whistleblower Protection Act of 1989, the Freedom of Information Act, or the Hatch Act.

§ 516.71 Duties.

(a) DA General Counsel. The DA General Counsel is responsible for the following:

(1) Provide overall guidance on all issues concerning cooperation with OSC, including the investigation of alleged prohibited personnel practices and allegations of improper or illegal conduct.

(2) Review for adequacy and legal sufficiency each OSC report of investigation that must be personally reviewed by the Secretary of the Army.

(3) Ensure compliance with the Civil Service Reform Act of 1978 by obtaining a suitable investigation of allegations of improper or illegal conduct received from OSC. This includes compliance with time limits for reporting results of the investigation and personal review of the report by the Secretary of the Army when required.

(4) Forward to the DOD Inspector General (DODIG) copies of each allegation of improper or illegal conduct referred to DA by OSC.

(5) Delegate to The Judge Advocate General the authority to act on behalf of the DA General Counsel in all OSC investigations of prohibited personnel practices.

(6) Act upon requests for counsel from "accused" or "suspected" employees.

(b) Chief, Labor and Employment Law Office. The Chief, Labor and Employment Law Office, OTJAG (DAJA–LE) is responsible for the following:

(1) Act for TJAG as the Senior Management Official in cooperating with OSC. As Senior Management Official, the Chief, DAJA–LE, through TJAG, will be responsible to the DA General Counsel for administration of the policies and procedures contained in this chapter.

(2) Promptly inform the DA General Counsel of any OSC investigation and consult with the DA General Counsel on any legal or policy issue arising from an OSC investigation.

(3) Serve as the HQDA point of contact in providing assistance to OSC.

(4) Act as DA attorney-of-record in administrative matters initiated by OSC before the MSPB which arise from an OSC investigation. As DA attorney-of-record, the Chief, DAJA–LE, will file necessary pleadings and make necessary appearances before the MSPB to represent DA interests.

(5) Monitor ongoing OSC investigations within DA.

(6) Ensure that appropriate DA personnel are fully apprised of their rights, duties and the nature and basis for an OSC investigation.

(7) Review and prepare recommendations to the General Counsel concerning any OSC recommended corrective action referred to DA. Such review and recommendations will address whether disciplinary action should be taken against DA civilian employees or military members, and whether the information warrants referral to appropriate authorities for corrective and disciplinary action.

(8) Seek OSC approval of DA proposed disciplinary action against an employee for an alleged prohibited personnel practice or other misconduct which is the subject of or related to any OSC investigation.

(9) Review and prepare recommendations for DA General Counsel concerning requests for counsel, to include identifying available

DA attorneys to act as individual representatives. Upon approval of DA General Counsel, appoint DA civilian and military attorneys, to include attorneys from the U.S. Army Materiel Command and the Corps of Engineers, to represent individual military members or employees.

(10) Determine, to the extent practicable, whether an investigation is being or has been conducted which duplicates, in whole or in part, a proposed or incomplete OSC investigation, and convey that information to the OSC whenever it might avoid redundant investigative efforts.

(11) Provide guidance and assistance to activity Labor Counselors in fulfilling their duties as Liaison Officers.

(c) Activity Labor Counselor. The activity Labor Counselor will do the following:

(1) Act as Liaison Officer for OSC investigations arising within the command, activity or installation serviced by the Labor Counselor's client Employment Office.

(2) Promptly inform the MACOM labor counselor and the Chief, DAJA–LE, of any OSC inquiry or investigation.

(3) Act as the legal representative of the command, activity, or installation.

(4) Assist the OSC investigator with administrative matters related to the investigation, such as requests for witnesses and documents.

(5) Process all OSC requests for documents.

(6) Make appropriate arrangements for OSC requests to interview civilian employees and military members.

(7) Ensure that personnel involved are advised of the nature and basis for an OSC investigation, the authority of the OSC, and their rights and duties.

(8) Consult with the Chief, DAJA–LE, on policy and legal issues arising from the OSC investigation.

(9) Keep the Chief, DAJA–LE, informed of the status of the OSC investigation.

(10) Act as agency representative before the MSPB in actions initiated by employees (individual right of action appeals).

§ 516.72 Procedures.

(a) Witnesses and counsel for consultation.

(1) DA military and civilian managers, supervisors, and employees who are requested by OSC for an interview will be made available in accordance with arrangements the Labor Counselor will establish. Requests for the testimony of IGs will be coordinated with the Inspector General Legal Office, SAIG–ZXL, DSN 227–9734 or Commercial (703) 697–9734.

(2) The Labor Counselor will ensure that witnesses are aware of their obligation to answer OSC questions, their potential to be considered "suspects" in OSC investigations, and their right to the assistance of counsel during interviews with OSC representatives. If the requested witness is not an "accused" or "suspected" individual and the witness asks for assistance of counsel, a DA attorney will be made available for the limited purpose of consultation regarding the witness' rights and obligations. An attorney-client relationship will not be established. (See Appendix F to this part).

(3) The Labor Counselor will arrange for individual counsel for consultation from local assets. If local assets are not sufficient, assistance may be requested from other DOD activities in the area or from HQDA, DAJA–LE. DA attorneys tasked to consult with one or more witnesses individually will not be tasked to represent the DA activity concerned.

(4) The Labor Counselor, as the legal representative of the activity, is precluded from assisting or representing individual witnesses during OSC interviews.

(b) "Accused" or "suspected" DA personnel and counsel for representation.

(1) If the OSC identifies a DA civilian employee or a military member as an "accused" or "suspected" individual, or if the Labor Counselor concludes that an individual is a "suspect," the Labor Counselor will inform the individual. The Labor Counselor also will advise the individual of the availability of counsel for representation upon approval by DA General Counsel. (See Glossary, Counsel for Representation).

(2) If the "suspected" individual desires legal representation by DA, the individual must request counsel by submitting a written request through DAJA–LE to DA General Counsel. (See Figure I–1, Appendix G, to this part).

(3) During the investigation but prior to DA General Counsel approval of the request for counsel, an "accused" or "suspected" individual will be provided the assistance of counsel for consultation in the same manner as any other OSC requested witness. "Accused" or "suspected" individuals who do not request counsel for representation will be provided counsel for consultation in the same manner as any other OSC requested witness.

(4) If the DA General Counsel approves the request for counsel, the Chief, DAJA-LE, will appoint a DA attorney to represent the individual. This appointment may be made telephonically but will be confirmed in writing. The Chief, DAJA-LE, will make appropriate coordination with MACOM SJAs and command counsel to confirm availability of the attorney.

(5) An attorney appointed by DA may represent a civilian employee in any proceeding initiated by OSC before the MSPB. However, counsel provided by DA may not represent the employee in any proceeding initiated by DA, in any appeal from a final decision by the MSPB, or in any collateral proceeding before any forum other than the MSPB.

(6) OSC may not bring a disciplinary action before the MSPB against a military member. Accordingly, DA counsel will not be required to represent the military member in any MSPB disciplinary proceeding. However, counsel may represent the member during the OSC investigation with the understanding that the evidence obtained by OSC may be referred to the member's command for possible disciplinary action under the UCMJ or appropriate regulations. If DA initiates action against the military member for misconduct disclosed in the OSC investigation, the member will obtain counsel as provided under the UCMJ or relevant regulations.

(c) Records.

(1) OSC requests for records must be in writing. The Labor Counselor will assist OSC representatives in identifying the custodian of specific records sought during the inquiry.

(2) Generally, requested records should be furnished to OSC representatives if such records would be released under AR 25–55 or AR 340–21 to other government agencies in the normal course of official business. Records constituting attorney work product should not be released without approval of the Chief, DAJA-LE. IG records will not be released without the approval of the Inspector General. (AR 20–1). The Labor Counselor should seek guidance from the Chief, DAJA-LE, if there is any doubt concerning the release of records.

(3) If, after completion of the OSC investigation, the OSC files a complaint against DA or a DA employee, release of records and other information will be accomplished pursuant to MSPB rules of discovery (5 CFR part 1201, subpart B).

(d) Funding. The command, activity, or installation within which the allegations of misconduct arose will provide funding for travel, per diem and other necessary expenses related to the OSC investigation. These expenses may include appropriate funding for witnesses, counsel for consultation and

DA General Counsel approved counsel for representation.

§ 516.73 Assistance from HQDA.

Labor Counselors may seek guidance on questions arising from implementation of this chapter by calling the Chief, DAJA-LE, DSN 225–9476/9481 or Commercial (703) 695–9476/9481.

Subpart J—Soldiers Summoned to Serve on State and Local Juries

§ 516.74 General.

(a) This subpart implements 10 U.S.C. § 982 and DOD Directive 5525.8. It establishes Army policy concerning soldiers on active duty who are summoned to serve on state and local juries.

(b) This subpart does not apply to Army National Guard soldiers in an annual training or full-time AGR (Active Guard Reserve) status under Title 32, U.S. Code. Soldiers in a Title 32 status must refer to their respective state law for relief from state or local jury duty.

§ 516.75 Policy.

(a) Active duty soldiers should fulfill their civic responsibility by serving on state and local juries, so long as it does not interfere with military duties.

(b) The following active duty soldiers are exempt from complying with summons to serve on state and local juries:

(1) General officers.

(2) Commanders.

(3) Active duty soldiers stationed outside the United States, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

(4) Active duty soldiers in a training status.

(5) Active duty soldiers assigned to forces engaged in operations.

(c) Other active duty soldiers may be exempted from serving on local juries if compliance with such summons would have either of the following effects:

(1) It would unreasonably interfere with performance of the soldier's military duties; or,

(2) It would adversely affect the readiness of a summoned soldier's unit, command, or activity.

§ 516.76 Exemption determination authority.

(a) The commander exercising special court-martial convening authority (SPCMCA) over a unit has the authority to determine whether a soldier of that unit, who has been served with a summons, is exempt from serving on a state or local jury unless that authority has been limited or withheld in accordance with paragraph (b) or (c) of this section. This authority may not be delegated to a subordinate commander who does not exercise SPCMCA.

(b) A commander superior to the SPCMCA, who also exercises SPCMCA or general court-martial convening authority (GCMCA) over a unit, may limit or withhold the exemption determination authority of subordinate commanders.

(c) A GCMCA, who orders a unit or soldier assigned to one command to be attached or detailed to another command for disciplinary purposes (for example, "for administration" or "for administration of military justice"), may reserve exemption determination authority to the commander exercising SPCMCA in the chain of command to which the unit or soldier is assigned rather than the chain of command to which the unit or soldier is attached or detailed.

§ 516.77 Procedures for exemption.

(a) Active duty soldiers served with a summons to serve on a state or local jury will promptly advise their commander and provide copies of pertinent documents.

(b) Unit commanders will evaluate the summons considering both the individual soldier's duties and the unit mission. Coordination with the servicing judge advocate or legal adviser and with the appropriate state or local official may be necessary to determine any impact on the soldier's duties or on unit readiness.

(1) If the soldier is not exempt under § 516.75 (b) or (c), the commander will process the soldier for permissive TDY in accordance with AR 630–5, Leaves and Passes.

(2) If the soldier is exempt under § 516.75 (b) or (c), the commander will forward the summons and any related documentation, with recommendations, through the chain of command to the commander with exemption determination authority over the soldier concerned.

(c) The commander with exemption determination authority over the soldier concerned will determine whether the soldier is exempt. His determination is final.

(d) The exemption determination authority will notify responsible state or local officials whenever a soldier summoned for jury duty is exempt. The notification will cite 10 U.S.C. 982 as authority.

§ 516.78 Status, fees, and expenses.

(a) Soldiers who are required to comply with summons to serve on state or local juries will be placed on permissive TDY under the provisions of AR 630–5.

(b) Jury fees accruing to soldiers for complying with the summons to serve on state and local juries must be turned over to the appropriate finance office for deposit into the U.S. Treasury. Commands will establish procedures with local authorities and their servicing finance and accounting activity to ensure that such jury fees are so deposited. Soldiers, however, may keep any reimbursement from state or local authority for expenses incurred in the performance of jury duty, including transportation, meals, and parking.

Appendix A to Part 516—References

Publications referenced in this part can be obtained at the National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Required Publications

AR 25–55, The Department of the Army Freedom of Information Act Program. (Cited in §§ 516.40, 516.72)

AR 27–10, Military Justice. (Cited in § 516.4)

AR 27–20, Claims. (Cited in §§ 516.4, 516.33, 516.22)

AR 27–60, Patents, Inventions, and Copyrights.

AR 37–60, Pricing for Material and Services. (Cited in § 516.43.)

AR 37–103, Finance and Accounting for Installations: Disbursing Operations. (Cited in § 516.22.)

AR 60–20, Operating Policies. (Cited in § 516.22.)

AR 190–9, Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies. (Cited in § 516.9)

AR 210–47, State and Local Taxation of Lessee's Interest in Wherry Act Housing (Title VIII of the National Housing Act).

AR 215–1, Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in § 516.22.)

AR 215–2, The Management and Operation of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in § 516.22.)

AR 310–1, Publications, Blank Forms, and Printing Management.

AR 340–21, The Army Privacy Program. (Cited in §§ 516.40, 516.72.)

AR 380–5, Department of the Army Information Security Program.

AR 405–25, Annexation. (Cited in § 516.22.)

AR 630–5, Leaves and Passes. (Cited in §§ 516.55, 516.77, 516.78.)

AR 630–10, Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings. (Cited in § 516.9)

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand the regulation.

AR 20–1, Inspector General Activities and Procedures. (Cited in §§ 516.41, 516.72.)

AR 27–1, Judge Advocate Legal Service.

AR 27–3, Legal Assistance. (Cited in § 516.6.)

AR 27–10, Military Justice. (Cited in §§ 516.4, 516.5, 516.15.)

AR 27–50, Status of Forces Policies, Procedures, and Information. (Cited in § 516.15.)

AR 37–104–3, Military Pay and Allowances Procedures.

AR 37–105, Finance and Accounting for Installations: Civilian Pay Procedures.

AR 55–19, Marine Casualties. (Cited in § 516.22.)

AR 190–29, Misdemeanors and Uniform Violation Notices Referred to U.S. Magistrates or District Courts.

AR 190–40, Serious Incident Report. (Cited in § 516.15.)

AR 210–50, Family Housing Management. (Cited in § 516.37.)

AR 335–15, Management Information Control System. (Cited in § 516.15.)

AR 600–40, Apprehension, Restraint, and Release to Civil Authorities.

AR 600–50, Standards of Conduct for Department of the Army Personnel.

AR 690–700, Personnel Relations and Services. (Cited in § 516.70.)

Prescribed Form

DA Form 4, Department of the Army Certification for Authentication of Records. (Prescribed in § 516.25, 516.35.)

Referenced Forms

DA Form 2631–R, Medical Care-Third Party Liability Notification.

DA Form 3154, MSA Invoice and Receipt.

Appendix B to Part 516—Mailing Addresses

The following is a list of frequently referred to Department of the Army Services/Divisions/Offices and their mailing addresses:

COMMANDER (JACS–Z), U.S. ARMY CLAIMS SERVICE, OTJAG, BUILDING 4411, ROOM 206, LLEWELLYN AVENUE, FORT GEORGE G. MEADE, MD 20755–5360

(1) PERSONNEL CLAIMS AND RECOVERY DIVISION (JACS–PC), U.S. ARMY CLAIMS SERVICE, OTJAG, BUILDING 4411, ROOM 206, LLEWELLYN AVENUE, FORT GEORGE G. MEADE, MD 20755–5360

(2) TORT CLAIMS DIVISION (JACS–TC), U.S. ARMY CLAIMS SERVICE, OTJAG, BUILDING 4411, ROOM 206, LLEWELLYN AVENUE, FORT GEORGE G. MEADE, MD 20755–5360

CONTRACT APPEALS DIVISION, HQDA(DAJA–CA), 901 NORTH STUART STREET, ARLINGTON, VA 22203–1837

CONTRACT LAW DIVISION, THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310–2200

CRIMINAL LAW DIVISION, THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310–2200

ENVIRONMENTAL LAW DIVISION, HQDA(DAJA–EL), 901 NORTH STUART STREET, ARLINGTON, VA 22203–1837

LABOR AND EMPLOYMENT LAW DIVISION, THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310–2200,

LITIGATION DIVISION, HQDA(DAJA–LT), 901 NORTH STUART STREET, ARLINGTON, VA 22203–1837

(1) CIVILIAN PERSONNEL BRANCH, HQDA(DAJA–LTC), 901 NORTH STUART STREET, ARLINGTON, VA 22203–1837

(2) GENERAL LITIGATION BRANCH, HQDA(DAJA–LTG), 901 NORTH STUART STREET, ARLINGTON, VA 22203–1837

(3) MILITARY PERSONNEL BRANCH, HQDA(DAJA–LTM), 901 NORTH STUART STREET, ARLINGTON, VA 22203–1837

(4) TORT BRANCH, HQDA(DAJA–LTT), 901 NORTH STUART STREET, ARLINGTON, VA 22203–1837

PERSONNEL, PLANS, AND TRAINING OFFICE, THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310–2200

PROCUREMENT FRAUD DIVISION, HQDA(DAJA–PF), 901 NORTH STUART STREET, ARLINGTON, VA 22203–1837

INTELLECTUAL PROPERTY DIVISION, HQDA(JALS–IP), 901 NORTH STUART STREET, ARLINGTON, VA 22203–1837

REGULATORY LAW OFFICE, HQDA(JALS–RL), 901 NORTH STUART STREET, ARLINGTON, VA 22203–1837

THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310–2200

THE AJAG FOR CIVIL LAW & LITIGATION, THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310–2200

U.S. ARMY TRIAL DEFENSE SERVICE, HQDA(JALS–TD), NASSIF BUILDING, FALLS CHURCH, VA 22041–5013

Appendix C to Part 516—Department of Defense Directive 5405.2, Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses

Department of Defense Directive

July 23, 1985, Number 5405.2, GC, DOD

Subject: Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses

References:

(a) Title 5, United States Code, Sections 301, 552, and 552a

(b) Title 10, United States Code, Section 133

(c) DoD Directive 5220.6, "Industrial Personnel Security Clearance Program," December 20, 1976

(d) DoD Directive 5200.1–R, "Information Security Program Regulation," August 1982, authorized by DoD Directive 5200.1, June 7, 1982

(e) DoD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," November 6, 1984

(f) DoD Instruction 7230.7, "User Charges," January 29, 1985

(g) DoD Directive 5400.7–R, "DoD Freedom of Information Act Program," December 1980, authorized by DoD Directive 5400.7, March 24, 1980

A. Purpose

Under Section 301 reference (a) and reference (b), this Directive establishes policy, assigns responsibilities, and prescribes procedures for the release of official DoD information in litigation and for testimony by DoD personnel as witnesses during litigation.

B. Applicability and Scope

1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"), and to all personnel of such DoD Components.

2. This Directive does not apply to the release of official information or testimony by DoD personnel in the following situations:

a. Before courts-martial convened by the authority of the Military Departments or in administrative proceedings conducted by or on behalf of a DoD Component;

b. Pursuant to administrative proceedings conducted by or on behalf of the Equal Employment Opportunity Commission (EEOC) or the Merit Systems Protection Board (MSPB), or pursuant to a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;

c. In response to requests by Federal Government counsel in litigation conducted on behalf of the United States;

d. As part of the assistance required in accordance with the Defense Industrial Personnel Security Clearance Program under DoD Directive 5220.6 (reference (c)); or

e. Pursuant to disclosure of information to Federal, State, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DoD criminal investigative organization.

3. This Directive does not supersede or modify existing laws or DoD programs governing the testimony of DoD personnel or the release of official DoD information during grand jury proceedings, the release of official information not involved in litigation, or the release of official information pursuant to the Freedom of Information Act, 5 U.S.C. Section 552 (reference (a)) or the Privacy Act, 5 U.S.C. Section 552a (reference (a)), nor does this Directive preclude treating any written request for agency records that is not in the nature of legal process as a request under the Freedom of Information or Privacy Acts.

4. This Directive is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases.

5. This Directive does not preclude official comment on matters in litigation in appropriate cases.

6. This Directive is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Defense.

C. Definitions

1. Demand. Subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority for the production, disclosure, or release of official DoD information or for the appearance and testimony of DoD personnel as witnesses.

2. DoD Personnel. Present and former U.S. military personnel; Service Academy cadets and midshipmen; and present and former civilian employees of any Component of the Department of Defense, including nonappropriated fund activity employees; non-U.S. nationals who perform services overseas, under the provisions of status of forces agreements, for the United States Armed Forces; and other specific individuals hired through contractual agreements by or on behalf of the Department of Defense.

3. Litigation. All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

4. Official Information. All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces.

D. Policy

It is DoD policy that official information should generally be made reasonably available for use in Federal and state courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure.

E. Responsibilities

1. The General Counsel, Department of Defense (GC, DoD), shall provide general policy and procedural guidance by the issuance of supplemental instructions or specific orders concerning the release of official DoD information in litigation and the testimony of DoD personnel as witnesses during litigation.

2. The Heads of DoD Components shall issue appropriate regulations to implement this Directive and to identify official information that is involved in litigation.

F. Procedures

1. Authority to Act

a. In response to a litigation request or demand for official DoD information or the testimony of DoD personnel as witnesses, the General Counsels of DoD, Navy, and the Defense Agencies; the Judge Advocates General of the Military Departments; and the Chief Legal Advisors to the JCS and the Unified and Specified Commands, with regard to their respective Components, are authorized—after consulting and coordinating with the appropriate Department of Justice litigation attorneys, as required—to determine whether official information originated by the Component may be released in litigation; whether DoD personnel assigned to or affiliated with the Component may be interviewed, contacted, or used as witnesses concerning official DoD information or as expert witnesses; and what, if any, conditions will be imposed upon such release, interview, contact, or testimony. Delegation of this authority, to include the authority to invoke appropriate claims of privilege before any tribunal, is permitted.

b. In the event that a DoD Component receives a litigation request or demand for official information originated by another Component, the receiving Component shall forward the appropriate portions of the request or demand to the originating Component for action in accordance with this Directive. The receiving Component shall also notify the requestor, court, or other authority of its transfer of the request or demand.

c. Notwithstanding the provisions of paragraphs F.1.a. and b., the GC, DoD, in litigation involving terrorism, espionage, nuclear weapons, intelligence means or sources, or otherwise as deemed necessary, may notify Components that GC, DoD, will assume primary responsibility for coordinating all litigation requests and demands for official DoD information or the testimony of DoD personnel, or both; consulting with the Department of Justice, as required; and taking final action on such requests and demands.

2. Factors to Consider

In deciding whether to authorize the release of official DoD information or the testimony of DoD personnel concerning official information (hereinafter referred to as "the disclosure") pursuant to paragraph F.1., DoD officials should consider the following types of factors:

a. Whether the request or demand is unduly burdensome or otherwise inappropriate under the applicable court rules;

b. Whether the disclosure, including release in camera, is appropriate under the rules of procedure governing the case or matter in which the request or demand arose;

c. Whether the disclosure would violate a statute, executive order, regulation, or directive;

d. Whether the disclosure, including release in camera, is appropriate or necessary under the relevant substantive law concerning privilege;

e. Whether the disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified pursuant to the DoD Information Security Program under DoD 5200.1–R (reference (d)), unclassified technical data withheld from public release pursuant to DoD Directive 5230.25 (reference (e)), or other matters exempt from unrestricted disclosure; and

f. Whether disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly confidential commercial or financial information, or otherwise be inappropriate under the circumstances.

3. Decisions on Litigation Requests and Demands

a. Subject to paragraph F.3.e., DoD personnel shall not, in response to a litigation request or demand, produce, disclose, release, comment upon, or testify concerning any official DoD information without the prior written approval of the appropriate DoD official designated in paragraph F.1. Oral approval may be granted, but a record of such approval shall be made and retained in accordance with the applicable implementing regulations.

b. If official DoD information is sought, through testimony or otherwise, by a litigation request or demand, the individual seeking such release or testimony must set forth, in writing and with as much specificity as possible, the nature and relevance of the official information sought. Subject to paragraph F.3.e., DoD personnel may only produce, disclose, release, comment upon, or testify concerning those matters that were specified in writing and properly approved by the appropriate DoD official designated in paragraph F.1. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

c. Whenever a litigation request or demand is made upon DoD personnel for official DoD information or for testimony concerning such information, the personnel upon whom the request or demand was made shall immediately notify the DoD official designated in paragraph F.1. for the Component to which the individual contacted is or, for former personnel, was last assigned. In appropriate cases, the responsible DoD official shall thereupon notify the Department of Justice of the request or demands. After due consultation and coordination with the Department of Justice, as required, the DoD official shall determine whether the individual is required to comply with the request or demand and shall notify the requestor or the court or other authority of the determination reached.

d. If, after DoD personnel have received a litigation request or demand and have in turn notified the appropriate DoD official in accordance with paragraph F.3.c., a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in paragraph F.1. shall furnish the requestor or the court or other authority with a copy of this Directive and applicable implementing regulations, inform the requestor or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending

a final determination by the Component concerned.

e. If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken pursuant to paragraph F.3.d., or if such court or other authority orders that the request or demand must be complied with notwithstanding the final decision of the appropriate DoD official, the DoD personnel upon whom the request or demand was made shall notify the responsible DoD official of such ruling or order. If the DoD official determines that no further legal review of or challenge to the court's ruling or order will be sought, the affected DoD personnel shall comply with the request, demand, or order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. See United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

4. Fees

Consistent with the guidelines in DoD Instruction 7230.7 (reference (f)), the appropriate officials designated in paragraph F.1. are authorized to charge reasonable fees, as established by regulation and to the extent not prohibited by law, to parties seeking, by request or demand, official DoD information not otherwise available under the DoD Freedom of Information Act Program (reference (g)). Such fees, in amounts calculated to reimburse the Government for the expense of providing such information, may include the costs of time expended by DoD employees to process and respond to the request or demand; attorney time for reviewing the request or demand and any information located in response thereto and for related legal work in connection with the request or demand; and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. See Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340 (1978).

5. Expert or Opinion Testimony

DoD personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DoD information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Defense or the United States, the appropriate DoD official designated in paragraph F.1. may, in writing, grant special authorization for DoD personnel to appear and testify at no expense to the United States. If, despite the final determination of the responsible DoD official, a court of competent jurisdiction, or other appropriate authority, orders the appearance and expert or opinion testimony of DoD personnel, the personnel shall notify the responsible DoD official of such order. If the DoD official determines that no further legal review of or challenge to the court's order will be sought, the affected DoD personnel shall comply with the order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

G. Effective Date and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the General Counsel, DoD, within 120 days.

Signed by William H. Taft, IV

Deputy Secretary of Defense.

Appendix D to Part 516—Department of Defense Directive 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities

Department of Defense Directive

June 7, 1989, Number 7050.5, IG, DOD

Subject: Coordination of Remedies for Fraud and Corruption Related to Procurement Activities

References:

(a) DoD Directive 7050.5, subject as above, June 28, 1985 (hereby canceled)

(b) Public Law 97–291, "The Victim and Witness Protection Act of 1982," October 12, 1982

(c) Defense FAR Supplement (DFARS), Subpart 4.6, "Contract Reporting"

(d) DoD Instruction 4105.61, "DoD Procurement Coding Manual," May 4, 1973

(e) DoD 4105.61–M, "Procurement Coding Manual" (Volume I), October 1988, authorized by DoD Instruction 4105.61 May 4, 1973

A. Reissuance and Purpose

This Directive reissues reference (a) to update policies, procedures, and responsibilities for the coordination of criminal, civil, administrative, and contractual remedies stemming from investigation of fraud or corruption related to procurement activities. More effective and timely communication of information developed during such investigations will enable the Department of Defense to take the most appropriate of the available measures.

B. Applicability

This Directive applies to the Office of the Secretary of Defense (OSD); the Inspector General, Department of Defense (IG, DoD); the Military Departments; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

C. Definitions

1. *DoD Criminal Investigative Organizations.* Refers to the U.S. Army Criminal Investigation Command; the Naval Investigative Service Command; the U.S. Air Force Office of Special Investigations; and the Defense Criminal Investigative Service, Office of the IG, DoD (OIG, DoD).

2. *Significant.* Refers to all fraud cases involving an alleged loss of $100,000, or more; all corruption cases related to procurement that involved bribery, gratuities, or conflicts of interest; and any investigation into defective products or product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated, regardless of loss value

D. Policy

It is DoD policy that:

1. Each of the DoD Components shall monitor, from its inception, all significant investigations of fraud or corruption related to procurement activities affecting its organizations, for the purpose of ensuring that all possible criminal, civil, administrative, and contractual remedies in such cases are identified to cognizant procurement and command officials and that appropriate remedies are pursued expeditiously. This process shall include appropriate coordination with all other affected DoD Components.

2. All investigations of fraud or corruption related to procurement activities shall be reviewed to determine and implement the appropriate contractual and administrative actions that are necessary to recover funds lost through fraud or corruption and to ensure the integrity of DoD programs and operations.

3. Appropriate civil, contractual, and administrative actions, including those set forth in enclosure 1, shall be taken expeditiously. During an investigation and before prosecution or litigation, and when based in whole or in part on evidence developed during an investigation, such actions shall be taken with the advance knowledge of the responsible DoD criminal investigative organization and, when necessary, the appropriate legal counsel in the Department of Defense and the Department of Justice (DoJ). When appropriate, such actions shall be taken before final resolution of the criminal or civil case.

E. Responsibilities

1. The *Heads of DoD Components* shall:

a. Establish a centralized organization (hereafter referred to as "the centralized organization") to monitor and ensure the coordination of criminal, civil, administrative, and contractual remedies for each significant investigation of fraud or corruption related to procurement activities affecting the DoD Component.

b. Establish procedures requiring the centralized organization to discuss regularly with the assigned DoD criminal investigative organization(s) such issues as the current status of significant investigations and their coordination with prosecutive authorities.

c. Establish procedures requiring that all coordination involving the DoJ, during the pendency of a criminal investigation, is accomplished by or with the advance knowledge of the appropriate DoD criminal investigative organization(s).

d. Establish procedures to ensure appropriate coordination of actions between the centralized organizations of any DoD Components affected by a significant investigation of fraud or corruption related to procurement activities.

e. Establish procedures to ensure that all proper and effective civil, administrative, and contractual remedies available to the Department of Defense are, when found applicable and appropriate, considered and

undertaken promptly by the necessary DoD officials (e.g., commanders, programs officials, and contracting officers). This includes initiation of any suspension and debarment action within 30 days of an indictment or conviction. The centralized organization shall ensure that all proposed actions are coordinated with appropriate investigative organization.

f. Establish procedures to ensure that a specific comprehensive remedies plan is developed for each significant investigation involving fraud or corruption related to procurement activities. These procedures shall include the participation of the appropriate DoD criminal investigative organization in the development of the plan.

g. Establish procedures to ensure that in those significant investigations of fraud or corruption related to procurement activities when adverse impact on a DoD mission can be determined, such adverse impact is identified and documented by the centralized organization. This information is to be used by the centralized organization of the DoD Component concerned in development of the remedies plan required in paragraph E.1.f., above, and shall be furnished to prosecutors as stated in paragraph E.2.e., below. The information shall also be used by the centralized organizations in development and preparation of "Victim Impact Statements" for use in sentencing proceedings, as provided for P.L. 97–291 (reference (b)). Some examples of adverse impact on a DoD mission are as follows:

(1) Endangerment of personnel or property.

(2) Monetary loss.

(3) Denigration of program or personnel integrity.

(4) Compromise of the procurement process.

(5) Reduction or loss of mission readiness.

h. Ensure training materials are developed on fraud and corruption in the procurement process, and that all procurement and procurement-related training includes a period of such instruction appropriate to the duration and nature of the training.

i. Establish procedures enabling the centralized organization to ensure that safety and readiness issues are examined and appropriately dealt with for all cases in which a notice is required under paragraph E.2.i., below. The minimum procedures to be followed by the centralized organization are in enclosure 3.

j. Ensure that appropriate command, procurement, and investigative organizations are provided sufficient information to determine if further inquiry is warranted on their part to prevent reoccurrence and detect other possible fraud within their activity.

2. The *Secretaries of the Military Departments* and the *Inspector General, Department of Defense (IG, DoD)*, or their designees, shall establish procedures that ensure that their respective criminal investigative organizations will:

a. Notify, in writing, the centralized organization for the affected DoD Component of the start of all significant investigations involving fraud or corruption that are related to procurement activities. Initial notification shall include the following elements:

(1) Case title.

(2) Case control number.

(3) Investigative agency and office of primary responsibility.

(4) Date opened.

(5) Predication.

(6) Suspected offense(s).

b. Notify expeditiously the Defense Investigative Service (DIS) of any investigations that develop evidence that would impact on DoD-cleared industrial facilities or personnel.

c. Discuss regularly with the centralized organization such issues as the current status of significant investigations and their coordination with prosecutive authorities. If the DoD criminal investigative organization has prepared any documents summarizing the current status of the investigation, such documents shall be provided to the centralized organization. Completed reports of significant investigations also should be provided to the centralized organization.

d. Provide to the appropriate procurement officials, commanders, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption related to procurement activities. Such information shall be provided in a timely manner to enable the suspension and debarment authority to initiate suspension and debarment action within 30 days of an indictment or conviction.

e. Provide expeditiously to prosecutive authorities the information regarding any adverse impact on a DoD mission, that is gathered under paragraph E.1.g., above, for the purpose of enhancing the prosecutability of a case. Such information also should be used in preparing a victim impact statement for use in sentencing proceedings as provided for in Public Law 97–291.

f. Gather, at the earliest practical point in the investigation, without reliance on grand jury subpoenas whenever possible, relevant information concerning responsible individuals, the organizational structure, finances, and contract history of DoD contractors under investigation for fraud or corruption related to procurement activities, to facilitate the criminal investigation as well as any civil, administrative, or contractual actions or remedies that may be taken. Some available sources of such information are listed in enclosure 2.

g. Provide timely notice to other cognizant DoD criminal investigative organizations of evidence of fraud by a contractor, subcontractor, or employees of either, on current or past contracts with, or affecting, other DoD Components.

h. Ascertain the impact upon any ongoing investigation or prosecution of civil, contractual, and administrative actions being considered and advise the appropriate centralized organization of any adverse impact.

i. Obtain a DD 350 report in every investigation into defective products or product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated. Timely notification shall be made to the centralized organization of each DoD Component that is identified as having contract actions with the subject of the investigation.

j. Obtain a DD 350 report in all significant fraud investigations, as defined in subsection C.2. above, whether or not the case involved defective products or product substitution. Timely notification shall be made to the centralized organization of each DoD Component that is identified as having contract actions with the subject of the investigation.

3. The *Inspector General, Department of Defense* (IG, DoD), shall:

a. Develop training materials relating to fraud and corruption in procurement related activities which shall be utilized in all procurement related training in conjunction with training materials developed by the DoD Components. (See paragraph E.1.h., above.)

b. Establish procedures for providing to the DoD criminal investigative organizations, through the Office of the Assistant Inspector General for Auditing (OAIG–AUD), reports of data contained in the Individual Procurement Action Report (DD Form 350) System.

F. Procedures

Transmissions of information by DoD criminal investigative organizations required by subsection E.2., above, shall be made as expeditiously as possible, consistent with efforts not to compromise any ongoing criminal investigation. The transmission of the information may be delayed when, in the judgment of the head of the DoD criminal investigative organization, failure to delay would compromise the success of any investigation or prosecution. The prosecutive authorities dealing with the investigation shall be consulted, when appropriate, in making such determinations.

G. Effective Date and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the Inspector General, Department of Defense, within 120 days.

Donald J. Atwood,

Deputy Secretary of Defense.

Enclosures—3

1. Civil Contractual and Administrative Actions That Can Be Taken in Response to Evidence of Procurement Fraud

2. Sources of Information Relating to Government Contractors

3. Actions to be Taken in Product Substitution Investigations

Civil, Contractual, and Administrative Actions That Can Be Taken in Response to Evidence of Procurement Fraud

A. Civil

1. *Statutory*

a. False Claims Act (31 USC 3729 et seq.).

b. Anti-Kickback Act (41 USC 51 et seq.).

c. Voiding Contracts (18 USC 218).

d. Truth in Negotiations Act (10 USC 2306(f)).

e. Fraudulent Claims-Contract Disputes Act (41 USC 604)

2. *Nonstatutory*

a. Breach of contract.

b. Breach of warranty.

c. Money paid under mistake of fact.

d. Unjust enrichment.

e. Fraud and/or Deceit.

f. Conversion.
g. Recision and/or Cancellation.
h. Reformation.
i. Enforcement of performance bond/guarantee agreement.

3. *Contractual*

a. Termination of contract for default.
b. Termination of contract for convenience of Government.
c. Termination for default and exemplary damages under the gratuities clause.
d. Recision of contract.
e. Contract warranties.
f. Withholding of payments to contractor.
g. Offset of payments due to contractor from other contracts.
h. Price reduction.
i. Correction of defects (or cost of correction).
j. Refusal to accept nonconforming goods.
k. Revocation of acceptance.
l. Denial of claims submitted by contractors.
m. Disallowance of contract costs.
n. Removal of the contractor from automated solicitation or payment system.

4. *Administrative*

a. Change in contracting forms and procedures.
b. Removal or reassignment of Government personnel.
c. Review of contract administration and payment controls.
d. Revocation of warrant contracting officer.
e. Suspension of contractor and contractor employees.
f. Debarment of contractor and contractor employees.
g. Revocation of facility security clearances.
h. Nonaward of contract based upon a finding of contractor nonresponsibility.
i. Voluntary refunds.

SOURCES OF INFORMATION RELATING TO GOVERNMENT CONTRACTORS

Type of information	Possible source
Location, dollar value, type, and number of current contracts with the Department of Defense.	a. DD Form 350 Report.[1] b. Defense Logistics Agency's (DLA) "Contract Administration Defense Logistics Agency's (DLA) Contract Administration Report (CAR Report) on contracts DLA administers.
2. Financial status of corporation, history of corporation, owners, and officers.	a. Dunn and Bradstreet Reports. b. Corporate filings with local secretaries of the State, or corporate recorders. c. Securities and Exchange Commission (public corporations). d. Small Business Administration (SBA) (small businesses). e. General Accounting Office (bid protests, and contractors indebted to the Government). f. Armed Services Board of Contract Appeals (ASBCA) or court litigation. g. List of Contractors Indebted to the United States (maintained, published and distributed by the U.S. Army Finance and Accounting Center, Indianapolis, Indiana 46249).
3. Security clearance background information on facility and officers	a. Defense Investigative Service.
4. Performance history of contractor	a. Local contracting officers. b. Defense Contract Administration Service preaward surveys. c. SBA Certificate of Competency records.
5. Name, location, offense alleged, and previous investigative efforts involving DLA-awarded or DLA-administered contracts.	DLA Automated Criminal Case Management System. (Available through field offices of the DLA Counsel's office.)
6. Bid protests, litigation, and bankruptcy involving DLA-awarded or DLA-administered contracts.	Field offices of the DLA Counsel's office.

[1] A determination as to the contract history of any DoD contractor with contracts in excess of $25,000 annually can be made through a review of the "Individual Procurement Action Report" (DD Form 350) system, as prescribed by Subpart 4.6 of the DoD FAR Supplement, DoD Instruction 4105.61, and DoD 4105.61-M (references (c), (d), and (e)).

Actions to be Taken in Product Substitution Investigations

A. The centralized organization, in all cases involving allegations of product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated shall:

1. Review the notice of the case immediately after receiving it from the Defense criminal investigative organization. Review the notice to determine any potential safety or readiness issues indicated by the suspected fraud.

2. Notify all appropriate safety, procurement, and program officials of the existence of the case.

3. Obtain a complete assessment from safety, procurement, and program officials of the adverse impact of the fraud on DoD programs and operations.

4. Ensure that the DoD Component provides the Defense criminal investigative organization with full testing support to completely identify the defective nature of the substituted products. Costs associated with the testing shall be assumed by the appropriate procurement program.

5. Prepare a comprehensive impact statement describing the adverse impact of the fraud on DoD programs for use in any criminal, civil, or contractual action related to the case.

B. In all cases involving allegations of product substitution that affect more than one DoD Component, that centralized organizations of the affected DoD Components shall identify a lead Agency. The lead centralized organization shall ensure that information on the fraud is provided to the centralized organization of all other affected DoD Components. The lead centralized organization shall ensure compliance with the requirements of section A., above. The lead centralized organization shall then be responsible for preparing a comprehensive "Victim Impact Statement" as required by paragraph E.1.g. of this Directive.

C. In all cases involving allegations of product substitution, the Defense Criminal Investigative Organization shall:

1. Immediately notify the appropriate centralized organization of the beginning of the case.

2. Continue to provide to the centralized organization any information developed during the course of the investigation that indicates substituted products have been, or might be, provided to the Department of Defense.

3. Ensure that any request for testing of substituted products is provided to the centralized organization.

Appendix E to Part 516—Department of Defense Directive 5505.5, Implementation of the Program Fraud Civil Remedies Act

DOD Directive 5505.5 is contained in 32 CFR Part 277.

Appendix F to Part 516—Glossary

Abbreviations

AAFES: Army and Air Force Exchange Service
AMEDD: Army Medical Department

AFARS: Army Federal Acquisition Regulation Supplement
ASBCA: Armed Services Board of Contract Appeals
AUSA: Assistant United States Attorney
CFR: Code of Federal Regulations
COE: United States Army Corps of Engineers
DA: Department of the Army
DFARS: Defense Federal Acquisition Regulation Supplement
DOD: Department of Defense
DOJ: Department of Justice. In this regulation, reference to DOJ means either United States Attorneys' Offices or The (main) Department of Justice in Washington, DC
DCIS: Defense Criminal Investigative Service
e.g.: An abbreviation for *exempli gratia*, meaning "for example"
et seq.: An abbreviation for *et sequentes*, meaning "and the following"
FAR: Federal Acquisition Regulation
FAX: Facsimile Transmission
FBI: Federal Bureau of Investigation
Fed. R. Civ. P.: Federal Rules of Civil Procedure
Fed. R. Crim. P.: Federal Rules of Criminal Procedure
FOIA: Freedom of Information Act
GAO: General Accounting Office
HQDA: Headquarters, Department of the Army
i.e.: An abbreviation for *id est*, meaning "that is"
IG: Inspector General
JA: Judge Advocate
MACOM: Major Command
MSPB: Merit Systems Protection Board
NAF: Nonappropriated Fund
OTJAG: Office of The Judge Advocate General
OSC: Office of Special Counsel
PFA: Procurement Fraud Advisor
PFCRA: Program Fraud Civil Remedies Act
PFD: Procurement Fraud Division
PFI: Procurement Fraud or Irregularities
RJA: Recovery Judge Advocate
SAUSA: Special Assistant U.S. Attorney
SJA: Staff Judge Advocate
TDY: temporary Duty
TJAG: The Judge Advocate General
UCMJ: Uniform Code of Military Justice
USACIDC: U.S. Army Criminal Investigation Command
USALSA: U.S. Army Legal Services Agency
USARCS: U.S. Army Claims Service
USATDS: U.S. Army Trial Defense Service
USMA: United States Military Academy
U.S.C.: United States Code

Terms

Active Duty

Full-time duty in the active military service of the United States. Includes: full-time training duty; annual training duty; active duty for training; attendance, while in the active military service, at a school designated as a Service School by law or by the Secretary of the military department concerned; and, attendance, while in the active military service, at advanced civil schooling and training with industry. It does not include full-time National Guard duty under Title 32, United States Code.

Army Activities

Activities of or under the control of the Army, one of its instrumentalities, or the Army National Guard, including activities for which the Army has been designated the administrative agency, and those designated activities located in an area in which the Army has been assigned single service claims responsibility by DOD directive.

Army Property

Real or personal property of the United States or its instrumentalities and, if the United States is responsible therefore, real or personal property of a foreign government which is in the possession or control of the Army, one of its instrumentalities, or the Army National Guard, including property of an activity for which the Army has been designated the administrative agency, and property located in an area in which the Army has been assigned single service claims responsibility.

Centralized Organization

That organization of a DOD component responsible for coordinating and monitoring of criminal, civil, contractual, and administrative remedies relating to contract fraud. For DOD components other than the Army, the Centralized organizations are as follows: the Office of General Counsel, Department of the Air Force; the Office of the Inspector General, Department of the Navy; and the Office of General Counsel, Defense Logistics Agency.

Claim

The Government's right to recover money or property from any individual, partnership, association, corporation, governmental body, or other legal entity (foreign and domestic) except an instrumentality of the United States. A claim against several joint debtors or tortfeasors arising from a single transaction or incident will be considered one claim.

Claims Officer

A commissioned officer, warrant officer, or qualified civilian employee designated by the responsible commander and trained or experienced in the conduct of investigations and the processing of claims.

Corruption

Practices that include, but are not limited to, solicitation, offer, payment, or acceptance of bribes or gratuities; kickbacks; conflicts of interest; or unauthorized disclosure of official information related to procurement matters.

Counsel for Consultation

An attorney, provided by DA at no expense to the military member or civilian employee, who will provide legal advice to the witness concerning the authority of OSC, the nature of an OSC interview and their individual rights and obligations. The counsel may accompany the witness to the interview and advise the witness during the interview. No attorney-client relationship is established in this procedure.

Counsel for Representation

An attorney, provided by DA at no expense to the military member or civilian employee, who will act as the individual's lawyer in all contacts with the MSPB and the OSC during the pendancy of the OSC investigation and any subsequent OSC initiated action before the MSPB. An attorney-client relationship will be established between the individual and counsel for representation.

DA Personnel

DA personnel includes the following:

a. Military and civilian personnel of the Active Army and The U.S. Army Reserve.

b. Soldiers of the Army National Guard of the United States (Title 10, U.S.C.) and, when specified by statute or where a Federal interest is involved, soldiers in the Army National Guard (Title 32, U.S.C.). It also includes technicians under 32 U.S.C. 709(a)(d).

c. USMA cadets.

d. Nonappropriated fund employees.

e. Foreign nationals who perform services for DA overseas.

f. Other individuals hired by or for the Army.

Debarment

Administrative action taken by a debarring authority to exclude a contractor from Government contracting and Government-approved subcontracting for a specified period.

Deciding Official (Chapter 7)

SJA, legal adviser, or Litigation Division attorney who makes the final determination concerning release of official information.

DOD Criminal Investigation Organizations

Refers to the USACIDC; the Naval Investigative Service; the U.S. Air Force Office of Special Investigations; and the Defense Criminal Investigative Service, Office of the Inspector General, DOD.

Fraud

Any intentional deception of DOD (including attempts and conspiracies to effect such deception) for the purpose of inducing DOD action or reliance on that deception. Such practices include, but are not limited to, the following: bid-rigging; making or submitting false statements; submission of false claims; use of false weights or measures; submission of false testing certificates; adulterating or substituting materials; or conspiring to use any of these devices.

Improper or Illegal Conduct

a. A violation of any law, rule, or regulation in connection with Government misconduct; or

b. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Information Exempt From Release To The Public

Those categories of information which may be withheld from the public under one or more provisions of law.

Judge Advocate

An officer so designated (AR 27–1).

Legal Adviser

A civilian attorney who is the principal legal adviser to the commander or operating head of any Army command or agency.

Litigation

Legal action or process involving civil proceedings, i.e., noncriminal.

Litigation in Which The United States Has an Interest

a. A suit in which the United States or one of its agencies or instrumentalities has been, or probably will be, named as a party.

b. A suit against DA personnel and arises out of the individual's performance of official duties.

c. A suit concerning an Army contract, subcontract, or purchase order under the terms of which the United States may be required to reimburse the contractor for recoveries, fees, or costs of the litigation.

d. A suit involving administrative proceedings before Federal, state, municipal, or foreign tribunals or regulatory bodies that may have a financial impact upon the Army.

e. A suit affecting Army operations or which might require, limit, or interfere with official action.

f. A suit in which the United States has a financial interest in the plaintiff's recovery.

g. Foreign litigation in which the United States is bound by treaty or agreement to ensure attendance by military personnel or civilian employees.

Medical Care

Includes hospitalization, outpatient treatment, dental care, nursing service, drugs, and other adjuncts such as prostheses and medical appliances furnished by or at the expense of the United States.

Misdemeanor

An offense for which the maximum penalty does not exceed imprisonment for 1 year. Misdemeanors include those offenses categorized as petty offenses (18 USC § 3559).

Official Information

All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces.

Operating Forces

Those forces whose primary missions are to participate in combat and the integral supporting elements thereof. Within DA, the operating forces consist of tactical units organized to conform to tables of organization and equipment (TOE).

Personnel Action

These include—

a. Appointment.

b. Promotion.

c. Adverse action under 5 U.S.C. 7501 et seq. or other disciplinary or corrective action.

d. Detail, transfer, or reassignment.

e. Reinstatement.

f. Restoration.

g. Reemployment.

h. Performance evaluation under 5 U.S.C. 4301 et seq.

i. Decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action.

j. Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

Private Litigation

Litigation other than that in which the United States has an interest.

Process

The legal document that compels a defendant in an action to appear in court; e.g., in a civil case a summons or subpoena, or in a criminal case, a warrant for arrest, subpoena or summons.

Prohibited Personnel Practice

Action taken, or the failure to take action, by a person who has authority to take, direct others to take, recommend, or approve any personnel action—

a. That discriminates for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited by certain specified laws.

b. To solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests, or is under consideration for, any personnel action, unless the recommendation or statement is based on the personal knowledge or records of the person furnishing it, and consists of an evaluation of the work performance, ability, aptitude, or general qualifications of the individual, or an evaluation of the character, loyalty, or suitability of such individual.

c. To coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.

d. To deceive or willfully obstruct any person with respect to such person's right to compete for employment.

e. To influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

f. To grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

g. To appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 3110) of the employee, if the position is in the agency in which the employee is serving as a public official or over which the employee exercises jurisdiction or control as an official.

h. To take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for being a whistleblower, as defined below.

i. To take or fail to take a personnel action against an employee or applicant for employment as a reprisal for the exercise of any appeal right granted by law, rule, or regulation.

j. To discriminate for or against any employee or applicant for employment on the basis of conduct that does not adversely affect the performance of the employee or applicant or the performance of others.

k. To take or fail to take any other personnel action if the taking of, or failure to take, such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.

Prosecutive Authorities

These include—

a. A U.S. Attorney;

b. A prosecuting attorney of a State or other political subdivision when the U.S. Attorney has declined to exercise jurisdiction over a particular case or class of cases; and

c. An SJA of a general court-martial convening authority considering taking action against a person subject to the UCMJ.

Recovery JA

A JA or legal adviser responsible for assertion and collection of claims in favor of the United States for property claims and medical expenses.

Significant Case of Fraud and Corruption

A procurement fraud case involving an alleged loss of $100,000 or more; all corruption cases related to procurement that involve bribery, gratuities, or conflicts of interest; any defective products or product substitution in which a serious hazard to health, safety or operational readiness is indicated, regardless of loss value; and, any procurement fraud case that has received or is expected to receive significant media coverage.

Staff Judge Advocate

An officer so designated (AR 27–1). The SJA of an installation, a command or agency reporting directly to HQDA, or of a major subordinate command of the U.S. Army Materiel Command, and the senior Army JA assigned to a joint or unified command.

Subpoena

A process to cause a witness to appear and give testimony, e.g., at a trial, hearing, or deposition.

Suspension

Administrative action taken by a suspending authority to temporarily exclude a contractor from Government contracting and Government-approved subcontracting.

Suspension and Debarment Authorities

Officials designated in DFARS, section 9.403, as the authorized representative of the Secretary concerned.

Tortfeasor

A wrongdoer; one who commits a tort.

Appendix G to Part 516—Figures

This appendix contains figures cited or quoted throughout the text of this part.

Figure C–1. Sample Answer to Judicial Complaint, With Attached Certificate of Service

In the United States District Court for the Southern District of Texas Corpus Christi Division, No. C–90–100

John Doe, Plaintiff v. Togo D. West, Jr., Secretary of the Army, Department of the Army, Defendant.

First Affirmative Defense

The Complaint is barred by laches.

Figure C–3. Sample Answer to Judicial Complaint, with attached Certificate of Service. This is intended to be used as a guide in preparing a draft Answer as part of a Litigation Report.

Answer

For its answer to the complaint, defendant admits, denies and alleges as follows:

1. Admits.
2. Denies.
3. Denies.
4. The allegations contained in paragraph 4 are conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, they are denied.
5. Denies the allegations contained in the first sentence of paragraph 5; admits the allegations contained in the second sentence of paragraph 5; denies the remainder of the allegations in paragraph 5.
6. Denies the allegations in paragraph 6 for lack of knowledge or information sufficient to form a belief as to their truth.
7. Denies each allegation in the complaint not specifically admitted or otherwise qualified.

Prayer for Relief

The remainder of plaintiff's Complaint contains his prayer for relief, to which no answer is required. Insofar as an answer is required, denies that plaintiff is entitled to any relief whatsoever.

Defendant respectfully prays that the Court dismiss plaintiff's Complaint and award to defendant costs and such further relief as the Court deems proper.

Respectfully submitted,

Ronald M. Ford,

United States Attorney.

Roy A. Andersen,

Assistant United States Attorney, 606 N. Carancua, Corpus Christi, Texas 78476, (512) 884–3454.

Captain Christopher N. Jones,

Department of the Army, Office of the Judge, Advocate General, 901 N. Stuart St., Suite 400, Arlington, Virginia 22203–1837, (703) 696–1666.

Certificate of Service

I hereby certify that a true and correct copy of Defendant's Answer has been placed in the mail, postage prepaid, this ____ day of _____, 1991, addressed to plaintiff's counsel as follows: Mr. Eugene Henderson, 777 Fourth Street, Corpus Christi, TX 78888.

Roy A. Andersen,

Assistant United States Attorney.

Sample DA Form 4

Figure C–3. Unsworn Declaration Under Penalty of Perjury Executed Within the United States

Declaration Under Penalty of Perjury

I am Private Paul Jones, currently assigned to Company B, 4th Battalion, 325th Parachute Infantry Regiment, Fort Bragg, North Carolina. I have personal knowledge of the following matters.

On the evening of 3 June 1970, I was present at the company party at Lake Popolopen when the accident occurred. I saw a bright, full moon that evening.

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. § 1746).

Executed on: _____

Paul Jones,

Private, U.S. Army.

Figure D–1. Format for a Request for a Representation Using an Unsworn Declaration Under Penalty of Perjury Executed Within the United States

Request for Representation

I request that the Attorney General of the United States, or his agent, designate counsel to defend me in my official and individual capacities in the case of *John Doe* v. *Private Paul Jones*, now pending in the U.S. District Court for the Eastern District of North Carolina. I have read the complaint filed in this case and I declare that all my actions were performed in my official capacity, within the scope of my official duties, and in a good faith belief that my actions conformed to the law. I am not aware of any pending related criminal investigation.

I understand the following: if my request for representation is approved, I will be represented by a U.S. Department of Justice attorney; that the United States is not required to pay any final adverse money judgment rendered against me personally, although I can request indemnification; that I am entitled to retain private counsel at my own expense; and, that the Army expresses no opinion whether I should or should not retain private counsel.

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. § 1746).

Executed on: _____

Paul Jones,

Private, U.S. Army.

Figure D–2. Format for Scope of Employment Statement Using an Unsworn Declaration Under Penalty of Perjury Executed Outside the United States

Declaration

I am currently the Commander of HHC, 6th Armored Division, Bad Vilbel, Germany. I have read the allegations concerning Private Paul Jones in the complaint of *John Doe* v. *Private Paul Jones*, now pending in the U.S. District Court for the Eastern District of North Carolina.

At all times relevant to the complaint, I was Private Jones' company commander. His actions relevant to this case were performed within the scope of his official duties as Assistant Charge of Quarters, Company B, 4th Battalion, 325th Parachute Infantry Regiment, Fort Bragg, North Carolina.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. § 1746).

Executed on: _____

John Smith,

Captain, Infantry.

Figure D–3. Format for Contractor Request for Representantion

Request for Representation

I am the President of the XYZ Corporation. I request the Attorney General of the United States designate counsel to defend me and my company in *Doe* v. *XYZ, Inc.*, now pending in the U.S. District Court for the Eastern District of North Carolina.

I understand that the assumption by the Attorney General of the defense of this case does not alter or increase the obligations of the United States under United States Contract No. WP–70–660415.

I further agree that such representation will not be construed as waiver or estoppel to assert any rights which any interested party may have under said contract.

Executed on: _____

D.D. Tango,

President, XYZ, Inc.

Figure G–1. Sample "Touhy" Compliance Letter

Department of the Army, Office of the Staff Judge Advocate, Fort Smith, North Dakota 84165, 15 April 1993

Mr. T. Hudson Taylor,
Attorney At Law, 105 Hay Street, Whynot, ND 84167

Dear Mr. Taylor: We have learned that you subpoenaed Captain Roberta Selby to testify at a deposition in the case *Kramer* v. *Kramer*, currently filed in state court, and that you directed her to bring her legal assistance file concerning her client, SSG Kramer.

Under 32 CFR §§ 97.6(c), 516.35, and 516.40, the Army must authorize the appearance of its personnel or the production of official documents in private litigation. In this case, the Army cannot authorize Captain Selby to appear or produce the requested file absent the following:

You must request in writing her appearance and the production of the file in accordance with Department of Defense directives, 32 CFR § 97.6(c), and Army regulations, 32 CFR §§ 516–34—516.40. The request must include the nature of the proceeding, 32 CFR § 516.34(b), and the nature and relevance of the official information sought. *Id.* § 516.35(d). We cannot act on your request until we receive the required information. *See, for example, United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951); *Boron Oil Co.* v. *Downie*, 873 F.2d 67 (4th Cir. 1989); *United States* v. *Bizzard*, 674 F.2d 1382 (11th Cir. 1982); *United States* v. *Marino*, 658 F.2d 1120 (6th Cir. 1981); *United States* v. *Allen*, 554 F.2d 398 (10th Cir. 1977).

To overcome Federal statutory restrictions on the disclosure of the requested file imposed by the Privacy Act, 5 U.S.C. § 552a, you must provide either a written release authorization signed by the individual to whom the file pertains (that is, SSG Kramer)

or a court ordered release signed by a judge of a court of competent jurisdiction. A subpoena signed by a clerk of court, notary, or other official is insufficient. *See, for example, Doe* v. *DiGenova*, 779 F.2d 74 (DC Cir. 1985).

In this case, because of the attorney-client relationship between Captain Selby and SSG Kramer, you must produce a written waiver of the attorney-client privilege from SSG Kramer. Because the privilege may protect both documents and testimony, Captain Selby may not divulge such information without SSG Kramer's consent. *See, for example*, Rule of Professional Conduct for Army Lawyers 1.6(a).

In addition to the above requirements, Captain Selby's supervisor must approve her absence from duty. *See* 32 CFR § 516.43. In this regard, we suggest you take the deposition at Fort Smith. In any event, however, you or your client must pay all travel expenses, as this is purely private litigation and witness' appearance must be at no expense to the United States. *See id.* § 516.48(c).

Finally, if Captain Selby does appear as a witness, she may only give factual testimony. She may not testify as an opinion or expert witness. This limitation is based on Department of Defense and Army policy that generally prohibits Government employees from appearing as expert witnesses in private litigation. *See id.* §§ 97.6(e), 516.42.

Our sole concern in this matter is to protect the interests of the United States Army; the Army will not block access to witnesses or documents to which you are lawfully entitled. So that the Army can adequately protect its interests in this matter, I request that you respond to this letter by 27 April 1993. If you have any questions, please call CPT Taylor at 919–882–4500.

Sincerely,

Robert V. Jackansi,

Major, JA, Chief, Administrative Law.

Figure G–2. Sample Fact Witness Approval Letter

Department of the Army, Office of the Staff Judge Advocate, Fort Smith, North Dakota 84165, 15 April 1993

Mr. T. Hudson Taylor,
Attorney At Law, 105 Hay Street, Whynot, ND 84167

Dear Mr. Taylor: This letter responds to your request to interview and depose Captain Buzz Sawyer as a witness in *Morgan* v. *Jones*. Subject to the following conditions, your request is approved.

This grant of authority is limited to factual testimony only. Captain Sawyer may not testify as an expert witness. This limitation is based on Army policy prohibiting Government employees from appearing as expert witnesses in private litigation. *See* 32 CFR § 516.42. Captain Sawyer may not provide official information that is classified, privileged, or otherwise protected from public disclosure.

The decision whether to testify in private litigation is within the discretion of the prospective witness. This authorization is also subject to the approval of the witness' supervisors to be absent during the period involved. Finally, because this is private litigation, the witness' participation must be at no expense to the United States. *See* 32 CFR § 516.48.

If you have any questions, please call CPT Taylor at 919–882–4500.

Sincerely,

Robert V. Jackansi,

Major, JA, Chief, Administrative Law

Figure G–3. Sample Expert Witness Denial Letter

Department of the Army, Office of the Staff Judge Advocate, Fort Smith, North Dakota 84165, 15 April 1993

Mr. T. Hudson Taylor,
Attorney At Law, 105 Hay Street, Whynot, ND 84167

Dear Mr. Taylor: This responds to your request for Mr. Charles Montrose to appear as an expert witness in private litigation: *Smithers* v. *ABC Video*. For the following reasons, the request is denied.

Army Regulation 27–40 forbids Army personnel from providing expert testimony in private litigation, with or without compensation, except under the most extraordinary circumstances. See 32 CFR §§ 97.6(e), 516.42. Several reasons support the exercise of strict control over such witness appearances.

The Army policy is one of strict impartiality in litigation in which the Army is not a named party, a real party in interest, or in which the Army does not have a significant interest. When a witness with an official connection with the Army testifies, a natural tendency exists to assume that the testimony represents the official view of the Army, despite express disclaimers to the contrary.

The Army is also interested in preventing the unnecessary loss of the services of its personnel in connection with matters unrelated to their official responsibilities. If Army personnel testify as expert witnesses in private litigation, their official duties are invariably disrupted, often at the expense of the Army's mission and the Federal taxpayer.

Finally, the Army is concerned about the potential for conflict of interest inherent in the unrestricted appearance of its personnel as expert witnesses on behalf of parties other than the United States. Even the appearance of such conflicts of interest seriously undermines the public trust and confidence in the integrity of our Government.

This case does not present the extraordinary circumstances necessary to justify the requested witness' expert testimony. You have demonstrated no exceptional need or unique circumstances that would warrant (his or her) appearance. The expert testimony desired can be secured from non-Army sources. Consequently, we are unable to grant you an exception to the Army's policy.

If you have any questions, please call me or CPT Taylor at 919–882–4500.

Sincerely,

Robert V. Jackansi,

Major, JA, Chief, Administrative Law.

Figure G–4. Sample of Doctor Approval Letter

Department of the Army, Office of the Staff Judge Advocate, Fort Smith, North Dakota 84165, 15 April 1993

Mr. T. Hudson Taylor,
Attorney At Law, 105 Hay Street, Whynot, ND 84167

Dear Mr. Taylor: This responds to your request to depose Dr. (MAJ) J. McDonald, Fort Smith Medical Treatment Facility. Pursuant to 32 CFR §§ 516.33–516.49, you may depose him subject to the following conditions:

He may testify as to his treatment of his patient, Sergeant Rock, as to related laboratory tests he may have conducted, or other actions he took in the regular course of his duties.

He must limit his testimony to factual matters such as his observations of the patient or other operative facts, the treatment prescribed or corrective action taken, course of recovery or steps required for treatment of injuries suffered, or contemplated future treatment.

His testimony may not extend to hypothetical questions or to a prognosis. He may not testify as an "expert." This limitation is based on Department of Defense and Army policy prohibiting present or former military personnel and Army civilian employees from providing opinion or expert testimony concerning official information, subjects, or activities in private litigation. *See* 32 CFR §§ 97.6(e), 516.42.

The witnesses may not provide official information that is classified, privileged, or otherwise protected from public disclosure. To protect the Army's interests, CPT Taylor or another Army attorney will be present during the depositions.

To overcome restrictions imposed by the Privacy Act, 5 U.S.C. § 552a, Dr. McDonald may not discuss matters derived from the patient's medical records absent the patient's written consent or a court order signed by a judge. A subpoena issued by someone other than a judge or magistrate is insufficient. *See Doe* v. *DiGenova, 779 F.2d 74 (D.C. Cir. 1985); Stiles* v. *Atlanta Gas Light Co.*, 453 F. Supp. 798 (N.D. Ga. 1978).

The decision whether to testify in private litigation is within the discretion of the witness, subject to the approval of his supervisors to be absent during the period involved.

Finally, because this is private litigation, the witnesses' participation must be at no expense to the United States. *See* 32 CFR § 516.48.

If you have any questions, please call me or CPT Taylor at 919–882–4500.

Sincerely,

Robert V. Jackansi,

Major, JA, Chief, Administrative Law.

Figure H–1. Procurement Fraud Indicators

Procurement Fraud Indicators

1. During the identification of the government and services.

a. Need determinations for items currently scheduled for disposal or reprocurement, or which have predetermined reorder levels.

b. Excessive purchase of "expendables" such as drugs or auto parts.

c. Inadequate or vague need assessment.

d. Frequent changes in the need assessment or determination.

e. Mandatory stock levels and inventory requirements appear excessive.

f. Items appear to be unnecessarily declared excess or sold as surplus, while same items are being reprocured.

g. It appears that an item or service is being purchased more as a result of aggressive marketing efforts rather than in response to a valid requirement.

h. Need determination appears to be unnecessarily tailored in ways that can only be met by certain contractors.

i. Items and services are continually obtained from the same source due to an unwarranted lack of effort to develop second sources.

2. During the development of the statements of work and specifications.

a. Statements of work and specifications appear to be intentionally written to fit the products or capabilities of a single contractor.

b. Statements of work, specifications, or sole source justifications developed by or in consultation with a preferred contractor.

c. Information concerning requirements and pending contracts is released only to preferred contractors.

d. Allowing companies and industry personnel who participated in the preparation of bid packages to perform on subsequent contracts in either a prime or subcontractor capacity.

e. Release of information by firms or personnel participating in design or engineering to companies competing for prime contract.

f. Prequalification standards or specifications appear designed to exclude otherwise qualified contractors or their productions.

g. Requirements appear split up to allow for rotating bids, giving each contractor his or her "fair share."

h. Requirements appear split up to meet small purchase requirements (that is, $25,000) or to avoid higher levels of approval that would be otherwise required.

i. Bid specifications or statement of work appear inconsistent with the items described in the general requirements.

j. Specifications appear so vague that reasonable comparisons of estimate would be difficult.

k. Specifications appear inconsistent with previous procurements of similar items of services.

3. During the presolicitation phase.

a. Sole source justifications appear unnecessary or poorly supported.

b. Statements justifying sole source or negotiated procurements appear inadequate or incredible.

c. Solicitation documents appear to contain unnecessary requirements which tend to restrict competition.

d. Contractors or their representatives appear to have received advanced information related to the proposed procurement on a preferential basis.

4. During the solicitation phase.

a. Procurement appears to be processed so as to exclude or impede certain contractors.

b. The time for submission of bids appears to be unnecessarily limited so that only those with advance information have adequate time to prepare bids or proposals.

c. It appears that information concerning the procurement has been revealed only to certain contractors, without being revealed to all prospective competitors.

d. Bidders conferences are conducted in a way that apparently invites bid rigging, price fixing, or other improper collusion between contractors.

e. There is an apparent intentional failure to fairly publish notice of the solicitation.

f. Solicitation appears vague as to the details such as time, place and manner, of submitting acceptable bids.

g. There is evidence of improper communications or social contract between contractors and government personnel.

h. Controls over the number and destination of bid packages sent to interested bidders appear inadequate.

i. Indications that government personnel or their families may own stock or have some other financial interest in either a contractor or subcontractor.

j. Indications that government personnel are discussing possible employment for themselves or a family member with a contractor or subcontractor or indications that a proposal for future employment from a contractor or subcontractor to a government employee or his or her family members has not been firmly rejected.

k. Indications that any contractor has received special assistance in preparation of his or her bid or proposal.

l. It appears that a contract is given an expressed or implied reference to a specific subcontractor.

m. Failure to amend solicitation to reflect necessary changes or modifications.

5. During the submission of bids and proposals.

a. Improper acceptance of a late bid.

b. Documents, such as receipts, appear falsified to obtain acceptance of a late bid.

c. Improperly attempting to change a bid after other bidders prices are known.

d. Indications that mistakes have been deliberately planted in a bid to support correction after bid opening.

e. Withdrawal by a low bidder who may later become a subcontractor to a higher bidder who gets the contract.

f. Apparent collusion or bid rigging among the bidders.

g. Bidders apparently revealing their prices to each other.

h. Required contractor certifications appear falsified.

i. Information concerning contractor's qualifications, finances, and capabilities appears falsified.

6. During the evaluation of bids and proposals.

a. Deliberately losing or discarding bids of certain contractors.

b. Improperly disqualifying the bids or proposals of certain contractors.

c. Accepting apparently nonresponsive bids from preferred contractors.

d. Unusual or unnecessary contacts between government personnel and contractors during solicitation, evaluation, and negotiation.

e. Any apparently unauthorized release of procurement information to a contractor or to non-government personnel.

f. Any apparent favoritism in the evaluation of the bid or proposal of a particular contractor.

g. Apparent bias in the evaluation criteria or in the attitude or actions of the members of the evaluation panel.

7. During contract formation and administration.

a. Defective pricing by the contractor usually associated with submitting false cost and pricing data under the Truth in Negotiation Act.

b. Cost/Labor mischarging.

c. Product substitution.

d. Progress payment fraud. For more details on these subjects see DA PAM 27–153, Contract Law, paragraph 23–5.

Figure H–2. Guide for Preparing Remedies Plan

Guide for Preparing a Remedies Plan

(Date of Plan)

Section I (Administrative Data)

A. Subject of Allegation.
B. Principal Investigative Agency.
C. Investigative Agency File Number.
D. Subject's Location.
E. Location Where Offense Took Place.
F. Responsible Action Commander.
G. Responsible MACOM.
H. Contract Administrative Data (If Applicable):
  1. Contract Number.
  2. Type of Contract.
  3. Dollar Amount of Contract.
  4. Period of Contract.
I. Principal Case Agent (Name and Telephone Number).
J. Civilian Prosecutor (If Applicable) (Name, Address, and Telephone Number).
K. Is Grand Jury Investigating This Matter? If So, Where is Grand Jury Located?
L. Audit Agency Involved (If Applicable). Name and Telephone Number of Principal Auditor.
M. Suspense Date for Update of This Plan.

Section II (Summary of Allegations and Investigative Results to Date)

(Provide sufficient detail for reviewers of the plan to evaluate the appropriateness of the planned remedies. If information is "close-hold" or if grand jury secrecy applies, so state.)

Section III (Adverse Impact Statement)

(Describe any adverse impact on the DA/DOD mission. Adverse impact is described in DOD Directive 7050.5, paragraph E.1.g. Identify impact as actual or potential. Describe the impact in terms of monetary loss, endangerment to personnel or property, mission readiness, etc. This information should be considered in formulating your remedies as described below and provided to prosecutors for their use in prosecution of the offenses.)

Section IV (Remedies Taken and/or Being Pursued)

A. Criminal Sanctions. (As a minimum, address the following: Are criminal sanctions appropriate? If so, which ones? If not, why not? Has the local U.S. Attorney or other civilian prosecutor been notified and briefed? What actions have been taken or are intended? If and when action is complete, describe action and final results of the action. Other pertinent comments should be included.)

B. Civil Remedies. (As a minimum address the following: Which civil remedies are appropriate? Has the local U.S. Attorney or other civilian prosecutor been notified and briefed? How, when, where and by whom are the appropriate civil remedies implemented? If and when action is completed, describe action and final results. Other pertinent comments should be included.)

C. Contractual/Administrative Remedies. (As a minimum, address the following: Are contractual and administrative remedies appropriate: If so, which ones? If not, Why? If contractual or administrative remedies are considered appropriate, describe how, when, and by whom the remedies are implemented. If and when action is completed, describe action and results of the action. Other pertinent comments should be included.)

D. Restrictions on Remedies Action. (Comment as to why obvious remedies are not being pursued. For example, the U.S. Attorney requests suspension action held in abeyance pending criminal action.)

Section V (Miscellaneous Comments/ Information)

Section VI (Remedies Plan Participants)

(Record the name, grade, organization, and telephone number of all Remedies Plan participants.)

Section VII (MACOM Coordination Comments)

(Record the name, grade, office symbol, and telephone number of all MACOM officials providing coordination comments; record the date when comments are submitted and append to the Remedies Plan the signed comments provided.)

MACOM Focal Point

(Record the name, grade, office symbol, and telephone number of the MACOM focal point.)

Section VIII (Coordination/Comments)

(Record the name, grade, organization, office symbol, and telephone number of all officials with whom you have coordinated the Remedies Plan or who have provided comments on your plan; append any comments provided to the Remedies Plan.)

Figure H–3. Guide for Testing Defective Items Under Criminal or Civil Investigation

Testing Defective Items Under Criminal or Civil Investigation

1. Under no circumstances is testing to proceed unless the command has committed sufficient funding to cover the entire cost of the projected testing.

2. No testing will be initiated unless there has been a written request for the testing to the appropriate Procurement Fraud Advisor from a criminal investigator or Assistant United States Attorney or Department of Justice Attorney (AUSA is used in these procedures to indicate either an AUSA or Department of Justice attorney). If they have not already done so, criminal investigators should be requested to coordinate their testing requests with the AUSA overseeing the investigation.

3. Barring extraordinary circumstances, only one test will be conducted to support the criminal and civil recovery efforts of a procurement fraud/irregularity matter. Early coordination with the Civil Division of Department of Justice or the local United States Attorneys Office is necessary to ensure that testing funds are not wasted.

4. The request for testing should include a clear, concise statement of the purpose of the testing to include a statement of the allegations made and the contact number(s) involved. *Any test plan which requires destructive testing must be approved by the AUSA.*

5. No testing will be initiated unless a test plan has been developed which states the following:

a. the contract number(s) involved
b. the National Stock Number (NSN) of the item to be tested
c. the purpose of the testing
d. the alleged defect or the contractual requirement violated
e. the CID report of investigation (ROI) number or the DCIS case number
f. cost of the test (a cost proposal should be an attachment to the test plan)
g. where the test will be conducted
h. how the test will be conducted
i. the name and telephone number of the test team leader
j. the names of all test team members
k. the approximate dates of the testing
l. the date that completion of the test is required
m. a clear statement of the desired product (that is test report, raw data, analysis of results, evaluation of test results)
n. the PRON to fund the testing
o. a retention plan.

6. The test plan shall be coordinated with the concurrence received in advance from the appropriate personnel in the Procurement Directorate, Product Assurance and Test Directorate, the Procurement Fraud Advisor, and the investigator/AUSA requesting the test. No testing will be initiated until the criminal investigator/AUSA who requested the testing has approved the test plan.

7. If the items tested are to be retained as evidence, the criminal investigator should arrange for retention of the evidence. While the Command will support evidence retention, this is primarily the responsibility of the criminal investigators. Agents should be advised that putting items in Code L or similar non-use status is insufficient to protect it from being released to the field. *A decision not to retain the tested items as evidence must have the approval of the AUSA.*

8. All items to be tested should be from a statistically valid random sample. The sample should conform with the inspection requirements of the contract or be in conformance with a random sample specifically developed for the instant test plan. It is recommended that a statistician be consulted to determine the feasibility of a random sample specifically created to support the test plan.

9. Results of testing should be available to Command and DA personnel for appropriate contractual and administrative remedies. Any request for testing results that indicates that dissemination of the testing results will be limited by Rule 6(e) of the Federal Rules of Criminal Procedure is to be forwarded through the MACOM or AMC Procurement Fraud Coordinator to DA Procurement Fraud Division prior to the initiation of any testing.

10. Resolution of problems associated with testing requests should be conducted at the local level. In AMC the authority to refuse a testing request resides with the Office of Command Counsel. Any disputes which cannot be resolved at the local level will be forwarded to the AMC or MACOM Procurement Fraud Coordinator for resolution. This includes disputes regarding funding or any time sensitive issues.

11. Second requests for testing of the same item due to a change in the investigative plan require coordination by the PFA with the investigator *and* AUSA overseeing the investigation to determine the deficiencies in the earlier test. Disputes which cannot be resolved between the AUSA, PFA, and investigator regarding testing are to be forwarded simultaneously to the MACOM Procurement Fraud Coordinator and PFD for resolution. The procedures established in paragraphs 5 and 6 apply for second requests for testing with the additional requirement that the Assistant United States Attorney must be requested to approve the test plan.

Figure I–1. Guide for Seeking Legal Advice and Representation Before Office of Special Counsel

Guide for Seeking Legal Advice and Representation Before Office of Special Counsel

1. Overview

a. DA employees or military members asked to provide information (testimonial or documentary) to OSC may obtain legal advice through the Labor Counselor from DA attorneys concerning their rights and obligations. This includes assistance at any interviews with OSC investigators. However, an attorney-client relationship will not be established unless the employee or military member—

(1) Is suspected or accused by the OSC of committing a prohibited personnel practice or other illegal or improper act; and

(2) Has been assigned counsel by the DA General Counsel.

b. Any military member or employee who reasonably believes that he or she is suspected or has been accused by OSC of committing a prohibited personnel practice or other illegal or improper act may obtain legal representation from DA. The counsel assigned will be from another DOD component whenever a DA attorney is likely to face a conflict between the attorney's ethical obligation to the client and DA, or when the suspected or accused individual

has requested representation from another DOD component. Outside legal counsel may be retained by DA on behalf of the member or employee under unusual circumstances and only with the personal approval of the DOD General Counsel.

c. The DA General Counsel will determine whether a conflict is likely to occur if a DA attorney is assigned to represent a military member or civilian. If the DA General Counsel determines a conflict may occur, or if the suspected or accused employee has requested representation from another DOD component, the DA General Counsel will seek the assistance of another General Counsel in obtaining representation outside DA.

2. Requests for Representation

a. To obtain legal representation, military members or civilian employees must—

(1) Submit a written request for legal representation through the Labor and Employment Law Office, Office of the Judge Advocate General, Department of the Army, to DA General Counsel, explaining the circumstances that justify legal representation. Copies of all process and pleadings served should accompany the request.

(2) Indicate whether private counsel, at personal expense, has been retained.

(3) Obtain written certification from their supervisor that—

(a) They were acting within the scope of official duties; and

(b) DA has not initiated any adverse or disciplinary action against them for the conduct being investigated by the OSC.

b. Requests for DA legal representation must be approved by the DA General Counsel.

c. The conditions of legal representation must be explained and accepted in writing by the member or employee.

3. Limitations on Representation

a. DA will not provide legal representation with respect to a DA initiated disciplinary action against a civilian employee for committing or participating in a prohibited personnel practice or for engaging in illegal or improper conduct. This prohibition applies regardless of whether the participation or conduct is also the basis for the disciplinary action proposed by the OSC.

b. In certain situations, counsel provided by DA may be limited to representing the individual only with respect to some of the pending matters, if other specific matters of concern to the OSC or MSPB do not satisfy the requirements contained in this regulation.

4. Attorney-Client Relationship

a. An attorney-client relationship will be established and continued between the suspected or accused individual and assigned DA counsel.

b. In representing a DA employee or military member, the DA attorney designated as counsel will act as a vigorous advocate of the individual's legal interests before the OSC or MSPB. The attorney's professional responsibility to DA will be satisfied by fulfilling this responsibility to the employee or military member. Legal representation may be terminated only with the approval of the DA General Counsel and normally only on the basis of information not available at the time the attorney was assigned.

c. The attorney-client relationship may be terminated if the assigned DA counsel determines, with the approval of the DA General Counsel, that—

(1) The military member or civilian employee was acting outside the scope of his or her official duties when engaging in the conduct that is the basis for the OSC investigation or charge; and

(2) Termination is not in violation of the rules of professional conduct applicable to the assigned counsel.

d. The DA attorney designated as counsel may request relief from the duties of representation or counseling without being required to furnish explanatory information that might compromise confidential communications between the client and the attorney.

5. Funding

This regulation authorizes cognizant DA officials to approve requests from military members or civilian employees for travel, per diem, witness appearances, or other departmental support necessary to ensure effective legal representation by the designated counsel.

6. Status

A military member's or civilian employee's participation in OSC investigations, MSPB hearings, and other related proceedings will be considered official departmental business for time and attendance requirements and similar purposes.

7. Advice to Witnesses

The following advice to military members and civilian employees questioned during the course of an OSC investigation may be appropriate in response to these frequent inquiries:

a. A witness may decline to provide a "yes" or "no" answer in favor of a more qualified answer when this is necessary to ensure accuracy in responding to an OSC interviewer's question.

b. Requests for clarification of both questions and answers are appropriate to avoid misinterpretation.

c. Means to ensure verifications of an interview by OSC investigators are appropriate, whether or not the military member or civilian employee is accompanied by counsel. Tape recorders may only be used for this purpose when—

(1) The recorder is used in full view.

(2) All attendees are informed.

(3) The OSC investigator agrees to record the proceeding.

d. Any errors that appear in a written summary of an interview prepared by the investigator should be corrected before the member or employee signs the statement. The military member or civilian employee is not required to sign any written summary that is not completely accurate. A military member or civilian employee may receive a copy of the summary as a condition of signing.

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July 27, 1994

Part III

Department of Labor

Office of the Secretary

29 CFR Part 95

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, et cetera.; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 95

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is issuing these regulations pursuant to the requirements of the Office of Management and Budget (OMB) Circular No. A–110 (Revised), which provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations. This rule also applies to the Department of Labor's grants to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments and international organizations.

OMB issued Circular A–110 in 1976 and, except for a minor revision in February 1987, the Circular remained unchanged until revised in 1993. To update the Circular, OMB established an interagency task force to review the Circular. The task force solicited suggestions for changes to the Circular from university groups, non-profit organizations and other interested parties and compared for consistency the provisions of similar provisions applied to State and local governments. The revised Circular and these regulations reflect the results of these efforts.

EFFECTIVE DATE: This rule is effective on July 27, 1994.

ADDRESSES: U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Directorate of Administrative and Procurement Programs, Room S–1522, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Melvin Goldberg, Office of Acquisition Integrity, Division of Procurement and Grant Policy. Telephone 202–219–9174, Extension 109 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

A. Background

OMB published a notice in the **Federal Register** (57 FR 39018) on August 27, 1992, requesting comments on proposed revisions to OMB Circular A–110. Interested parties were invited to submit comments. OMB received over 200 comments from Federal agencies, non-profit organizations, professional organizations and others. All comments were considered in developing this final revision.

On November 29, 1993, at 58 FR 62992, OMB published a notice containing its final revision to Circular A–110. In that publication, OMB presented a summary of the major comments, grouped by subject, and a response to each comment. Other changes were made to increase clarity and readability.

Omitted from part 95 are requirements which DOL must meet pursuant to the Circular. Those requirements deal with the relationship between DOL and OMB and are not necessary to this rulemaking. OMB Circular A–110 gives Federal agencies the discretion to make these regulations applicable to grants and agreements awarded to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations. The Department of Labor has chosen to do so. As permitted by OMB Circular A–110, the Department has made a few changes to the language of the Circular to fit the particular circumstances of the DOL programs. The Department has added a definition of "commercial organizations" and revised the definition of "program income" for clarification purposes. The Department also has revised the language in § 95.25(e)(2), dealing with extensions, for editorial purposes. The Department has deleted the words "at least" from § 95.22(e)(2) to enhance administrative efficiency by limiting invoicing to once a month. Other minor editorial, technical, and clarifying changes are made as well.

B. Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on this procedural amendment to the regulation because such comment is unnecessary, impracticable, and contrary to the public interest. This finding is made because all executive agencies are required to follow OMB directives with respect to grants or assistance of property. See 41 U.S.C. § 405 (The Office of Federal Procurement Policy Act).

C. Dates

The Department has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. Therefore, this rule shall be effective July 27, 1994. See 5 U.S.C. 553.

D. Procedural Matters

This rule is not a "significant regulatory action" as defined by section 3(f) of Executive Order 12866. Since this rule was not preceded by a proposed rule, a regulatory flexibility analysis is not required. See 5 U.S.C. 601(2). Further, the Department of Labor certifies that the rule will not have a significant economic impact on a substantial number of small entities, because it does not affect the amount of funds provided in the covered programs, but, rather, modifies and updates administrative and procedural requirements. The recordkeeping requirements in this rule have been approved by the Office of Management and Budget, as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 1225–0017.

List of Subjects

29 CFR Part 95

Grants programs, Grants administration, Government contracts, Reporting and record-keeping requirements.

For the reasons set out in the preamble, subtitle A of title 29 of the *Code of Federal Regulations* is amended, by adding a new part 95, as set forth below.

Signed at Washington, DC, this 18th day of July, 1994.

Cynthia A. Metzler,

Assistant Secretary for Administration and Management.

PART 95—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS, AND WITH COMMERCIAL ORGANIZATIONS, FOREIGN GOVERNMENTS, ORGANIZATIONS UNDER THE JURISDICTION OF FOREIGN GOVERNMENTS, AND INTERNATIONAL ORGANIZATIONS

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Appendix A to Part 95—Contract Provisions

Authority: 5 U.S.C. 301; OMB Circular A–110; Secretary of Labor's Order 4–76.

Subpart A—General

§ 95.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, other non-profit organizations, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations. DOL shall not impose additional or inconsistent requirements, except as provided in §§ 95.4 and 95.14 or unless specifically required by Federal statute or executive order. Non-profit and commercial organizations that implement Federal programs for the States are also subject to State requirements.

§ 95.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by DOL to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which DOL determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DOL.

(h) *Commercial organization* means any business entity organized primarily for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in or outside the United States. The term includes, but is not limited to, an individual, partnership, corporation, joint venture, association, or cooperative.

(i) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(j) *Cost sharing or matching* means that portion of project or program costs not borne by DOL.

(k) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or

amendment thereto, on which DOL sponsorship ends.

(l) *Disallowed costs* means those charges to an award that DOL determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(m) *DOL* means the U.S. Department of Labor, including its agencies and organizational units.

(n) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established. Equipment includes, but is not limited to, equipment acquired before the publication of these regulations and equipment transferred from prior years.

(o) *Excess property* means property under the control of DOL that, as determined by the Secretary of Labor, is no longer required for its needs or the discharge of its responsibilities.

(p) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where DOL has statutory authority to vest title in the recipient without further obligation to the Federal Government.

(q) *Federal agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

(r) *Federal awarding grantor agency* means the Federal agency that provides an award to the recipient.

(s) *Federal funds authorized* means the total amount of Federal funds obligated by DOL for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by DOL's regulations or DOL's implementing instructions.

(t) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(u) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(v) *Grant officer* means any person authorized to enter into, modify or terminate any financial assistance awards and make related determinations and findings. DOL grant officers shall be designated by name on a "Certificate of Appointment."

(w) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(x) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(y) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(z) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(aa) *Prior approval* means written approval by an authorized official evidencing prior consent.

(bb) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 95.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(cc) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(dd) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(ee) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(ff) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment. Real property includes, but is not limited to, real property acquired before publication of these regulations and real property transferred from prior years.

(gg) *Recipient* means an organization receiving financial assistance directly from DOL to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term also includes commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(hh) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also

includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ii) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. § 403(11) (currently $25,000).

(jj) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in paragraph (e) of this section.

(kk) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term includes foreign organizations and international organizations (such as agencies of the United Nations).

(ll) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(mm) *Suspension* means an action by DOL that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under DOL's regulations at 29 CFR part 98, implementing E.O.'s 12549 and 12689, "Debarment and Suspension." See 29 CFR part 98, subpart D.

(nn) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(oo) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(pp) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(qq) *Unobligated balance* means the portion of the funds authorized by DOL that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(rr) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(ss) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 95.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 95.4.

§ 95.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum grant-wide uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. DOL may apply more restrictive requirements to a class of recipients when approved by OMB. DOL may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by DOL.

§ 95.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, other non-profit organizations, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and codified by DOL at 29 CFR part 97 or its successor.

Subpart B—Pre-Award Requirements

§ 95.10 Purpose.

Sections 95.11 through 95.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 95.11 Pre-award policies.

Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 95.12 Forms for applying for Federal assistance.

(a) Applicants shall use the SF–424 series or those forms and instructions prescribed by DOL.

(b) The applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from DOL or the *Catalog of Federal Domestic Assistance*. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

§ 95.13 Debarment and suspension.

Recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.'s 12549 and 12689, "Debarment and Suspension" codified by DOL at 29 CFR part 98. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 95.14 Special award conditions.

If an applicant or recipient:

(a) Has a history of poor performance,

(b) Is not financially stable,

(c) Has a management system that does not meet the standards prescribed in this part,

(d) Has not conformed to the terms and conditions of a previous award, or

(e) Is not otherwise responsible,

DOL may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: The nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 95.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205), declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. DOL shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§ 95.16 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 95.17 Certifications and representations.

Unless prohibited by statute or codified regulation, DOL requires recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis only, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 95.20 Purpose of financial and program management.

Sections 95.21 through 95.28 prescribe standards for financial management systems, methods for making payments and rules for: Satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 95.21 Standards for financial management systems.

(a) Recipients shall relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 95.52. Though DOL requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, DOL, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) DOL may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 95.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(2) Financial management systems that meet the standards for fund control and accountability as established in § 95.21.

Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by DOL to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients are authorized to submit requests for advances monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special DOL instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. DOL may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, DOL shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients are authorized to submit requests for reimbursement monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and DOL has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, DOL may provide cash on a working capital advance basis. Under this procedure, DOL shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, DOL shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, DOL shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) or (h)(2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, "Managing Federal Credit Programs." Under such conditions, DOL may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2) of this section, DOL shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraph (k)(1), (k)(2), or (k)(3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

In keeping with Electronic Funds Transfer rules, (31 CFR Part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIRE Deposit system. Recipients who do not have this capability should use a check.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from DOL, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. DOL shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. The SF–270 is the standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. DOL, however, has the option of using this form for construction programs in lieu of the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. The SF–271 is the standard form to be used for requesting reimbursement for construction programs. However, DOL may *substitute* the SF–270 when DOL determines that it provides adequate information to meet Federal needs.

§ 95.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other Federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by DOL.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with prior written approval of the grant officer.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If DOL authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of the value determined under paragraph (c)(1) or paragraph (c)(2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the grant officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g)(1) or (g)(2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the grant officer has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 95.24 Program income.

(a) Except as provided in paragraph (e) of this section, program income earned during the project period shall be retained by the recipient and added to funds committed to the project by DOL and recipient, and used to further eligible project or program objectives.

(b) Recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(c) Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(d) Proceeds from the sale of property are not program income and shall be handled in accordance with the requirements of the Property Standards (See §§ 95.30 through 95.37).

(e) Unless DOL's regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 95.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon DOL's requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior written

approvals from the grant officer for one or more of the following program or budget changes:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25-percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa.

(6) The inclusion, unless waived by the grant officer, of costs that require prior approval in accordance with OMB Circular A–21, "Cost Principles for Institutions of Higher Education," OMB Circular A 122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74, Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, the grant officer may waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior written approval of the grant officer. All pre-award costs are incurred at the recipient's risk (i.e., the grant officer is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the grant officer in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. The one-time extension may not be initiated if:

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the grant officer provides otherwise in the award or in DOL's regulations, the prior written approval requirements described in paragraph (e) are automatically waived (i.e., recipients need not obtain such prior written approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) DOL may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by DOL. DOL shall not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from the grant officer for budget revisions whenever paragraphs (h)(1), (h)(2) or (h)(3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 95.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When DOL makes an award that provides support for both construction and nonconstruction work, DOL may require the recipient to request prior written approval before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, recipients shall notify the grant officer in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting written approval for budget revisions, recipients shall use the budget forms that were used in the application.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, the grant officer shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the grant officer shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 95.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions" and applicable provisions of DOL regulations at 29 CFR part 96.

(b) Recipients and subrecipients that are State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and DOL's regulations implementing OMB Circular A–128, "Audits of State and Local Governments" and applicable provisions of DOL regulations at 29 CFR part 96.

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 shall be subject to the audit requirements of DOL. See 29 CFR part 96.

(d) Commercial organizations shall be subject to the audit requirements specified by the DOL awarding agency or the prime recipient as incorporated into the award document. See 29 CFR part 96.

§ 95.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the

entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 95.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by DOL.

Property Standards

§ 95.30 Purpose of property standards.

Sections 95.31 through 95.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Recipients are required to observe these standards under awards and no additional requirements shall be imposed, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 95.31 through 95.37.

§ 95.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 95.32 Real property.

DOL shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of DOL.

(b) The recipient shall obtain prior written approval from the grant officer for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by DOL.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the grant officer. The grant officer shall issue one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by DOL and pay DOL for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 95.33 Federally-owned and exempt property.

(a) Federally-owned property.

(1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to DOL. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to DOL for further Federal agency utilization.

(2) If DOL has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless DOL has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(i)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by DOL.

(b) Exempt property.

When statutory authority exists, DOL has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions DOL considers appropriate. Such property is "exempt property." Should DOL not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 95.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the grant officer. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally, sponsored activities, in the following order of priority:

(1) Activities sponsored by the DOL agency which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the DOL agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the grant officer. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the written approval of the grant officer.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information:

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates DOL for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the grant officer.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original DOL agency. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from DOL. The DOL agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within the DOL agency, the availability of the equipment shall be reported to the General Services Administration by DOL to determine whether a requirement for the equipment exists in other Federal agencies. DOL shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse DOL an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the awarding agency for such costs incurred in its disposition.

(4) The DOL agency reserves the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards:

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The DOL agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If DOL fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When DOL exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 95.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 95.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOL reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) DOL has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without written approval of the grant officer. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 95.34(g).

§ 95.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Grant officers may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 95.40 Purpose of procurement standards.

Sections 95.41 through 95.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by DOL upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 95.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to DOL, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 95.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 95.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 95.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (a)(2), and (a)(3) of this section apply.

(1) Recipients shall avoid purchasing unnecessary items.

(2) Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services shall provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, the Department of Commerce's Minority Business Development Agency, and DOL's Office of Small Business and Minority Affairs in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.'s 12549 and 12689, "Debarment and Suspension." See 29 CFR part 98.

(e) Recipients shall, on request, make available to DOL, pre-award and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 95.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 95.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a) basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.

§ 95.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 95.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts:

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, DOL may accept the bonding policy and requirements of the recipient, provided DOL has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the

contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, DOL, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

Reports and Records

§ 95.50 Purpose of reports and records.

Sections 95.51 through 95.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 95.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 95.26.

(b) DOL shall prescribe the frequency with which performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. DOL may require annual reports before the anniversary dates of multiple-year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify DOL of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) DOL may make site visits, as needed.

(h) DOL shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

(Approved by the Office of Management and Budget, Approval Number 1225–0017)

§ 95.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients:

(1) SF–269 or SF–269A, Financial Status Report.

(i) Recipients shall use the SF–269, SF–269A, or other OMB-approved forms to report the status of funds for all nonconstruction projects or programs. DOL may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) DOL shall prescribe whether the report shall be on a cash or an accrual basis. If DOL requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) DOL shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) Recipients shall submit to DOL the SF–269, SF–269A, or other OMB-approved forms (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by DOL upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients, the recipient shall submit the SF–272 and, when necessary, its continuation sheet, SF–272a. DOL shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) DOL may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, DOL may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The DOL agency may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) DOL may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in DOL's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When DOL needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, DOL shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When DOL determines that a recipient's accounting system does not meet the standards in § 95.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. DOL, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) DOL may shade out any line item on any report if not necessary.

(4) DOL may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) DOL may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

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§ 95.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. DOL shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by DOL. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by DOL, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc., as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by DOL.

(d) DOL shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, DOL may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal grantor awarding agency, the Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, DOL shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when DOL can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. § 552) if the records had belonged to DOL.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to DOL or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to DOL or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

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Termination and Enforcement

§ 95.60 Purpose of termination and enforcement.

Sections 95.61 and 95.62 set forth uniform suspension, termination and enforcement procedures.

§ 95.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a)(1), (a)(2), or (a)(3) of this section apply.

(1) By grant officers, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By grant officers, with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the grant officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the grant officer determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, the grant officer may terminate the grant in its entirety under either paragraphs (a) (1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 95.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 95.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or

notice of award, DOL may, in addition to imposing any of the special conditions outlined in § 95.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by DOL.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, DOL shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless DOL expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (c)(2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.'s 12549 and 12689 and DOL's implementing regulations. See § 95.13 and 29 CFR part 98.

Subpart D—After-the-Award Requirements

§ 95.70 Purpose.

Sections 95.71 through 95.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 95.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. DOL may approve extensions when requested by the recipient.

(b) Unless DOL authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) DOL shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that DOL has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, DOL shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 95.31 through 95.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, DOL retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 95.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of DOL to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 95.26.

(4) Property management requirements in §§ 95.31 through 95.37.

(5) Records retention as required in § 95.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of DOL and the recipient, provided the responsibilities of the recipient referred to in § 95.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 95.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, DOL may reduce the debt by paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, DOL shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

Appendix A to Part 95—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which one is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing

Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. § 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient. See 29 CFR part 98.

8. *Debarment and Suspension (E.O.'s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.'s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

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Part IV

Environmental Protection Agency

40 CFR Parts 260, 261, and 273

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury-Containing Lamps; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, and 273

[FRL–5020–1]

RIN 2050–AD93

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury-Containing Lamps

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Mercury-containing lamps (light bulbs) may be hazardous waste under the Toxicity Characteristic Rule issued under the Resource Conservation and Recovery Act (RCRA) and if so, must be managed as a hazardous waste, unless they are a household waste or are generated by an exempted small quantity generator. Mercury-containing lamps include fluorescent, high pressure sodium, mercury vapor and metal halide lamps. The Environmental Protection Agency (EPA) is today seeking comment on two alternative approaches for the management of mercury-containing lamps. First, EPA is seeking comment on whether an exclusion from regulation as hazardous waste is appropriate for mercury lamps, provided they are disposed in municipal landfills that are permitted by States/Tribes with EPA approved municipal solid waste (MSW) landfill permitting programs or managed in mercury reclamation facilities that are permitted, licensed or registered by States/Tribes. The second approach would add mercury lamps to EPA's Universal Waste Proposal (February 11, 1993, 58 FR 8102). The Universal Waste approach is a streamlined, reduced regulatory structure, which is designed to address the management of certain widely generated wastes currently subject to full Subtitle C RCRA regulations.

Today's proposal presents management options that would be considered less stringent than the existing Federal regulations because they would exempt certain activities now within the purview of RCRA Subtitle C (hazardous waste management). Therefore, States authorized under RCRA section 3006 to administer and enforce a hazardous waste system in lieu of the Federal program would be allowed flexibility in modifying their programs to adopt less stringent regulations regarding the management of mercury-containing lamps, should one of the proposed options be promulgated as a final rule.

DATES: Comments on this proposed rule must be submitted on or before September 26, 1994.

ADDRESSES: Persons who wish to comment on this notice must provide an original and two copies of their comments, include the docket number (F–94–FLEP-FFFFF), and send them to EPA RCRA Docket (OS–305), U.S. EPA, 401 M Street SW., Washington, DC 20460. The RCRA Docket is located at Room M2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory docket at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline toll free at (800) 424–9346. In the Washington, DC metropolitan area, call (703) 412–9810. For information regarding specific aspects of this notice, contact Valerie Wilson, Office of Solid Waste (mail code 5304), U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone (202) 260–4678.

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I. Legal Authority

These regulations would be promulgated under the authority of sections 1006, 2002(a), 3001–3007, 3010, 3013, 3016–3017, 3018 and 7004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6937–6938, 6939 and 6974 (commonly referred to as RCRA).

II. Background

A. The Toxicity Characteristic

Under section 3001 of the Resource, Conservation and Recovery Act (RCRA), the U.S. Environmental Protection Agency (EPA) is charged with defining which solid wastes are hazardous by identifying the characteristics of hazardous waste and by listing particular hazardous wastes. Toxicity is one of the four characteristics used by EPA to identify waste as hazardous (along with ignitability, corrosivity, and reactivity). EPA promulgated the Extraction Procedure Toxicity Characteristic (EPTC) on May 19, 1980. The EPTC regulated eight metals, four insecticides, and two herbicides. Section 3001(g) of RCRA, added by the Hazardous and Solid Waste Amendments (HSWA) of 1984, required EPA to revise the EPTC. On March 29, 1990 (55 FR 11798), the EPA promulgated the Toxicity Characteristic (TC) to revise the existing EPTC. Like the EPTC, the TC and its associated testing methodology, the Toxicity Characteristic Leaching Procedure (TCLP) is used to define the toxicity of a waste by measuring the potential for the toxic constituents in the waste to leach out of an unlined municipal landfill into groundwater and contaminate drinking water wells at levels of health or environmental concern if not subject to Subtitle C controls. The TC implemented an improved leaching procedure that better predicts leaching and added several hazardous waste constituents. Twenty-five organic hazardous waste constituents were added to the TC and a model was developed to predict their fate and transport in the groundwater. If wastes exhibit the Toxicity Characteristic they are subject to the hazardous waste management requirements of RCRA Subtitle C.

As discussed in the preamble to the Toxicity Characteristic Rule (March 29, 1990, 55 FR 11813), the regulatory levels for the TC metals were not changed by the promulgation of the

final TC rule. EPA retained the regulatory levels set by the EPTC rule, pending further study of the fate and transport of metals in groundwater.

The Agency is continuing longer-term developmental work on a metal speciation model, called MINTEQ, to be used to evaluate the fate and transport of the TC metals (including mercury) for purposes of reassessing the toxicity characteristic regulatory levels for the TC metals. EPA's preliminary analysis indicates that mercury that would leach out of landfills would not all necessarily travel far enough through the groundwater to contaminate drinking water wells, depending on the distance to the well. A certain percent (still to be determined) will combine with other substances in the soil (via complexation, adsorption, etc.) to form solid substances and remain in the soil. Therefore, the regulatory limits for mercury if re-assessed using the MINTEQ model, when completed, might be higher (less stringent) than the current limits because mercury may be less mobile than the current TC rule indicates. However, these studies are still ongoing (U.S. EPA, 1991b).

Available data (included in the docket for this proposal) indicate that as a result of the use of mercury in the production of fluorescent and high intensity discharge (HID) lamps, a relatively high percentage of these lamps, when spent, exhibit the characteristic of toxicity. (U.S. EPA, 1992a) However, all generators of spent lamps that exhibit the toxicity characteristic may not have to manage those lamps as hazardous waste. EPA has specified different requirements for generators of hazardous waste depending on the amount of hazardous waste generated per month. Conditionally-exempt small quantity generators (CESQG) generate less than 100 kilograms (kg) of hazardous waste each month and can send their waste to a hazardous waste facility, or may elect to send their wastes to a landfill or other facility approved by the State for industrial or municipal non-hazardous wastes (see 40 CFR 261.5). Generators of more than 100 kg of hazardous waste per month are required to fully comply with Federal hazardous waste regulations (although generators of between 100 and 1000 kg of hazardous waste per month are subject to certain reduced regulatory requirements).

For the purposes of this proposal "electric lamp" also referred to as "lamp" is defined as the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common electric lamps include but are not limited to, incandescent, fluorescent, high intensity discharge, and neon lamps. Also, a "mercury-containing lamp" is defined as an electric lamp in which mercury is purposely introduced by the manufacturer for the operation of the lamp. The Agency requests comment on whether the definitions of "lamp" and "mercury-containing lamp" are technically correct and on whether they accurately define the appropriate universe of items.

B. Energy-Efficient Lighting Programs

Today's proposal, which would reduce management requirements for lamps, is expected to support the efforts of many existing and planned energy conservation programs, which encourage the installation of energy efficient lighting. Energy efficient lighting consumes less electricity, reducing the generation of pollution from power plants. However, replacing energy inefficient lighting systems with energy efficient lighting systems requires the use and eventual disposal of fluorescent and high intensity discharge (HID) lamps, which contain mercury. Requiring the disposal of lamp wastes as hazardous waste, under full Subtitle C regulations, may discourage participation in energy efficient lighting programs. The Agency anticipates that either of the proposed actions will encourage participation in energy-efficient lighting programs, and will therefore promote the energy-efficiency and the environmental benefits derived from that program.

If energy-efficient lighting were used wherever it is profitable, the nation's demand for electricity could be cut by more than 10 percent. This would result in reductions of estimated annual carbon dioxide emissions of 202 million metric tons (4 percent of the national total), reductions of annual sulfur dioxide emissions of 1.3 million metric tons (7 percent of the national total), and reductions of annual nitrogen oxide emissions of 600,000 metric tons (4 percent of the national total). (U.S. EPA, 1992b)

In 1991, EPA initiated a voluntary energy conservation program called "Green Lights" to encourage pollution prevention through energy efficient lighting. Lighting accounts for 20–25 percent of electricity used annually in the U.S. Lighting for industry, businesses, offices, and warehouses represents 80–90 percent of total lighting electricity use. Available technologies in energy efficient lighting can reduce lighting electricity demand by over 50 percent, enabling power plants to generate less electricity and burn less fuel. It also reduces other types of pollution resulting from mining and transporting power plant fuels and disposing of power plant wastes (U.S. EPA, 1992b). In addition, electric utilities, when burning fossil fuels, emit mercury at a rate of 0.0428 mg/kWh sold, on a national average. Full implementation of Green Lights is estimated to reduce the emission by 9.7 Mg of mercury by the year 2000 (U.S. EPA, 1992b). Further, the energy-efficient fluorescent lamps, used by Green Lights and other energy conservation programs, contain less mercury than energy-inefficient fluorescent lamps.

A goal of Green Lights is to encourage the widespread use of efficient lighting technologies to reduce air pollution from coal combustion. Energy-efficient lighting technologies provide excellent investment opportunities. A typical lighting upgrade yields an internal rate of return of 20–30 percent and a payback of 3–4 years.

Green Lights participants include: Corporations; State, city, and county governments; lighting manufacturing and management companies; electric utilities; non-profit organizations; and hospitals, universities, and other businesses throughout the U.S. Green Lights encourages the establishment of comprehensive energy-efficient lighting programs within an organization that include: Converting from less-efficient fluorescent to more-efficient fluorescent lamps; converting from incandescent to compact fluorescent lamps; converting from magnetic to electronic lighting ballasts; installing occupancy sensors, daylight dimmers, and other lighting control technologies; installing more efficient luminaries or lighting fixtures; and efficient maintenance practices, such as group relamping and regular fixture cleaning.

By signing a partnership agreement with the EPA, Green Lights participants agree to survey and upgrade, within 5 years, 90 percent of all domestic facilities wherever profitable and wherever lighting quality is improved or maintained. In return, these participants should receive reductions (savings) in their monthly energy expenses. A good energy-efficient lighting upgrade typically includes some type of control strategy (such as occupancy sensors) that will reduce lamp burning hours. The result is that the lamp will last longer and need to be replaced less frequently. As of June 30, 1993, over 1,000 organizations have joined the Green Lights program. These organizations have committed over 3.5

billion square feet of facility space to the program.

The Green Lights Program encourages the use of energy-efficient lamps using an initial and scheduled periodic relampings to achieve higher energy efficiency and reduce energy costs. These relampings involve removal and replacement of all lamps in a building or in an area at one time, as opposed to replacement of lamps as they burn out. An initial lighting upgrade and group relamping may result in a large number of fluorescent lamps that require disposal. In some instances, a participant that would usually be a conditionally exempt small quantity generator, could become a large quantity generator of hazardous waste due to the large number of lamps generated in one month. In general, if a generator disposes of more than approximately 350 four foot fluorescent lamps, that generator is a large quantity generator due to lamps alone.

Despite the environmental and financial benefits of energy efficient lighting systems, there are disincentives to participating in an energy conservation program like Green Lights. Establishing a comprehensive energy-efficient lighting program and installing energy-efficient lighting technologies require an initial investment that may be significant, depending on the size and comprehensiveness of the project. Although Green Lights provides information to participants on financing options, many profitable lighting upgrade projects are delayed due to restricted availability of capital. It is especially difficult for smaller businesses and government organizations to raise the necessary capital, although energy-efficient lighting investments are low risk and in the long run will reduce costs. The additional costs associated with managing, transporting, and disposing of lighting wastes as hazardous wastes can create an additional disincentive to join Green Lights and make the initial investment in energy-efficient light technologies. For example, under the hazardous waste regulations, large quantity generators are required to label boxes and drums, notify EPA of status as a hazardous waste generator, transport waste via a hazardous waste transporter, manage waste consistent with the land disposal restrictions, and manage waste at a hazardous waste management facility. In addition, on May 8, 1994, generators of mercury-containing lamps will be required (under the Land Disposal Restrictions) to meet a treatment standard for lamps as hazardous debris. As is discussed in detail in Section VII, Economic Impact Analysis, of this preamble, the Agency estimates that the annual national cost of Subtitle C compliance for large quantity generators could range from 110 to 134 million dollars. EPA's preliminary estimates suggest that an exclusion would save generators of mercury containing lamps approximately 85 to 102 million dollars annually, while the inclusion of lamps in the universal waste management system would save generators approximately 16 to 20 million dollars annually.

Although the Green Lights program may increase the number of large quantity generators on months when mass relamping occurs, the program is not expected to increase the total quantity of used fluorescent lamps in the long run. The lamps recommended by the Green Lights program are more energy efficient and with implementation of energy saving practices, these lamps could have an extended life of four to five years rather than the average three to four years. Therefore, if by reducing the initial costs of participation in the Green Lights program, generators participate in the Green Lights Program, an energy savings will occur. These additional energy savings will decrease the amount of mercury and other pollutants emitted to in the atmosphere from coal-burning.

C. Industry Source Reduction Initiatives

A report, "The Management of Spent Electric Lamps Containing Mercury," by the National Electrical Manufacturers Association (NEMA, 1992) discussed industry efforts to reduce mercury in fluorescent lamps. According to the report, due to the use of more efficient dosing techniques (i.e., placing mercury in the lamp), the average mercury content of a standard 4-foot, 1½ inch diameter, cool white fluorescent lamp was reduced by 14% (48.2 mg/lamp to 41.6 mg/lamp) from 1985 to 1990. Future industry projections of mercury reductions by 1995 show an estimated 35% further reduction (41.6 mg/lamp to 27.0 mg/lamp) for the standard fluorescent lamp.

Source reduction, which is the reduction or elimination of the toxicity and/or volume of a waste product, is at the top of EPA's hierarchy of municipal solid waste (MSW) management methods. With regard to mercury, the most significant source reduction achievement has been the trend toward elimination of mercury from alkaline batteries. Although these batteries are still a significant contributor of mercury to municipal solid waste, discards of mercury from alkaline batteries are dropping dramatically because of source reduction achievement. Mercury-containing lamps are one of the next highest single sources of mercury in the municipal solid waste, accounting for 3.8% of mercury now going to MSW landfills. EPA encourages cost-effective source reduction of mercury in fluorescent lamps. Opportunities exist to reduce mercury content levels in both standard 4-foot fluorescent lamps and the increasingly popular compact fluorescent lamps (U.S. EPA, 1993b). If source reduction is pursued aggressively by the fluorescent lamp manufacturing industry, the overall contribution of mercury from fluorescent lamps to municipal solid waste could remain constant or decrease over time even as fluorescent lamp usage increases.

EPA requests comment on industry and other source reduction initiatives involving the reduction of mercury in fluorescent lamps. Source reduction may be occurring through more efficient dosing techniques, lightweighting of lamps, and changes in phosphor powder technology. The Agency requests comments reflecting these and any other source reduction activities and may use this information to develop a strategy to support and encourage voluntary source reduction.

III. Environmental Release and Fate

This section presents the technical information used by the Agency in developing options for the management of used mercury-containing lamps. Information is provided on the environmental fate and transport in the ground water and air pathway for mercury. Specifically, EPA has reviewed leachate data from municipal landfills and data on air emissions from municipal waste combustors and municipal landfills. In addition, the Agency has estimated possible releases of mercury to the air from lamps broken during storage and transportation. Most of the information considered pertains to management in municipal landfills. Information on other types of non-hazardous landfills is not presented due to a lack of data and the wide variability in design and waste composition of other non-hazardous landfills.

The Agency requests comment on the data presented in this section of the preamble. These data, along with any data submitted in the public comment to this proposal, will be used to determine the risk to human health and the environment from the management of used mercury-containing lamps. Also, some information on the risks of managing mercury-containing lamps in landfills, combustors and recovery facilities was submitted to the Agency in response to a request for such

information in the Universal Waste Proposal (February 11, 1993, 58 FR 8102). This information is included in the rulemaking docket for today's proposal and the Agency requests comment on it.

A. Groundwater Impacts

This section discusses leachate samples collected by EPA from municipal landfills. As previously discussed, the Agency is further developing its groundwater model under the TC to accurately predict the movement of mercury through the groundwater system. The groundwater pathway for mercury is being considered because the TC uses the groundwater pathway to estimate the movement of contaminants from municipal landfills. The leachate data indicate that further analysis may be needed on the behavior and movement of mercury in municipal landfills and in groundwater, although initial analyses indicate that mercury is less mobile than previously believed.

EPA has collected data indicating that mercury may not leach from MSW landfills at levels above the drinking water MCL, despite some mercury disposal in MSW landfills. EPA estimates that approximately 73% of municipal solid waste (MSW) is placed in municipal landfills, while 14% of municipal solid waste is incinerated and 13% is recycled. Based on a study of mercury production and use, the Agency estimates that about 643 metric tons (Mg) of mercury is discarded in MSW landfills per year. A major source of mercury in municipal solid waste is household batteries which accounts for about 88% of the 565 metric tons (Mg) of mercury in municipal solid waste. Most of these batteries fall under the Household Waste Exclusion (see 45 FR 33119, May 19, 1980). Thermostats/thermometers and mercury-containing lamps are second in their contribution of mercury in municipal solid waste, 3.9% and 3.8% respectively. The Agency estimates that, assuming all lamps are disposed of in MSW landfills, approximately 20 Mg of mercury would be placed in MSW landfills per year from used mercury-containing lamps. (U.S. EPA, 1991c).

Data on the amounts of mercury in MSW landfill leachate are included in a study summarizing the available data on MSW landfill leachate characteristics conducted by the Office of Solid Waste (U.S. EPA, 1988). Out of 109 leachate mercury analyses collected, only six (7 percent) were above the drinking water level or maximum contaminant level (MCL) for mercury (0.002 mg/L) and none were above the Toxicity Characteristic (TC) limit for mercury (0.2 mg/L). The average of these MSW leachate analyses was 0.0008 mg/L mercury. The maximum concentration reported is 0.0098 mg/L.

Further analysis indicates that less than 0.01 percent of the mercury in MSW landfills leaches from the landfill. This estimate is supported by a study measuring mercury disposition (in landfill gas and leachate) in four Swiss landfills which found around .007 percent of the mercury from the landfill in the leachate (Baccini et al., 1987).

The behavior of mercury in a MSW landfill is not known in great detail. The complexity of aqueous mercury chemistry makes it difficult to predict and model at this time. However, the available information suggests that chemical conditions tend to favor the metallic form of mercury in MSW landfills. This form has a lower solubility in water (0.02–0.04 mg/L) than other chemical forms. In addition, EPA has identified studies that indicate that municipal solid waste has a significant capacity for retaining mercury in the landfill unless there are unusually large quantities of mercury in municipal solid waste (Gould et al., 1988/Mennerich, 1985). The Agency has not seen field data for industrial non-hazardous landfills.

In addition, the Agency reviewed 1990 and 1991 Superfund Records of Decision (RODs) for information on municipal landfill sites where mercury was listed as a contaminant of concern (COC). A total of twelve out of sixty-six 1990 and 1991 RODs for landfills accepting municipal waste listed mercury as a COC. Of these 12 sites, 5 had mercury detections in ground-water over the MCL. All but one of these sites had confirmed industrial waste codisposal. At this site only onsite ground-water exceeded the MCL for mercury (maximum of 0.013 mg/L); all offsite ground-water samples were below detection limits.

In conclusion, preliminary data and analysis suggest at this time that mercury in municipal solid wastes is not being readily released by leaching processes that typically occur in the MSW landfill environment. This indication is also supported by controlled leaching studies of high-concentration mercury-containing wastes codisposed with municipal solid waste (Borden et al., 1990/Gould et al., 1988). However, the Agency requests that commenters provide any MSW landfill leachate or groundwater data, or data from industrial Subtitle D landfills, that EPA has not considered in its analysis.

B. Air Exposure

The Agency is also reviewing data on the air pathway for mercury because low levels of mercury in surface water have caused elevated fish concentrations at many sites in Minnesota, Michigan, Wisconsin, Florida, and other States, and these elevated levels of mercury have been attributed to atmospheric deposition from non-specific sources (U.S. EPA, 1993a). Therefore, EPA reviewed data on mercury emissions to air from a number of sources, including those potentially related to lamp disposal. EPA also considered available data on the fate and transport of mercury of mercury emitted to the air.

Because of elemental mercury's high vapor pressure, it is easily volatilized into the atmosphere. Two factors are believed to contribute to the recent increases in atmospheric deposition of mercury compounds. The first factor is increased atmospheric levels from mercury emissions from coal-fired power plants, chloralkali plants, MWC facilities, and other sources. The second factor is increased oxidation of atmospheric elemental mercury vapor to more soluble oxidized forms which is enhanced by anthropogenic (i.e., pollution from man-made sources) increases in atmospheric oxidizing agents, such as ozone and inorganic acids. Based on current mercury emissions inventories EPA believes that major mercury emission source categories include coal fired power plants, municipal waste combustors and medical waste combustors. (U.S. EPA, 1993).

Mercury that is methylated is strongly biomagnified through the food chain through bioconcentration in animals, and in plant tissue. Methylation is a chemical process in which a methyl unit is added to either elemental or oxidized mercury. The primary environmental human exposure pathway for mercury is through the consumption of contaminated fish. Fish bioconcentration factors (fish tissue concentration/water concentration) are as high as 85,000. Recently, elevated levels of mercury in fish in isolated, pristine lakes have been identified in widespread areas around the country. There are currently over 1,550 fish consumption bans or advisories due to mercury in effect in the United States (Sorensen et al, 1990).

Although there may be insufficient data to determine whether mercury from lamps will endanger human health and environment by the release of mercury to the air, there are concerns over emissions of mercury from lamps from

municipal waste combustors, possibly landfill gas, as well as concerns with the handling and disposal of mercury lamps. In this section, available information will be discussed pertaining to the hazards of mercury via air exposure.

(1) Incineration

The Agency estimates that approximately 14% of U.S. municipal solid waste is burned in municipal waste combustors (MWCs), comprising 23 million metric tons (Mg) of waste. Approximately 100 Mg of mercury-containing waste is burned in municipal waste combustors, of which about 3 Mg/yr is mercury-containing lamps (U.S. EPA, 1990). Because of its low boiling point, elemental mercury in the waste is largely vaporized during municipal waste combustion and, without controls specific to mercury, passes out of the municipal waste combustor into the atmosphere with the flue gas. Measurements have shown that for several municipal waste combustors with emissions controls for sulfur and nitrogen oxide particulates, average MWC mercury emission factors range from 70 to 90 percent of the mercury input (Vogg et al, 1986/Reiman, 1989). If we assume that 98% of the mercury in incinerated municipal solid waste is volatilized during combustion this would potentially generate 98 Mg/year mercury emissions of this, about 2.9 Mg/year would be from mercury-containing lamps. Post-combustion mercury control at the municipal waste combustor's would reduce mercury levels by 80% to 90%.

EPA plans to propose mercury emission limits for new and existing municipal waste combustors in 1994 (U.S. EPA, 1991a). The mercury emission limits will be based on the use of activated carbon injection for mercury control as demonstrated by EPA at tests at the Stanislaus municipal waste combustor (California) and Camden municipal waste combustor (New Jersey). These tests demonstrated activated carbon injection technology as available for post-combustion mercury control at municipal waste combustors and achieved mercury reduction levels of 80 to 90 percent. During the tests, activated carbon was injected into the flue gases upstream of the acid gas control system and collected (with the mercury) in the particulate matter control system. The ash from the particulate matter control system was then landfilled.

It is unclear to what degree the mercury being released from municipal waste combustors would contribute to increased mercury levels in surface waters because the transport and cycling of atmospheric mercury emissions are complex and poorly understood. It is uncertain how long mercury will stay in the atmosphere after being released. The oxidation state of mercury dictates how long it remains in the air. Elemental mercury could stay in the atmosphere for months to years, whereas an oxidized species of mercury would stay for only days to weeks. Although controversy remains over the form of mercury as it leaves the MWC stack, it is likely that mercury from a municipal waste combustor would be more oxidized and therefore would not remain in the atmosphere for a long period of time.

However, since MWC facilities comprise one anthropogenic source of atmospheric mercury, there are probably regional-scale or global-scale impacts from such sources (Glass et al., 1986/Johnson, 1987). The elimination of mercury-containing lamps from municipal waste combustors would reduce annual atmospheric mercury emissions from these significant sources by around 3 metric tons, or about 3 percent of the total mercury-bearing waste that is incinerated. The Agency is considering proposing air emission controls for mercury later this year which would, when implemented, reduce these emissions.

(2) Mercury in Landfill Gas

EPA evaluated emissions of mercury in landfill gas emission in its "Preliminary Risk Assessment" which is available in the public docket (EPA, 1993). EPA reviewed studies on the amount of mercury that may be released to the air from municipal solid waste landfills. Specifically, this section presents in detail the results of two studies that attempt to measure mercury air releases.

A Swiss study (Baccini et al., 1987) measured the amount of landfill gas from four municipal landfills. This study is comparable to municipal solid waste landfills in the U.S. because the study indicated that these Swiss MSW landfills contained approximately 2 parts per million (ppm) of mercury, which, given the standard error range, is comparable to the approximately 3.6 ppm of mercury in U.S. municipal solid waste (U.S. EPA, 1990). The Swiss study indicated that mercury concentrations in landfill gases had a mean value of about 0.4 μg/cubic meter. The annual total mercury release also was low (0.0065 mg/Mg waste, average). Using this gas release value, and the amount of municipal solid waste annually disposed in U.S. landfills (118 million Mg), the amount of mercury annually released in landfill gas can be estimated as 0.8 kg, about 0.0001 percent of the total mercury load entering MSW landfills (643 Mg). Adjusting the proportion of total mercury contributed by mercury-containing lamps to the MSW stream (3.8 percent), provides an estimate of annual landfill gas emissions from lamps of about 0.03 kg, less than 0.00001 percent of the total municipal solid waste mercury input (EPA, 1993). The amount of mercury from lamps emitted into the atmosphere by landfill gas is very small (.00003 Mg) when compared to the 3 Mg of mercury from lamps that is estimated to be emitted into the atmosphere through municipal waste combustors.

EPA also received a study (National Environmental Protection Board et al, 1989) in a comment to the Universal Waste Proposal that provided data on mercury gas from four municipal landfills in Sweden. The Swedish study measured the ambient air quality above four municipal landfills. The study did not indicate the level of mercury in the municipal landfills. Mercury was measured using differential optical adsorption spectroscopy (DOAS), located two meters above the landfill, compared with background mercury concentrations measured at each of the four landfills. The mean ranged from 10.2 ng/m^3 to 23.6 ng/m^3 with background mercury levels at 4 ng/m^3 to 8ng/m^3. The report stated that because all measurements were close to the detection limit for the DOAS technique, the reliability of the results was questioned. After a review, it was determined that although the quantification was uncertain because of a low signal-to-noise ratio, the concentration above the landfills was significantly above background mercury levels, indicating that mercury was being released to the atmosphere. However, since it is unknown how much mercury is found in Swedish municipal solid waste landfills, the results of this study cannot be readily compared to the situation in the U.S.

(3) Crushing and Breakage of Lamps

Mercury remains in lamps until they are broken. When lamps break, the elemental mercury inside becomes available for evaporation, adsorption, or reaction. EPA modeled mercury emissions from broken lamps based on two different methods of transportation (EPA, 1993). Discarded lamps may be transported in one of two ways: In refuse trucks as household or commercial trash, and in closed vans or trailers as part of a bulk relamping program. Based on available information, it was assumed for the

purposes of this model that as much as 6.6% of mercury could be released in the air from a lamp broken during the collection, storage and transport of mercury-containing lamps in garbage trucks. The Agency recognizes that it is uncertain how much mercury is released from broken lamps. The amount of mercury released would vary depending on the ambient air temperature, the time the broken lamps are directly exposed to the air and the number of lamps broken. The Agency requests any available data concerning releases of mercury during storage, transportation and waste management (e.g., landfill and recyclers) activities.

C. Technical Considerations and Request for Comments

The available data on landfill leachate suggests that mercury-containing lamps may not pose a threat to groundwater when placed in a state-controlled municipal landfill due to the low levels of mercury found in landfill leachate.

However, available information also indicates that an important route of exposure for mercury is bioaccumulation up the food chain, causing mercury poisoning to both wildlife and humans (i.e., through fish consumption). Although it is unclear how mercury moves through the atmosphere and what conditions enhance or retard it, information suggests that given the high vapor pressure of mercury, it can readily volatilize to the air and be transported, perhaps long distances, and be deposited on surface water or soil (which can run off into surface water). Some mercury that is subsequently methylated will bioaccumulate in the food chain.

The actual amount of mercury released from fluorescent or HID lamps is unknown. It is estimated that lamps that are incinerated will release 98% of their mercury due to the high temperatures needed for the incineration process. However, because mercury is such a volatile metal, amounts of mercury could be released into the air from lamps broken during transportation or lamps broken at the landfill. For purposes of this proposal, EPA has made assumptions on the amount of mercury that may be released from a broken lamp but few studies have directly measured the amount of mercury released from a lamp over time.

More information on the air release, transport and exposure pathway for mercury is needed in order to better evaluate the proper management methods for spent mercury-containing lamps. The Agency requests information on air transport of mercury from mercury-containing lamps, the mercury methylation process (both in general and in landfills) and any studies that directly measure the amount and form of mercury released from broken mercury-containing lamps.

IV. Management Options

The information presented in this notice has led the Agency to re-evaluate the management of waste mercury-containing lamps because of their importance in promoting energy-efficiency. As mentioned earlier in this notice, the use of energy-efficient lighting can reduce mercury emissions from coal-burning power plants as well as emissions of carbon dioxide and sulfur oxide. In light of the benefits derived from the use of these lamps, EPA is seeking comment on two proposed options based the data which indicate that these lamps may be better managed either outside of the hazardous waste system or in a reduced regulatory structure within the hazardous waste system.

However, since there remain uncertainties in the data, more information on the air exposure pathway for mercury from lamps would facilitate a decision by EPA on the management of lamps. Additional information could clarify which kind of reduced management structure would be most appropriate for mercury-containing lamps. The Agency has requested that information, if available, be submitted with the public comment to this proposal.

Given these technical uncertainties, EPA has developed two proposed alternative approaches for the management of mercury-containing lamps. The first approach is a conditional exclusion for mercury-containing lamps from regulation as hazardous waste. Under this approach, mercury-containing lamps would no longer be considered hazardous waste provided that they are managed under the conditions of the exclusion. The second approach is to add mercury-containing lamps to the universal waste management system, which was proposed for batteries and pesticides on February 11, 1993 (58 FR 8102). Under the universal waste management system, lamps that fail the TC would be considered hazardous waste, but they would be subject to streamlined hazardous waste management requirements, which are described in detail later in this notice. The major difference between these two options is whether lamps are disposed of under Subtitle D requirements or under Subtitle C requirements. Recycling of lamps would be allowed under either option.

If EPA concludes, after considering data from the public comment on this proposal, that the risk from mercury release from mercury-containing lamps is not significant enough to warrant Subtitle C regulation, the Agency may choose to finalize a conditional exclusion. However, if EPA concludes, after considering data received in public comment that the risk from mercury release from lamps is significant, the Agency may choose to keep mercury-containing lamps in Subtitle C, under the universal waste management system.

The following sections describe the two approaches in detail.

A. Conditional Exclusion

Section 3001 of RCRA charges EPA with identifying the characteristics of hazardous waste and listing particular hazardous wastes. Section 1004(5) of RCRA defines waste as "hazardous" if the waste poses a "substantial present or potential hazard" to human health or the environment when improperly managed. The groundwater data discussed earlier in this notice suggest that mercury-bearing lamps, if they are disposed of according to the conditions of the proposed exclusion, may not pose a substantial present or future threat to human health or the environment. Based on the Agency's authority to identify characteristics of hazardous waste and the statutory definition of hazardous waste, EPA is considering whether an exclusion of used mercury-containing lamps from regulation as hazardous waste would be appropriate. EPA requests comment on the data presented in the proposal, as well as on whether to exclude these lamps from regulation as hazardous waste.

The exclusion under consideration today has two conditions. In order to qualify for the exclusion:

(1)(a) Generators would be required to either dispose of these lamps in a municipal solid waste landfill that is permitted by a State/Tribe with an EPA-approved MSW permitting program, or

(b) If generators do not send these lamps to a MSW landfill, they would send them to a State permitted, licensed, or registered mercury reclamation facility; and

(2) Generators would be required to keep a record of the lamps shipped to management facilities.

The Agency is proposing to limit the exclusion to spent lamps disposed in MSW landfills (requirements of MSW landfills are discussed later in this section), rather than allowing disposal in any nonhazardous waste landfill,

because EPA has field data on leachate (including mercury levels) only for MSW landfills (among Subtitle D facility categories). The available information (discussed above) suggests that the amount of mercury from mercury-containing lamps that is released from MSW landfill gas is very small and its effect on ambient air quality may not pose a significant hazard to human health or the environment. EPA requests any information on the levels and impacts of mercury in MSW landfill gas. Further, data on leachate quality and air emissions from other nonhazardous waste landfills, including industrial solid waste landfills, is very limited. However, some soil column data also suggest that mercury dissolution into soil pore water occurs at very low levels (Eichholz et al., 1986). EPA requests comment on this approach and any information on mercury releases from other nonhazardous waste landfills. Based on EPA's existing data and any additional data received, EPA may expand the exclusion to include disposal in non-municipal, solid waste, Subtitle D disposal facilities.

While this proposed exclusion from Subtitle C of RCRA is supported by data from municipal solid waste landfills with a range of design and operating conditions, EPA believes that limiting the exclusion to spent lamps disposed only in MSW landfills that are permitted by States or Tribes with EPA-approved MSW landfill permitting programs will provide further assurance that human health and the environment will be protected. In particular, these MSW landfill permitting controls will provide added protection to the management of these lamps.

In October 1991, EPA promulgated new requirements for municipal solid waste landfills (40 CFR Part 258, October 9, 1991, 56 FR 51016). These requirements cover location restrictions, landfill design and operations, groundwater monitoring, corrective action measures, financial assurance, and conditions for closing the landfill and post closure care. The majority of landfill owners/operators accepting greater than 100 tons per day must comply with the majority of the requirements by October 9, 1993. On October 1, 1993 (58 FR 51536), EPA delayed the October 9, 1993 effective date for six months for landfills accepting less than 100 tons per day (in addition to other criteria) and delayed the effective date for two years for landfills in arid or remote regions that accept less than 20 tons per day.

States/tribes are in the process of incorporating these new municipal solid waste landfill standards into their permitting programs and applying for EPA approval of their permitting programs. EPA is currently evaluating these State permitting programs to determine their adequacy in incorporating the new municipal solid waste landfill criteria (40 CFR part 258). As of June 30, 1993, EPA approved thirty-six State municipal solid waste landfill programs. In addition, EPA is actively reviewing numerous State permitting program applications and expects to approve the remaining State landfill permitting programs by April 1994, well before this proposed rule would become effective as a final rule. EPA expects to issue "partial" program approvals to some States because their landfill permitting programs may not fully address all elements of the EPA municipal solid waste landfill criteria. For purposes of today's rule, EPA would consider "partial" program approvals, as well as "full" program approvals, to be "EPA-approved" State municipal solid waste landfill permitting programs. Further, States with "partial" approval have agreed to an EPA approved schedule for full approval. The Agency believes that limiting today's proposed exclusion to landfills that are permitted by States that have incorporated EPA's new municipal landfill standards will provide further assurance that spent lamps will be safely managed in municipal solid waste landfills. EPA requests comment on this approach and any alternative approaches.

The second condition, which limits the proposed exclusion to lamps managed in State permitted, licensed, or registered mercury reclamation facilities, is also consistent with the Agency's support for environmentally sound reclamation of waste. EPA believes that with adequate State oversight, mercury containing lamps can be safely recycled and the mercury reclaimed from them. However, EPA is concerned that, in States without oversight over recyclers, recycling activities could pose a threat to human health and the environment because of inadequate or non-existent waste management controls. Therefore, the Agency is requesting information on recycling operations and practices. EPA is aware that several technologies are available to recycle lamps and recover mercury from them. However, the Agency does not have complete information on which technologies are currently being used by recycling companies and if these technologies can address all different kinds of lamps (e.g., tube, U-shaped, compact, etc.). The Agency also seeks information that tracks mercury as it moves through the recycling process. Further, EPA would like to know the operating capacity of existing or planned reyclers of mercury-containing lamps. The Agency is also requesting information on what markets exist for the mercury and other materials recovered from lamps. This information will be useful to the Agency in understanding and assessing possible risks to human health and the environment as well as to determine the potential or actual use of the materials recovered from lamps in the market.

Under the conditional exclusion, regulated lamp generators (i.e., those that generate more than the conditional-exempt small quantity generator (CESQG) limit of 100 kilograms of hazardous waste per month which would be about 350 mercury-containing lamps) would not be able to send lamps to a municipal waste combustor for disposal. EPA does not propose to extend the exclusion to lamps disposed in municipal waste combustors because of concern over mercury air emissions from these sources. However, this proposed option would not affect municipal waste combustors' ability to continue the combustion of traditional municipal solid waste which contains limited quantities of unregulated household or CESQG mercury-containing lamps. Because mercury-containing lamps do not burn, it is unlikely that truck loads of mercury-containing lamps (i.e., containing more than 350 lamps) would have been acceptable to most operators. The exclusion would assure that this disposal alternative is not considered in any situation. The Agency requests comment on the proposal to limit the exclusion to permitted municipal solid waste landfills (i.e., regulated lamp generators would not be allowed to send lamps to a municipal waste combustor for disposal).

EPA also requests comment on adding to the exclusion handling requirements to minimize mercury emissions during storage and transportation (e.g., packaging to reduce breakage). These management controls could be the same as those proposed in the universal waste management system. The Agency is interested in data on the cost of and human health protection provided by these handling requirements for lamps.

The third condition is that generators taking advantage of the exclusion would be required to maintain a written certification indicating the disposal or recycling location for the lamps. The proposed certification, to be signed by the generator or its authorized representative, would state that on a

specified date a specified amount of lamps was consigned to a specified transporter for disposal or recycling at a specified facility. This certification would be required for each shipment of lamps and would be maintained by the generator for three years from the date of shipment. The Agency is proposing this documentation as a mechanism for verifying that the conditions of the exclusion have been met. Failure to maintain the required documentation would disqualify the generator from eligibility for the exclusion. The existence of the certification, however, would not protect a generator from an enforcement action if the lamps were not actually disposed of or recycled in accordance with the conditions.

The Agency is proposing that separate documentation be required for each shipment based on its belief that most lamp generation is sporadic (every three to four years), as opposed to on-going generation which would lead to a continuous relationship with the same disposal or recycling facility. Given that the life span of mercury-containing lamps is approximately three to four years, businesses that participate in mass relampings would only dispose of their lamps every few years. Under the current hazardous waste regulations, many of these businesses would be subject to hazardous waste regulation because mass relamping could cause them to exceed the conditionally-exempt small quantity generator level (approximately 350 four foot lamps, if lamps are the only hazardous waste generated). However, small businesses and other facilities that generate just under the CESQG limit of hazardous waste (100 kg per month) may exceed this limit with attrition relamping. For these generators, this recordkeeping requirement could be more burdensome. The Agency requests comments on whether there are alternative mechanisms that can be used by generators to demonstrate compliance with the conditions of the exclusion. The Agency also requests comment on whether, if the Agency determines that documentation is necessary to demonstrate compliance with the conditions, the form and frequency of documentation proposed are appropriate.

In addition to requesting comment on the conditions of the exclusion, the Agency requests comment on having a 3 to 5 year sunset provision on the exclusion. A sunset provision would require the Agency to re-evaluate the exclusion after a period of three to five years, to determine whether an exclusion is indeed appropriate for lamps given any unanticipated management or risk issues that develop as a result of the exclusion. The Agency would then determine whether to extend the exclusion.

Finally, the Agency requests comments on other alternatives that still achieve the overall RCRA goal of protection of human health and the environment. EPA is interested in data on the benefits, costs, and legal authority for any alternatives and the Agency will consider such options.

B. Universal Waste Management System

1. Background

On February 11, 1993, EPA proposed a streamlined, reduced regulatory management structure for certain widely-generated hazardous wastes currently subject to full RCRA Subtitle C regulation, in an effort to facilitate their collection and proper management (the "universal wastes" proposal, 58 FR 8102). The proposed reduced regulatory structure, known as a special collection system, is designed to ensure that management of these hazardous wastes is conducted in a manner that is protective of human health and the environment, given the diffuse and diverse population of generators of these wastes. See the February 11, 1993 preamble discussion, for a detailed discussion of the proposal.

The general waste types that EPA believes may be appropriately managed under this streamlined regulatory structure are known as "universal wastes" and share several characteristics. These wastes:

- Are frequently generated in a wide variety of settings other than the industrial settings usually associated with hazardous wastes;
- Are generated by a vast community, the size of which poses implementation difficulties for both those who are regulated and the regulatory agencies charged with implementing the hazardous waste program; and
- May be present in significant volumes in the municipal waste stream.

The February 11, 1993, proposal included specific regulatory text addressing the management of two waste types; hazardous waste batteries, and suspended and/or canceled hazardous waste pesticides that are recalled. The proposal also included a petition process and a set of criteria to be used to determine whether it would be appropriate to add additional waste types to the special collection system in the future. Several waste types such as automotive antifreeze, paint application wastes, and mercury-containing items such as thermostats and thermometers were discussed as possible additions to the Universal Waste proposal, also referred to as the special collection system.

2. Universal Waste System Alternative for Lamps

In the February 11, 1993, proposal EPA mentioned fluorescent lamps (58 FR 8110), explaining that the Agency was examining the risks of managing these wastes in landfills and requesting data on the risks of various management methods for these wastes. Comments received in response to that request are included in the docket for this proposal. The Agency will respond to these comments in the final rule together with those submitted in response to Today's proposal. The Agency is requesting comment on using the proposed special collection system for the management of spent lamps as another approach to the management of mercury-containing lamps. The Agency has not yet promulgated a final universal waste rule but anticipates doing so in the near future. Should EPA select the universal waste option for lamps as a final rule, the Agency will ensure consistency with the more comprehensive universal waste final rule.

The Agency believes that spent lamps may appropriately be considered "universal wastes" in that they are generated in a wide variety of settings, are generated by a very large number of generators, and are present in significant volumes in the municipal waste stream. The special collection system approach may be an appropriate option for addressing the collection phase of managing lamps that are hazardous waste. The special collection system approach (which is consistent with the February 11, 1993 proposal), would not change any of the requirements applicable to the ultimate treatment and disposal or recycling of any wastes collected, but would minimize the regulatory requirements applicable to collection of these wastes (i.e., generation, transportation, and intermediate storage/consolidation) for proper management.

Special collection system regulations also could remove some existing barriers to management of hazardous waste lamps under the Subtitle C system by reducing the technical and paperwork requirements applicable to collection, thus making collection more efficient and economical. At the same time, management requirements included in special collection system regulations could be designed to minimize the hazards posed in collection of these wastes (e.g., special packaging could be required to minimize the risk of breakage).

By removing some of the barriers to Subtitle C management for lamps, a special collection system approach could minimize concerns about decreased participation in the Green Lights program by simplifying and clarifying the requirements for mercury-containing lamp collection while maintaining Subtitle C control over final treatment and disposal (or recycling) for these lamps. Such an approach could help in assuring that the substantial environmental benefits offered by the Green Lights program are realized through increased participation. Management costs under the special collection system approach proposed on February 11, 1993, would be lower than full Subtitle C management because hazardous waste transporters and manifests would not be required for lamp shipments between the generator and the consolidation facility, and permits would not be required for storage at interim consolidation points. However, under the Special Collection System the management of mercury-containing lamps (after reaching the consolidation point) would be more expensive than the management of these lamps under the conditional exclusion (although the larger volumes managed at these consolidation points may result in certain economies of scale for transport and disposal or recycling).

The Agency requests comment on whether spent hazardous waste lamps should be regulated under the special collection system approach proposed February 11, 1993. Documents included in the docket for this proposal include estimates indicating that approximately 3.9 billion spent lamps of all types may be disposed of annually in the country (including 550 million spent fluorescent lamps) and that lighting is one of the second largest contributors of mercury to the municipal waste stream (from all types of mercury-containing lamps). In addition, the Agency believes that spent mercury-containing lamps of some type must be generated by almost every commercial and industrial establishment in the country.

In addition, a special collection system approach could address all types of spent lamps that fail the toxicity characteristic and are therefore hazardous waste, not only mercury-containing lamps. Such an approach seems appropriate since any type of waste lamp is likely to be "universal" in nature. The Agency requests comment on whether various types of spent lamps (e.g., incandescent, neon), other than mercury-containing lamps, typically fail the TC test (or exhibit other characteristics) and would be hazardous waste under the current RCRA Subtitle C toxicity characteristic (40 CFR 261.24). Indeed, should the Agency choose, in a final rule, to conditionally exempt mercury-containing lamps from regulation under Subtitle C, the Agency may still elect to add other types of lamps to the universal waste management system. The Agency requests comment on this approach and on whether, how frequently, and for what TC constituents various lamp types may fail the toxicity characteristic. The Agency also requests that commenters submit any additional data that may be available on this question.

The Agency requests comment on a special collection system for management of spent lamps including the same basic structure and requirements for generators, transporters, consolidation points, and destination facilities as proposed on February 11, 1993 for management of hazardous waste batteries and pesticides. The Agency is also specifically requesting comment on the items discussed below.

First, in the February 11, 1993, proposal the Agency proposed a quantity limit for storage of batteries above which generators and consolidation points would be required to notify the Agency of their storage activities. The Agency requests comment on a notification requirement for generators and consolidation points storing more than 35,000 spent mercury-containing lamps. This requirement is similar in substance to the notification requirement proposed in the Universal Wastes rule (proposed § 273.11(c) and § 273.13(d) (58 FR 8129–8130)). EPA is suggesting a numerical limit rather than a weight limit because lamp packaging (e.g., the cardboard boxes in which new replacement lamps were shipped) may constitute a large proportion of the total weight of a shipment or stored quantity of lamps. In addition, industry practice appears to be to quantify inventories by number of lamps rather than by weight, calculated by multiplying the number of boxes of lamps in storage or in a shipment by the number of lamps per box. Since about 35,000 lamps roughly correspond to a full truckload of packaged fluorescent lamps, the Agency is suggesting a 35,000 limit for fluorescent lamps. The Agency also requests comment on appropriate quantity limits for notification for other hazardous waste lamps types.

Second, the Agency is requesting comment on the options proposed in the Universal Waste proposal § 273.11(b)(2) and § 273.13(a)(2) (58 FR 8129–8130) for demonstrating that lamps are not stored for greater than one year. In addition, with respect to tracking of lamp shipments, the Agency is requesting comment on several alternatives. The approach included in today's proposed regulatory text is the same as that included in the universal wastes proposal for batteries (§ 273.12(b) of the universal waste proposal). This approach requires that the manifest system be used (which triggers the use of hazardous waste transporters) for shipments from the last consolidation point to a destination facility, but that no manifests or other records (or hazardous waste transporters) be required for shipments from generators to consolidation points, between consolidation points, or from generators to destination facilities. On the other hand, because a number of comments received on the proposed universal wastes rule disagreed with this approach, the Agency is also requesting comment on two additional approaches. The first alternative, which was suggested in several comments on the universal wastes rule, would be to require that persons initiating and receiving shipments of lamps retain shipping papers documenting the shipments. The minimum data elements required for such records could be specified (e.g., quantity of lamps, date of shipment or receipt, name and address of shipper and receiver). The second alternative would be not to specifically require any specific record keeping for shipments of lamps, but, as with all exemptions, the person claiming the exemption would have to keep documentation to show they qualify (see § 261.2(f)). The Agency is requesting comment on this second alternative because it is believed that due to the large volumes of lamps, shipments are more likely to be made directly from the generator to a destination facility. Records would be available for such shipments because destination facilities are already required under 40 CFR 264.73(b)(1) or 265.73(b)(1) to maintain records including the description and quantity of each hazardous waste received. It is likely that lamps would be shipped directly from generators to disposal facilities because volumes are likely to be large enough that consolidation will not be necessary to make full truckloads. In addition, the storage space and careful handling required for management of these wastes make consolidation less attractive and shipment directly to the destination facility more likely.

A third question on which the Agency requests comment is what management controls would be appropriate to impose on collection of lamps under a special collection system approach. Some of the

data included in the docket for this proposal discuss the risks of the types of management likely in lamp collection such as management at the generator's site, transportation, and storage (U.S. EPA, 1993a). Requirements could include packaging that would be required to meet a performance standard of minimizing breakage for unbroken spent lamps. A wide variety of containers would probably satisfy such packaging requirements. EPA expects that packaging in which new replacement lamps are shipped from the manufacturer would frequently be reused to store and transport removed, used lamps. Another option could be to impose a prohibition on intentional breakage of spent lamps by generators.

In addition, requirements could be imposed on the storage and transportation of spent lamps that are inadvertently broken, to prevent further mercury emissions. Steel 55-gallon drums or any enclosed container could be used to hold broken lamps for transportation to the disposal site. In summary, the Agency requests comment on whether the exclusion should include requirements to minimize mercury emissions during storage and transportation of spent lamps. Management standards would apply to transporter and consolidation points as well as for generators. The Agency requests comment on management practices for lamps, the risks posed by these practices, and appropriate technical controls to minimize these risks while at the same time not inhibiting collection and proper management. The Agency also requests comment on whether generators or consolidation points should be allowed to intentionally crush lamps to minimize volume for storage or shipment and what, if any, standards should be imposed to protect against mercury releases during crushing or the subsequent management of crushed lamps. The proposed universal waste management system includes a prohibition on treatment (crushing is considered treatment) of lamps at the generator, transporter and consolidation points.

A fourth question on which the Agency requests comment is whether to include a 3 to 5 year sunset provision on the universal waste system for lamps. A sunset provision will require EPA to re-evaluate the effectiveness of the universal waste system in addressing the disposal of lamps after 3 to 5 years. The Agency can then decide whether less controls or more controls are needed to maintain the safe management of lamps and whether to extend the inclusion of lamps in the universal waste system.

VI. State Authority

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program with the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found at 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State and EPA could not issue permits for any facility in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the authorized State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement HSWA requirements and prohibitions in an authorized State, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

The conditional exclusion and the universal waste management system would not be HSWA regulations, and thus would not be immediately effective in authorized States. Thus, the exemption would be applicable only in those States that do not have final authorization for the base (non-HSWA) portion of the RCRA program.

Section 3009 of RCRA allows States to impose more stringent regulations than the Federal program. Accordingly, authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. Today's proposed options are considered less stringent or smaller in scope than the existing Federal regulations because that portion of today's proposal would exempt certain activities now within the purview of RCRA Subtitle C. Therefore, authorized States are not required to modify their programs to adopt regulations consistent with and equivalent to the proposed exclusion or the proposed universal waste management system for lamps.

Even though States will not be required to adopt today's proposed options (if either is finalized), EPA would encourage States to do so. As already explained in the preamble, a conditional exclusion of mercury-containing lamps or the addition of lamps to the universal waste management system could reduce barriers to participation in EPA's Green Lights program, which encourages pollution prevention through energy savings. Further, it could help to clarify for the regulated community the proper management of mercury-containing lamps.

In addition, the proposed options, by making regulations less stringent for management of lamps, would give States more freedom to develop programs for lamp disposal that would be appropriate for their situation.

VII. Economic Impact Analysis

Under Executive Order No. 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or

the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, this section of the preamble summarizes the costs (savings) and the economic impact analysis of (option 1) the proposed mercury-containing lamp exclusion and of (option 2) the proposed special collection of mercury-containing lamps. Based upon the economic impact analysis for today's rule, the Agency's best estimate is that the exclusion of mercury-containing lamps from Subtitle C hazardous waste regulatory requirements (option 1) may result in nationwide annualized savings of approximately $93 million, and the special collection of mercury containing lamps (option 2) may result in a nationwide annualized savings of approximately $17 million. A complete discussion of the economic impact analysis is available in the regulatory docket for today's proposed rule (EPA, 1994).

The Agency requests information to better evaluate the human health and environmental effects of the two options described in this notice and current disposal practices. Human and environmental exposure to mercury could occur during the collection, transportation, processing, recycling, treatment, and disposal of spent lamps. EPA estimated the potential mercury air emissions resulting from some of these activities, but is uncertain about the extent and likelihood of human and environmental exposure. The Agency is also aware that the two regulatory options may pose different worker and transportation injury risks as well as different environmental risks. The Agency requests information on the overall risks to human health and the environment associated with current practices and the two proposed options.

A. Compliance Costs (Savings) for Regulatory Options Considered

This section briefly describes (1) the universe of spent mercury-containing lamps and lamp generators, (2) the current regulatory baseline and (3) the major options for the regulation of spent mercury-containing lamps included in today's proposal for consideration. Descriptions of the baseline and the major options also include a summary of the methodology used in estimating compliance costs (savings). Results of the analysis are summarized in section 5.

1. Universe of Spent Lamps and Spent Lamp Generators

The Agency estimates that approximately 310 to 380 million mercury-containing lamps, and 47,000 to 64,000 facilities could be affected annually by today's proposal.

The spent lamp generation number is based on sales data,[1] adjusted to account for (1) Lamps generated by Conditionally Exempt Small Quantity Generators (CESQG), which would not be affected by either one of the proposed options, and (2) lamps generated in States where spent bulb management regulations exist (California, Minnesota, and Wisconsin). (It was assumed that these State controls would be more stringent than the options considered in today's proposal and would therefore supersede any Federal exemption of spent mercury-containing lamps from Subtitle C requirements).

2. Baseline Costs

EPA assumed that baseline requirements are the continuation of current Subtitle C regulatory standards for the treatment and disposal of mercury-containing lamps which currently fail the TC. Under this scenario, generators of spent mercury containing lamps which fail the TC continue to be subject to the full spectrum of hazardous waste management standards including record keeping and manifesting of all mercury-containing lamp shipments, Agency notification and Subtitle C transport, treatment, storage and disposal standards.

In the cost analysis, all spent mercury-containing lamps were assumed to be TC (Toxicity Characteristic) hazardous wastes. All spent lamps were also assumed to be in the low risk category for mercury, requiring stabilization as treatment under the Land Disposal Restrictions.

Cost drivers for the baseline management of spent lamps include hazardous waste transportation, and Subtitle C disposal. The bulk of mercury-containing lamps currently disposed (97%) are assumed to be stabilized and disposed of in hazardous waste landfills. The remainder, based upon volume data from the spent mercury-containing lamp recovery industry, are recycled. Based upon conversations with the recycling industry, which indicate planned increases in recycling capacity, the analysis assumed a small annual increase in the baseline recycling rate of mercury-containing lamps over the first three years of the analysis. Unit costs for stabilization, landfilling, recycling and hazardous waste transport were applied on a per ton basis.

[1] Source: National Electrical Manufacturing Association.

Generator specific requirements which applied to all large quantity generators of spent mercury-containing lamps included record-keeping, manifesting, exception reporting, and BRS (Biennial Reporting System) reporting. Other generator requirements, including rule familiarization, notification, personnel safety training and emergency[2] planning were only assessed for new facilities which spot relamp and store (up to 90 days for large quantity generators; up to 180 days for small quantity generators) spent lamps on site. It is assumed that costs resulting from generator requirements which are incurred on a per shipment basis (i.e. manifesting, exception reporting) will be incurred by group relampers once every three years (once per relamp). Spot relampers will incur these costs twice a year (for small quantity generators) or four times per year (for large quantity generators).

3. Option 1: Conditional Exclusion From Subtitle C Standards Costs

The first option under consideration in today's proposal is to exclude mercury-containing lamps from Subtitle C management standards with the condition that these lamps are managed in permitted municipal landfills or recycling facilities. The proposed exclusion also includes a minor generator record keeping requirement. As the exclusion would be deregulatory, primary economic impacts to small and large quantity generators of mercury-containing lamps resulting from this action would be in the form of cost savings from avoided Subtitle C regulatory management, particularly for transport and disposal of spent lamps.

In the cost analysis, it was assumed that, given the proposed conditional exclusion, all small and large quantity generators of spent mercury-containing lamps would opt for management in municipal landfills in order to reduce disposal costs.

Some generators may have slightly higher disposal costs than others as a result of the proposed exclusion of mercury-containing lamps from municipal combustors. If these generators currently manage their non-hazardous waste in municipal combustors, the combustor exclusion

[2] According to 40 CFR part 265 Subpart D of the Resource Conservation and Recovery Act, all large quantity generators of hazardous waste must draft a contingency plan describing the actions facility personnel will take should a fire, explosion, or any unplanned sudden or non-sudden releases of hazardous waste constituents to air, soil, or surface water occur. Local emergency response teams use the information required in the contingency plan to minimize unanticipated damage from the storage of hazardous waste.

may require these generators to: (1) Keep their spent lamps separate from the rest of their municipal solid waste, (2) store spent lamps on site until enough volume has been generated to make disposal cost effective, and (3) haul spent lamps greater distances to municipal solid waste landfills.

In short, overall savings to be accrued from the proposed exclusion may vary slightly from generator to generator.

4. Option 2: Special Collection Costs

The second option, special collection, included in today's proposal would allow small and large quantity generators of spent mercury-containing lamps to reduce certain administrative activities required under Subtitle C standards, including biennial reporting, notification, manifesting and personnel training. Additionally the option also allows generators to store spent mercury-containing lamps on-site for up to one year without a hazardous waste permit, and to transport their spent lamps direct to final disposal or recycling using non-hazardous waste haulers.

The option also includes similar reduced requirements for interim spent lamp storage facilities and "special collection centers." Transportation to these facilities or centers from the generator would not be regulated under Subtitle C standards, however, transport to final disposal or recycling from these facilities would be regulated under Subtitle C standards.

The costs estimated for Special Collection Option assumes for urban generators direct shipment using non-hazardous waste haulers, as allowed under this option, from generators to final disposal; thus the costs of creating and operating an interim storage facility or special collection center are not included for urban generators. The rationale for this omission is twofold: (1) It is assumed that spent lamp generation is large enough to create economies of scale for direct non-hazardous waste transport; the need for special collection centers is precluded by non-hazardous waste transport "milk runs" for spent lamps, and (2) although there may be economies of scale generated for long-haul transport of spent lamps from collection centers, the special collection option requires Subtitle C transport from the centers to final disposal or recycling, thus making the use of a collection center with Subtitle C final transport more expensive than Subtitle D direct transport to the disposal facility.

5. Results

a. *National Annualized Costs (Savings).* A summary of estimated national annual compliance costs associated with the exclusion option and the special collection option, along with estimated baseline compliance costs are presented below in exhibit VII.1. Also presented are estimated incremental savings above baseline compliance costs for each option. Costs were annualized over a twenty-year period, using a 7% discount rate. The analysis used projected growth in the U.S. population over the twenty-year time frame of the analysis to estimate the increase in growth of spent lamp generation. Total estimated annualized savings range between approximately $85 million and $102 million for the exclusion and savings estimates for the special collection option range between $16 million and $20 million in savings.

The above savings estimate is based on the assumption in the baseline that all facilities are properly managing their mercury-containing spent lamps as Subtitle C waste. Currently, however, some lamp generators may not be aware that fluorescent lamps are hazardous waste and therefore may not be following Subtitle C requirements. Hence, estimated savings may represent savings from a future scenario of full compliance with current law, rather than savings from current lamp management. EPA expects that if no regulatory action is taken, Subtitle C management of mercury-containing lamps will become more prevalent over the next few years.

EXHIBIT VII.1.—ANNUALIZED COSTS (SAVINGS) OF REGULATORY OPTIONS

[Costs (savings) are presented in millions of 1992 dollars/year[3]]

Regulatory option	Total annualized costs	Incremental annualized costs/(savings) above baseline
Baseline: Subtitle C Standards.	$110–$134; BE: $118.	NA.
Option 1: Conditional Exclusion from Subtitle C.	$25–$32; BE: $25.	($85)–($102); BE: ($93).
Option 2: Special Collection.	$94–$115; BE: $101.	($16)–($20); BE: ($17).

[3] Numbers may not add up due to rounding. BE=Best Estimate.

b. *Individual Generator Savings.* Average total savings per generator for both options were simply assessed by dividing total savings by the estimated number of generators above (refer to the methodology section). The average annual baseline Subtitle C cost per generator is estimated to be between $2,000 to $2,250 per generator. Average per generator savings for the two deregulatory options are indicated below in exhibit VII.2. Individual generator savings, however, will vary due to facility size, proximity to disposal or recycling facility, and regional disposal/recycling costs.

EXHIBIT VII.2.—AVERAGE ANNUAL COST (SAVINGS) PER REGULATED GENERATOR

[In 1992 dollars]

Regulatory option	Average annual cost (savings)/generator
Exclusion from Subtitle C Standards.	($1,500)—High Savings Scen. ($2,000)—Low Savings Scen. ($1,600)—Best Estimate.
Special Collection	($300)—High Savings Scen. ($300)—Low Savings Scen. ($300)—Best Estimate.

c. *Savings Per Waste Lamp Generated.* As with average savings per generator estimates, average savings per waste lamp generated were derived by simply dividing total upper and lower bound costs (savings) by the estimated number of waste lamps accounted for by small and large quantity generators in states without specific spent lamp management standards. The average baseline Subtitle C cost per bulb is estimated to be $.34 to $.36. The resulting savings per lamp is estimated at $.27 per bulb for the conditional exclusion option (both high and low savings scenario) and at $.05 per bulb for the special collection option. Again, cost per bulb may vary significantly due to site specific factors.

6. Sensitivity Analysis

This section presents the results of EPA's analysis of the effects of varying selected major parameters in the cost analysis (where the Agency used considerable judgment in arriving at the parameter's value) on the estimated savings incurred under the proposed conditional exclusion and the proposed Universal Waste Rule. The following assumptions were analyzed in the sensitivity analysis for EPA's analysis of spent lamp management costs:

(1) Percentage of Lamps Generated at Small and Large Quantity Generators. In the sensitivity analysis, EPA set its lower bound estimates of the percentage

of lamps generated at SQGs and LQGs at fifty percent of total spent lamp generation and its upper bound estimates at ninety percent. (Seventy-five percent was used in the initial cost analysis).

(2) Cost to Transport Subtitle C Waste. In the sensitivity analysis, EPA increased the upper bound estimates of the costs of transporting spent lamps as Subtitle C by a factor of three, based on price quotes from commercial transporters, over original estimates.

(3) Cost to Dispose of Subtitle C Waste. Based on price quotes from commercial hazardous waste disposal facilities, EPA increased the upper bound estimates of the Subtitle C disposal costs by a factor of four over original estimates.

(4) Cost of Employee Training. To reflect uncertainty over whether a professional trainer would be required and over how many employees would need to be trained, EPA increased and decreased the cost of employee training required by 50 percent.

The costs associated with the high-end scenario were estimated using the upper bound estimates for each cost element included in the sensitivity analysis. The costs associated with the low-end scenario combined the lower bound estimates for each cost element. The results from these two analyses suggest that the range of total annual savings from the proposed condition exclusion for spent lamps could be $65 million to $289 million, and the range of total annual savings from the proposed Universal Waste RCRA requirements for generators of spent lamps could be $15 million to $39 million. The range in cost savings is mainly the result of uncertainty over Subtitle C transportation and disposal costs for lamps. Although EPA has received price quotes for management of lamps as Subtitle C waste that are considerably higher than the average cost of managing hazardous waste in Subtitle C landfills, it is not appropriate to directly compare price quotes to engineering costs because the price quotes reflect a constrained market place which tends to inflate prices well above costs. However, a three-fold difference between the price quotes for spent lamps and standard Subtitle C management cost may also be due to other factors beyond the inflated prices of the constrained market, including the low density of lamps (i.e. a ton of lamps has a greater volume than a ton of hazardous waste sludge), or difficulty in handling lamps. EPA requests comment on the true costs, as well as the reasoning behind these costs, of managing spent lamps as Subtitle C waste.

B. Proposed Rule Impacts

1. Impacts on Generators of Mercury-Containing Waste Lamps

As indicated above, option 1, the exclusion, is estimated to result in average annual savings per small and large quantity spent lamp generator ranging from $2,000 to $2,250. Option 2, special collection, is estimated to result in an average annual per generator savings of approximately $300.

2. Secondary Effects

While total incremental savings from the proposed exclusion (option 1) and from the proposed special collection system (option 2) over a Subtitle C management approach appear to be high, the Agency does not expect significant immediate shifts in demand or price for the lamps or for products manufactured or sold by firms which consume these lamps due to the proposed options. Because the impacts to lamp generators are positive (i.e. net savings), the Agency does not expect the rule to result in adverse impacts to businesses, or to affect employment or international trade to any appreciable degree.

EPA believes that, with the exception of lamps generated in States with existing lamp disposal requirements, most small and large quantity generators of mercury containing lamps will choose to dispose of their waste lamps in municipal solid waste landfills under option 1, the proposed exclusion from Subtitle C. This is because Subtitle D disposal is significantly less expensive per bulb than recycling or Subtitle C disposal.[4] Subsequently, most waste lamps currently being handled according to Subtitle C standards by permitted hazardous waste haulers, disposal sites and spent lamp processing facilities, would be handled by Subtitle D haulers and disposal facilities. Thus Subtitle C waste haulers, disposal and spent lamp processing facilities would be affected negatively while Subtitle D haulers and disposal facilities would be affected positively under option 1.

The exclusion, option 1, may also have an impact upon mercury-containing lamp processors. The Agency estimates that there are currently 15 facilities which process spent mercury-containing lamps. Two of these facilities recover spent mercury through retorting; the remaining 13 facilities separate the glass and aluminum ends, and send the mercury-containing phosphor powder to the two facilities that retort. Ten of the 15 lamp processing facilities are located in the three States where spent lamp management regulations exist. Although most recovery facilities are located in States with stringent State lamp disposal requirements, and would most likely will not be affected by today's proposed exclusion, a certain percentage of the spent lamps currently recovered at these facilities are generated in States with no specific lamp disposal requirements. EPA believes that a portion of mercury-containing lamps would no longer be sent for recovery under the proposed exclusion (option 1) since disposal in municipal landfills would be significantly less expensive.[5] Assuming that lamps generated outside of these States will not be sent for recovery, it is possible that 17 percent, or 16 million lamps, may be diverted. Using a lamp/revenue ratio for recovery facilities of $.44, total impact to the industry could be approximately $7 million dollars[6] in lost revenues ($469,000 per facility). Future recycling efforts may also be impacted since many of these facilities may retract plans for expansion in States which currently have no specific lamp disposal requirements.

Under option 2, the proposed special collection system, small and large quantity generators would not be allowed to choose to dispose of hazardous waste lamps in a municipal solid waste landfill. Thus the above impacts on Subtitle C waste haulers, disposal and spent lamp processing facilities would not be observed under the second option.

VIII. References

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[4] EPA estimates that the average cost per ton for Subtitle D disposal is $35 as compared to $400 per ton for Subtitle C disposal and $1,375 per ton for recycling.

[5] EPA estimates that Subtitle D landfilling costs range between $10 and $150 per ton depending upon the region of the country. Compared with an average recycling cost of $1375 per ton, Subtitle D landfilling is significantly less expensive.

[6] Similar estimates were not derived for Subtitle C waste haulers or disposal sites.

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IX. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR# 1699.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street, S.W. (2136); Washington, DC 20460 or by calling (202) 260–2740.

The public record keeping burden for this collection of information is estimated to average 4.7 hours per response annually, including time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2236, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

X. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

The only entities directly subject to today's proposed rule are small and large quantity generators of spent mercury containing lamps (conditionally exempt small quantity generators are not directly subject to today's proposed rule). In order to meet the definition of a regulated entity under today's rule, a generator must produce over 100 kg of spent lamps (350 four foot fluorescent lamps) in a given month. It is conceivable that some of these generators would meet the definition of "small business" as defined by the Regulatory Flexibility Act (i.e. mid-sized firms that group relamp and generate in excess of 346 spent fluorescent lamps in a given month); however the Agency does not have an estimate of the number of such "small entities." However, both of the proposed options are expected to result in net savings to the regulated entities. Option 1, excluding mercury containing lamps from Subtitle C management standards, is estimated to result in per generator savings of between $2,000 and $2,250 annually. Option 2, managing spent lamps under a special collection system is estimated to result in an average annual per generator savings of approximately $300. Thus, since generator impacts are positive for both options, EPA has determined that small regulated entities will not be adversely impacted, and thus, no "mitigating" options are being analyzed in this section. Hence, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), "the Administrator certifies that this rule will not have a significant economic impact on a substantial number of entities."

Dated: July 13, 1994.

Carol M. Browner,

Administrator.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements, Waste treatment amd disposal.

40 CFR Part 273

Environmental protection, Hazardous materials, Packaging and containers.

For the reasons set out in the preamble, 40 CFR parts 260 and 261, and 40 CFR part 273 as proposed in the **Federal Register** on February 11, 1993 at 58 FR 8102, are proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.10 is amended by adding in alphabetical order the definitions for "electric lamp" and "mercury-containing lamp" to read as follows:

§ 260.10 Definitions.

* * * * *

Electric lamp means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common electric lamps include, but is not limited to, incandescent, fluorescent, high intensity discharge, and neon lamps.

* * * * *

Mercury-containing lamp is an electric lamp in which mercury is purposely introduced by the manufacturer for the operation of the lamp.

* * * * *

Option 1

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

4. In § 261.4, paragraph (b)(16) is added to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(16) Spent mercury-containing lamps which are disposed in municipal solid waste landfills in States or Indian Tribes with an EPA approved State or Tribal municipal solid waste landfill program or managed in mercury reclamation facilities that are permitted, licensed or registered by a State or Tribe. To qualify for this exclusion, a generator must maintain in its operating records for three years from the date of shipment a certification for each shipment of mercury-containing lamps that is signed by the generator or its authorized representative and that states the following:

I certify, under penalty of law, that on [date], I consigned [amount] of mercury-containing lamps to [name and address of transporter] for [disposal] [recycling] at [name and address of disposal or recycling facility]. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Option 2

PART 273—STANDARDS FOR SPECIAL COLLECTION SYSTEM WASTES

5. The authority citation for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

6. In § 273.3, definitions for "electric lamp" and "mercury-containing lamp" are added in alphabetical order to read as follows:

§ 273.3 Definitions.

* * * * *

Electric lamp means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolent (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common electric lamps include, but are not limited to, incandescent, fluorescent, high intensity discharge, and neon lamps.

* * * * *

Mercury-containing lamp is an electric lamp in which mercury are purposely introduced by the manufacturer for the operation of the lamp.

* * * * *

7–8. Subpart D is added to Part 273 to read as follows:

Subpart D—Lamps That Are Hazardous Wastes

Sec.
273.30 Applicability.
273.31 Generator requirements.
273.32 Transporter requirements.
273.33 Consolidation point requirements.
273.34 Destination facility requirements.
273.35 Export requirements.
273.36–273.39 [Reserved].

Subpart D—Lamps That Are Hazardous Wastes

§ 273.30 Applicability.

(a) *Covered wastes.* (1) This subpart sets forth standards for managing lamps that are hazardous wastes.

(2) Lamps that are hazardous wastes and that are not managed in compliance with the requirements of this Part must be managed under the hazardous waste regulations in 40 CFR parts 260 through 272 of this chapter.

(b) *Household and conditionally exempt small quantity generator waste lamps.* (1) Persons managing the wastes listed below may, at their option, manage them under the requirements of this subpart without changing the wastes' exempt status:

(i) Household hazardous waste lamps that are exempt under 40 CFR 261.4(b)(1); and/or

(ii) Conditionally exempt small quantity generator hazardous waste lamps that are exempt under 40 CFR 261.5.

(2) Persons who commingle household hazardous waste lamps and/or conditionally exempt small quantity generator hazardous waste lamps together with hazardous waste lamps regulated under this subpart must manage the commingled lamps under the requirements of this subpart.

§ 273.31 Generator requirements.

(a) *Generation of hazardous waste lamps.* (1) The date a used lamp becomes a waste is the date the generator permanently removes it from its fixture.

(2) The date an unused lamp becomes a waste is the date the generator decides to throw it away.

(3) A waste lamp is a hazardous waste if it exhibits one or more of the characteristics identified in 40 CFR part 261, subpart C.

(b) *Condition of hazardous waste lamps.* A generator of hazardous waste lamps must at all times:

(1) Contain unbroken lamps in packaging that will minimize breakage during normal handling conditions; and

(2) Contain broken lamps in packaging that will minimize releases of lamp fragments and residues.

(c) *Storage.* (1) A generator may store a hazardous waste lamp for no longer than one year from the date the lamp became a waste.

(2) A generator who stores hazardous waste lamps must be able to demonstrate that lamps are not stored for more than one year from the date they became a waste. A generator may make this demonstration by:

(i) Placing the lamps in a container and marking or labeling the container with the earliest date that any lamp in the container became a waste;

(ii) Marking or labeling an individual lamp with the date that it became a waste;

(iii) Maintaining an inventory system that identifies the date each lamp in storage became a waste;

(iv) Maintaining an inventory system that identifies the earliest date that any lamp in a group of lamps became a waste; or

(v) Placing the lamps in a specific storage area and identifying the earliest

date that any lamp in the storage area became a waste.

(d) *Notification.* (1) A generator who stores more than 35,000 hazardous waste lamps at any time must have, before exceeding the 35,000 lamp quantity limit, sent written notification of hazardous waste lamp storage to the Regional Administrator and received an EPA Identification Number.

(2) This notification must include:

(i) The generator's name and mailing address;

(ii) The name and business telephone number of the person at the generator's site who should be contacted regarding the lamp storage activity;

(iii) The address or physical location of the lamp storage activity;

(iv) A statement indicating that the generator stores more than 35,000 hazardous waste lamps.

(e) *Prohibitions.* A generator of hazardous waste lamps is:

(1) Prohibited from diluting or disposing of them;

(2) Prohibited from treating them, except by responding to releases as provided in paragraph (f)(2) of this section; and

(3) Prohibited from sending or taking the hazardous waste lamps to a place other than a consolidation point, destination facility, or foreign destination.

(f) *Lamp management.* (1) A generator must at all times manage hazardous waste lamps in a way that minimizes lamp breakage.

(2)(i) A generator must immediately contain all releases of residues from hazardous waste lamps.

(ii) A generator must determine whether any materials resulting from the release are hazardous wastes, and if so, the generator must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(3) A generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

§ 273.32 Transporter requirements.

(a) Shipments from a generator to a consolidation point, from a generator to a destination facility, or from one consolidation point to another consolidation point.

(1)(i) A transporter must at all times contain unbroken lamps in packaging that will minimize breakage during normal handling and transport conditions; and

(ii) A transporter must at all times contain broken lamps in packaging that will minimize releases of lamp fragments and residues.

(2) A transporter of hazardous waste lamps may only store them at a transfer facility for ten days or less.

(3) A transporter of hazardous waste lamps is prohibited from:

(i) Diluting or disposing of them;

(ii) Treating them, except by responding to releases as provided in paragraph (a)(4) of this section; and

(iii) Transporting them to a place other than a consolidation point, destination facility, or foreign destination.

(4)(i) A transporter must at all times manage hazardous waste lamps in a way that minimizes lamp breakage.

(ii) A transporter must immediately contain all releases of residues from hazardous waste lamps.

(iii) A transporter must determine whether any materials resulting from the release are hazardous wastes, and if so, the transporter must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(b) *Shipments from a consolidation point to a destination facility.* A transporter who transports shipments from a consolidation point to a destination facility must comply with 40 CFR part 263.

§ 273.33 Consolidation point requirements.

(a) *Condition of lamps.* The owner or operator of a consolidation point managing hazardous waste lamps must at all times:

(1) Contain unbroken lamps in packaging that will minimize breakage during normal handling conditions; and

(2) Contain broken lamps in packaging that will minimize releases of lamp fragments and residues.

(b) *Storage.* (1) The owner or operator of a consolidation point may store a hazardous waste lamp for no longer than one year from the date that the owner or operator receives it.

(2) The owner or operator of a consolidation point who stores hazardous waste lamps must be able to demonstrate that lamps are not stored for more than one year from the date they were received. The owner or operator may make this demonstration by:

(i) Placing the lamps in a container and marking or labeling the container with the earliest date that any lamp in the container was received;

(ii) Marking or labeling an individual lamp with the date that it was received;

(iii) Maintaining an inventory system that identifies the date each lamp in storage was received;

(iv) Maintaining an inventory system that identifies the earliest date that any lamp in a group of lamps was received; or

(v) Placing the lamps in a specific storage area and identifying the earliest date that any lamp in the storage area was received.

(c) *Prohibitions.* The owner or operator of a consolidation point managing hazardous waste lamps is:

(1) Prohibited from diluting or disposing of them;

(2) Prohibited from treating them, except by responding to releases as provided in paragraph (d)(2) of this section; and

(3) Prohibited from sending or taking them any place other than a consolidation point, destination facility, or foreign destination.

(d) *Lamp Management.* (1) The owner or operator of a consolidation point must at all times manage hazardous waste lamps in a way that minimizes lamp breakage.

(2)(i) The owner or operator of the consolidation point must immediately contain all releases of residues from hazardous waste lamps.

(ii) The consolidation point owner/operator must determine whether any materials resulting from the release are hazardous wastes, and if so, the owner/operator must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(3) The consolidation point owner or operator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

(e) *Notification.* (1)(i) A consolidation point owner or operator who stores more than 35,000 hazardous waste lamps at any time must have, before exceeding the 35,000 lamp quantity limit, sent written notification of hazardous waste lamp storage to the Regional Administrator and received an EPA Identification Number.

(ii) This notification must include:

(A) The owner's or operator's name and mailing address;

(B) The name and business telephone number of the person who should be contacted regarding the lamp storage activity;

(C) The address or physical location of the lamp storage activity;

(D) A statement indicating that the owner or operator stores more than 35,000 hazardous waste lamps.

(2)(i) A consolidation point owner or operator who sends a shipment of hazardous waste lamps directly from the

consolidation point to a destination facility, who is not required to notify under paragraph (e)(1) of this section, must have, before initiating the shipment, sent written notification of hazardous waste lamp shipments to a destination facility to the Regional Administrator and received an EPA Identification Number.

(ii) This notification must include:

(A) The owner's or operator's name and mailing address;

(B) A statement that the owner or operator intends to ship hazardous waste lamps to a destination facility;

(C) The name and business telephone number of the person who should be contacted regarding the lamp storage activity; and

(D) The address or physical location of the lamp storage activity.

(f) *Uniform Hazardous Waste Manifests.* The owner or operator of a consolidation point who sends a shipment of hazardous waste lamps directly to a destination facility must comply with subpart B of part 262 and §§ 262.30 through 262.33, 262.40(a), 262.40(d), and 262.42 of this chapter when initiating a shipment.

§ 273.34 Destination facility requirements.

(a) Owners or operators of destination facilities that recycle, treat, store, or dispose of hazardous waste lamps must comply with all applicable requirements of parts 264, 265, 266, 268, 270, and 124 of this chapter, and the notification requirement under section 3010 of RCRA.

(b) Owners and operators of destination facilities that recycle hazardous waste lamps without storing them before they are recycled must comply with 40 CFR 261.6(c)(2).

§ 273.35 Export requirements.

(a) A generator who sends hazardous waste lamps to a foreign destination, without first sending them to a consolidation point or destination facility, must:

(1) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;

(2) Export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and

(3) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(b) A transporter transporting a shipment of hazardous waste lamps to a foreign destination may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(1) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(2) The shipment is delivered to the facility designated by the person initiating the shipment.

(c) An owner or operator of a consolidation point who sends hazardous waste lamps to a foreign destination, without first sending them to another consolidation point or destination facility, must:

(1) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a) (1) through (4), (6), and (b) and 262.57;

(2) Export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and

(3) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(d) A destination facility sending hazardous waste lamps to a foreign destination must also comply with the generator requirements of part 262 of this chapter, and with 40 CFR 264.71(c) or 265.71(c) pertaining to initiating the manifest.

§§ 273.36–273.39 [Reserved]

[FR Doc. 94–18045 Filed 7–26–94; 8:45 am]

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Wednesday
July 27, 1994

Part V

Federal Emergency Management Agency

44 CFR Part 354

Fee for Services To Support FEMA's Offsite Radiological Emergency Preparedness Program; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 354

RIN 3067–AC10

Fee for Services To Support FEMA's Offsite Radiological Emergency Preparedness Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Under its appropriation for fiscal year (FY) 1993 (Pub. L. 102–389), FEMA was authorized to assess and collect fees from Nuclear Regulatory Commission (NRC) licensees to recover approximately, but not less than, 100 per centum of the amounts anticipated by FEMA to be obligated for its Radiological Emergency Preparedness (REP) program. This appropriations act further provided for the Director of FEMA to promulgate, through rulemaking, a schedule of fees applicable to persons subject to FEMA's radiological emergency preparedness regulations. Public Law 102–389 provided the authority for these user fees to be assessed and collected for fiscal year 1993 services only. FEMA's appropriation for FY 1994 (Pub. L. 103–124) continued the user fee provisions of Public Law 102–389, and FEMA anticipates that the Congress will provide such authority again in FEMA's appropriation for FY 1995. If such authority is provided, FEMA proposes to revise its existing interim rule to change for FY 1995 the methodology used to assess the user fees. One advantage of the proposed change in methodology would be the ability to issue user fee bills during the first quarter of the fiscal year. This proposed rule is being published at this time in order to publish the resulting revised rule in time to meet the FY 1995 billing schedule, as well as to notify all potentially affected parties of this proposed change and to invite and request comments on the proposed revised methodology.

DATES: Comments from the public on this proposed rule are encouraged and invited on or before September 12, 1994.

ADDRESSES: Written comments should be addressed to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472; (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Linda H. Vasta, Chief, Regulatory Services Coordination Unit, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4570.

SUPPLEMENTARY INFORMATION: On March 6, 1991, FEMA published in the **Federal Register** (56 FR 9452–9459) the final rule, 44 CFR part 353, that established a structure for assessing and collecting user fees from NRC licensees. Under 44 CFR part 353, REP services provided by FEMA personnel and FEMA contractors were reimbursable only if these services were site-specific in nature and directly contributed to the fulfillment of emergency preparedness requirements needed for licensing by the NRC under the Atomic Energy Act of 1954, as amended. Although FEMA is proposing a new approach for the assessment and collection of fees from licensees for FY 1995, part 353 remains in effect and will apply in any subsequent fiscal year for which FEMA is not authorized to collect user fees for generic services.

Public Law 102–389, October 6, 1992, 106 Stat. 1571–1619, expanded reimbursable REP Program activities by authorizing FEMA to charge licensees of commercial nuclear power plants fees to recover the full amount of the funds budgeted for FEMA's REP Program for FY 1993. On July 1, 1993, FEMA published in the **Federal Register** (58 FR 35770–35775) an interim rule, 44 CFR part 354, to establish and set forth the policies and administrative basis for assessing and collecting these fees. FEMA reserved the option of applying, reissuing, or amending part 354 for other fiscal years provided that appropriate authority was enacted. Public Law 103–124, September 23, 1993, 107 Stat. 1297, directed FEMA to continue assessing and collecting fees to recover the full amount of the funds budgeted for FEMA's REP Program for FY 1994. In addition, the Administration has proposed assessing such fees for subsequent fiscal years.

Using the methodology established by the interim rule, 44 CFR part 354, the final hourly user fee rate for FEMA personnel during FY 1993 was calculated at $122.88. On December 13, 1993, a notice to this effect was published in the **Federal Register** (58 FR 65274). The notice also explained that FEMA would not publish a final rule at that time, pending a reconsideration of the methodology used for FY 1993, taking into consideration the comments received on interim rule 44 CFR part 354. The methodology established by the interim rule 44 CFR part 354 was continued in effect for FY 1994 as noticed in the **Federal Register** (59 FR 26350) published on May 19, 1994. Although the revised interim rule would, if authorized by FEMA's FY 1995 appropriation, be restricted to FY 1995, FEMA reserves the option of reissuing or amending part 354 for other fiscal years provided that appropriate authority is enacted.

Under this proposed revision of 44 CFR part 354, fees for FY 1995 would be assessed at a flat rate based on fiscal year budgeted funds for REP Program services performed by FEMA personnel and FEMA contractors whether or not these services directly support NRC licensing requirements. Under Section 354.4, Assessment of Fees, charges for services would be determined by dividing the total amount of funds budgeted for the REP Program, i.e., salaries and expenses, including travel, and Emergency Management Planning and Assistance (EMPA) funding, by the total number of licensed commercial nuclear power plant sites benefiting from REP Program services, as defined under § 354.2, Scope. The total amount of funds budgeted for the REP Program would be recovered by dividing the funds equally among the NRC licensees on a per site basis; thus, all sites will be charged the same flat fee. Under this methodology, site-specific and generic services would not be distinguished.

Among the comments in response to interim rule 44 CFR part 354 considered by FEMA were those submitted by the Nuclear Management and Resources Council (NUMARC), which has now become part of the Nuclear Energy Institute. In its comments, NUMARC recommended a methodology whereby the hourly rate for FEMA personnel would be determined by dividing that percentage of the total FEMA Salaries and Expenses budget item attributable to site-specific activities by the total number of site-specific hours expended. This hourly rate then would be applied only to site-specific activities performed by FEMA personnel. Site-specific activities performed by contractor personnel would be billed on an actual cost basis. Finally, under the proposed NUMARC methodology, costs for generic services provided by FEMA personnel and FEMA contract personnel would be recovered by charging each licensee equally for these activities.

The methodology recommended by NUMARC was considered by FEMA, but the flat fee approach is being proposed instead because a flat fee would: (1) Provide each licensee with a bill early in the fiscal year, thus facilitating the licensee's planning and budgeting process by greatly increasing the predictability of the licensee's bill; (2) enable States and licensees to request needed technical assistance without

considering any cost implications associated with site-specific oriented methodologies; (3) benefit the U.S. taxpayer by earlier deposit of funds in the U.S. Treasury; and (4) reduce the FEMA resources required to track administrative costs, thus making the accounting and billing process more efficient and cost-effective for the Government and freeing up FEMA resources for other REP program activities.

In addition to the above considerations, FEMA used actual FY 1993 billing data to calculate a flat fee and compared this with the fees that would have been generated using the methodology proposed by NUMARC. Using FY 1993 data, the flat fee (for each site) would have been $149,928. Under the proposed NUMARC methodology, the generic portion of the bill alone for each site would have been $87,702. The site-specific portion, consisting of exercise, plan review, and other site-specific activities, would be added to this amount for the total bill.

A further comparison of the results of these calculations indicated that, under the proposed NUMARC methodology, 23 sites would have had bills equal to or higher than the flat fee, averaging approximately $90,000 more than the flat fee. Forty-seven sites would have had bills lower than the flat fee, averaging approximately $42,000 less than the flat fee. An analysis of the results using the proposed NUMARC methodology also indicated that the size of a site's bill was, in most instances, directly related to the biennial exercise cycle; i.e., the bill was higher if a site had an exercise in FY 1993, and the bill was lower if a site had not had an exercise in FY 1993. Thus, a majority of the bills below the flat fee in FY 1993 would be higher than the flat fee in FY 1994, and vice versa. Over a two-year period the bills would average out to an amount reasonably close to the flat fee.

Based upon the results of the above calculations, FEMA believes the flat fee to be fair and equitable because (1) although under the proposed NUMARC methodology, more bills were below the flat fee than were above it, those bills lower than the flat fee were, on the average, considerably closer to the flat fee than were the bills higher than the flat fee, and (2) the flat fee would eliminate the extreme year-to-year fluctuation in bill amount due to a site's position in the exercise cycle, and, thus, each site's bills would be more equitable in size over any given biennial cycle.

FEMA's services primarily are provided in support of a Memorandum of Understanding (MOU) between the NRC and FEMA published on September 14, 1993 (58 FR 47996), and regulations issued by both FEMA (44 CFR parts 350, 351, and 352) and the NRC (10 CFR parts 50 and 52).

Radiological emergency response plans and exercises are evaluated using joint FEMA–NRC criteria, NUREG–0654/FEMA–REP–1, Revision 1 and Supplement 1. When State and local governments do not participate in the development of an emergency plan, the licensee may submit a licensee offsite plan to the NRC. Pursuant to the MOU, the NRC can request that FEMA review a licensee offsite plan and provide its assessments and findings on the adequacy of such plans and preparedness evaluated under Supplement 1.

All funds collected under this proposed rule would be deposited in the U.S. Treasury to offset funds budgeted for FEMA's REP Program. In response to a FEMA request for a waiver from the Department of Treasury's cash management provisions of the Treasury Financial Manual (TFM), I–TFM 6–8000, Section 8025.10, the Department of the Treasury granted FEMA a waiver from the I–TFM 6–8000, Section 8025.10, requirement to bill within five days of service. A waiver was not granted to allow 45 days for payment of bills by licensees. However, if the authority for the proposed revised interim rule is enacted, the Department of the Treasury will grant a one-time exemption to the 30 day payment requirement in order to permit licensees to pay the FY 1995 bill, which would be issued in November 1994, in January of 1995. Also, the Department of the Treasury requested that the user fee rule provide for the use of electronic billing and payment mechanisms. FEMA worked with the Department of the Treasury to effect these procedures and now provides for payment of bills by electronic transfers through Automated Clearing House credit payments. The Department of the Treasury publication I–TFM 6–8000 has been recently revised to require, under section 8025.30, all funds to be collected by electronic funds transfer when such collection would be cost-effective, practicable, and consistent with current statutory authority.

Regulatory Flexibility Act

The Director certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule would not apply to a substantial number of small entities as defined by the Small Business Size Standards, 13 CFR 121.601, Division E, Major Group 49, as amended, 57 FR 62520, December 31, 1992, and would not be expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on a substantial number of small entities.

National Environmental Policy Act

The Director has determined under the National Environmental Policy Act of 1969 and FEMA Regulation, 44 CFR part 10, Environmental Considerations, that this proposed rule would not be a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Executive Order 12866, Regulatory Planning and Review

This proposed rule would not be a significant regulatory action under Executive Order 12866 of September 30, 1993, Regulatory Planning and Review. It would not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The proposed rule would not create a serious inconsistency or interference with an action taken or planned by another agency. It would not materially alter the impact of entitlements, grants, or loan programs, nor would it raise novel legal or policy issues. To the greatest extent possible the proposed rule would adhere to the regulatory principles set forth in Executive Order 12866. This proposed rule has not been reviewed under the procedures of Executive Order 12866.

Paperwork Reduction Act

This proposed rule would not contain collection of information requirements and would not be subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 et seq.).

Executive Order 12612, Federalism

A Federalism assessment under E.O. 12612 has been prepared and a copy is available for inspection and copying for a fee from the Rules Docket Clerk, address noted above.

List of Subjects in 44 CFR Part 354

Disaster assistance, Intergovernmental relations, Nuclear powerplants and reactors, Radiation protection, Technical assistance, Offsite radiological emergency planning and preparedness.

Accordingly, 44 CFR chapter I would be amended by revising part 354 to read as follows:

PART 354—FEE FOR SERVICES TO SUPPORT FEMA'S OFFSITE RADIOLOGICAL EMERGENCY PREPAREDNESS PROGRAM

Sec.
354.1 Purpose.
354.2 Scope.
354.3 Definitions.
354.4 Assessment of fees.
354.5 Description of services.
354.6 Billing and payment of fees.
354.7 Failure to pay.

Authority: Sec. 109, Pub. L. 96–295, 94 Stat. 780; Sec. 2901, Pub. L. 98–369, 98 Stat. 494; Title ____, Pub. L. 104–____ , Stat. ____; EO 12148, 3 CFR, 1979 Comp., p. 412 (50 U.S.C. App. 2251 note); EO 12657, 3 CFR, 1988 Comp., p. 611. [Authority citation to be inserted if enacted]

§ 354.1 Purpose.

This part establishes the methodology for FEMA to assess and collect user fees from Nuclear Regulatory Commission (NRC) licensees of commercial nuclear power plants to recover at least 100 percent of the cost of services provided by the Federal Emergency Management Agency (FEMA) through its Radiological Emergency Preparedness (REP) Program as authorized under Title ____, Public Law 104–____, ____ Stat. ____ [Authority citation to be inserted if enacted]. As stipulated by Public Law 104–____ [Authority citation to be inserted if enacted], the methodology for assessment and collection of fees shall be fair and equitable, and shall reflect the full amount of costs of providing radiological emergency planning, preparedness, response and associated services. Such fees will be assessed in a manner that reflects the use of agency resources for classes of regulated persons and the administrative costs of collecting such fees. Fees received pursuant to this section shall be deposited in the general fund of the Treasury as offsetting receipts. Assessment and collection of such fees are only authorized during fiscal year (FY) 1995.

§ 354.2 Scope.

The regulation in this part applies to all persons or licensees who have applied for or have received from NRC:

(a) A license to construct, operate or decommission a commercial nuclear power plant;

(b) A possession-only license for a commercial nuclear power plant;

(c) An early site permit for a commercial nuclear power plant;

(d) A combined construction permit and operating license for a commercial nuclear power plant; or

(e) Any other NRC licensee that is now or may become subject to requirements for offsite radiological emergency planning and preparedness.

§ 354.3 Definitions.

As used in this part, the following terms and concepts are defined:

(a) *FEMA* means the Federal Emergency Management Agency.

(b) *NRC* means the U. S. Nuclear Regulatory Commission.

(c) *Technical assistance* means services provided by FEMA to facilitate offsite radiological emergency planning and preparedness, including but not limited to, provision of support for the preparation of offsite radiological emergency response plans and procedures, and provision of advice and recommendations for specific aspects of radiological emergency planning and preparedness, such as alert and notification and emergency public information.

(d) *Persons or Licensee* means the utility or organization that has applied for or has received from the NRC:

(1) A license to operate or decommission a commercial nuclear power plant;

(2) A possession-only license for a commercial nuclear power plant;

(3) An early site permit for a commercial nuclear power plant;

(4) A combined construction permit and operating license for a commercial nuclear power plant; or

(5) Any other NRC license that is now or may become subject to requirements for offsite radiological emergency planning and preparedness activities.

(e) *RAC* means Regional Assistance Committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Agriculture, Department of Transportation, Department of Commerce, Department of Interior, and other Federal departments and agencies as appropriate.

(f) *REP* means Radiological Emergency Preparedness as in FEMA's REP Program.

(g) *Fiscal Year* means the Federal fiscal year commencing on the first day of October through the thirtieth day of September.

(h) *Federal Radiological Preparedness Coordinating Committee (FRPCC)* means a committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of the Interior, Department of Energy, Department of Transportation, Department of Agriculture, Department of Commerce, Department of State, Department of Veterans Affairs, General Services Administration, National Communications System, the National Aeronautics and Space Administration and other Federal departments and agencies as appropriate.

(i) *Site* means the location at which one or more commercial nuclear power plants (reactor units) have been, or are planned to be, constructed.

(j) *Site-specific services* mean offsite radiological emergency planning, preparedness and response services provided by FEMA personnel and by FEMA contractors that pertain to a specific commercial nuclear power plant site.

(k) *Generic services* mean offsite radiological emergency planning, preparedness, and response services provided by FEMA personnel and by FEMA contractor personnel that do not pertain to a specific commercial nuclear power plant site.

(l) *Obligate or obligation* means a legal reservation of appropriated funds for expenditure.

§ 354.4 Assessment of fees.

Assessment of fees for licensees will be based on the following methodology that includes, but does not distinguish between, charges for both site-specific and generic services provided by FEMA personnel and FEMA contractors. Fees will be assessed for REP Program services provided by FEMA personnel and by FEMA contractors and not for those services provided by other Federal agencies involved in the FRPCC or the RACs.

(a) *Determination of charges for services.* Charges for services will be determined by dividing the total amount of fiscal year funds budgeted for the REP Program, i.e., salaries and expenses, including travel, and Emergency Management Planning and Assistance (EMPA) funding, by the total number of commercial nuclear power plant sites, as defined under § 354.2, Scope. The total amount of funds budgeted for the REP Program will be recovered by dividing the funds equally among the NRC licensees on a per commercial nuclear power plant site basis; thus, all sites would be charged the same amount. Under this methodology, site specific and generic services will not be distinguished.

(b) *Discontinuation of Charges.* Upon receipt of official written notification

from the NRC that offsite radiological emergency planning and preparedness is no longer required at a particular commercial nuclear power plant site, FEMA will discontinue REP Program services and will close out the official docket. Commencing with the next fiscal year after closing out the official docket, user fees will no longer be assessed for that site.

§ 354.5 Description of services.

REP Program services provided by FEMA and FEMA contractors for which licensees would be assessed fees include, but are not limited to, the following:

(a) Evaluation of State and local offsite radiological emergency plans and preparedness.

(b) Scheduling of exercises.

(c) Development of exercise objectives and scenarios.

(d) Pre-exercise logistics.

(e) Conduct of exercises and evaluations.

(f) Preparing, reviewing and finalizing exercise reports, notice and conduct of public meetings.

(g) Scheduling, conducting and evaluating remedial exercises, medical services drills, or other exercises and drills including participation in meetings and the preparation and review of associated reports.

(h) Preparation of findings and determinations on the adequacy or approval of plans and preparedness.

(i) Conduct of the formal 44 CFR part 350 review process.

(j) Providing technical assistance to States and local governments.

(k) Review of licensee submissions pursuant to 44 CFR part 352.

(l) Review of NRC licensee offsite plan submissions under the NRC/FEMA Memorandum of Understanding on Planning and Preparedness, and NUREG–0654/FEMA–REP–1, Revision 1, Supplement 1. Copies of the NUREG–0654 may be obtained from Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

(m) Participation in NRC adjudicatory proceedings and any other site-specific legal forums.

(n) Alert and notification system reviews.

(o) Responses to petitions filed under 10 CFR 2.206.

(p) Disaster-initiated reviews and evaluations.

(q) Congressionally-initiated reviews and evaluations.

(r) Responses to licensee's challenges to FEMA's administration of the fee program.

(s) Response to actual radiological emergencies.

(t) Development of regulations, guidance, planning standards and policy.

(u) Coordination with other Federal agencies to enhance the preparedness of State and local governments for radiological emergencies.

(v) Coordination of REP Program issues with constituent organizations such as the National Emergency Management Association, Conference of Radiation Control Program Directors, and the Nuclear Energy Institute.

(w) Implementation and coordination of REP Program training with FEMA's Emergency Management Institute (EMI) to assure effective development and implementation of REP training courses and conferences.

(x) Participation of REP personnel as lecturers or to perform other functions at EMI, conferences and workshops.

(y) Services associated with the assessment of fees, billing, and administration of this part.

§ 354.6 Billing and payment of fees.

FEMA will forward bills to licensees based on the assessment methodology set forth in § 354.4 to recover the full amount of the funds budgeted by FEMA to provide REP Program services. The assessments for each site and licensee, as stated above, will not distinguish between site-specific and generic services provided by FEMA personnel and FEMA contractors. Licensees with multiple sites will receive consolidated bills. FEMA will forward one bill to each licensee during the first quarter of the fiscal year, with payment due within 30 days. There will be a one-time adjustment to the billing cycle in the first quarter of FY 1995 to accommodate a transition to the new methodology. During this quarter, an adjusted final bill for FY 1994 REP Program services will be issued along with the bill for all of FY 1995, with a possible second bill if minor adjustments are necessary. In order to avoid having the licensees pay two bills during the same fiscal year (FY 1994) for activities performed in two different fiscal years, FEMA, with the concurrence of the Department of the Treasury, will structure the due date of these two bills so that the adjusted bill for FY 1994 will be due and payable by the end of December 1994 and the full bill for FY 1995 will be due and payable in January of 1995.

§ 354.7 Failure to pay.

In any case where FEMA believes that a licensee has failed to pay a prescribed fee required under this part, procedures will be implemented in accordance with 44 CFR part 11, subpart C, to effectuate collections under the Debt Collection Act of 1982 (31 U.S.C. 3711 *et seq.*).

James L. Witt,

Director.

[FR Doc. 94–18146 Filed 7–26–94; 8:45 am]

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federal register

Wednesday
July 27, 1994

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 36

Regulations for the Management of Cabins on National Wildlife Refuges in Alaska; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AB46

Regulations for the Management of Cabins on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule clarifies, updates and modifies existing regulations on the management of cabins on national wildlife refuges (refuges) in Alaska. These regulations are necessary in order to comply with the National Wildlife Refuge System Administration Act of 1966 and the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) concerning the administration of cabins on Alaska refuges. These regulations are being revised to ensure proper and uniform management of all cabins on national wildlife refuges in Alaska. In addition, a technical amendment is made to eliminate reference to sections regarding general provisions which have been removed earlier.

EFFECTIVE DATE: This rule is effective August 26, 1994.

ADDRESSES: U.S. Fish and Wildlife Service, 1011 East Tudor Road, Attention: Daryl Lons, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Daryl Lons at the address above; Telephone: (907) 786–3354.

SUPPLEMENTARY INFORMATION:

Background

Sections 1303 and 1315 of ANILCA (16 U.S.C. 3193 and 3203) allow the Secretary of the Interior to permit cabins on refuges in Alaska under certain conditions. Section 304 of ANILCA reemphasizes the authority of the Secretary to prescribe such regulations as necessary to ensure the compatibility of uses with refuge purposes.

The original cabin policy for the U.S. Fish and Wildlife Service (Service) was developed in 1981 and revised in 1984. This policy was the basis for regulations printed in the Code of Federal Regulations Title 50. In September 1987, the Service, believing revisions of the existing cabin policy and regulations were needed, published a Draft Cabin Management Policy for Cabins on National Wildlife Refuges in Alaska. The purpose of the cabin policy is to provide uniform guidance to both the public and refuge managers on human use and occupancy of cabins located on refuges in Alaska. The policy further serves to define under what conditions use and occupancy of a cabin may be compatible with the purposes for which the refuge was established.

Comments and suggestions on the draft policy were solicited during a 60-day public review period. The Service made extensive revisions in response to the comments. Because of the number and nature of revisions made, the Service published a revised draft of the policy in December 1988 to give the public another opportunity to comment before the policy was made final.

The revised draft was completely reorganized. It better described the objectives of the policy and set forth the guidelines needed to comply with ANILCA and the National Wildlife Refuge System Administration Act of 1966. The comment period for the revised draft was also 60 days. The final cabin policy was issued in August, 1989.

The next step in the process was to publish proposed rules to afford the public an opportunity to participate in the rulemaking process and solicit public comment. A proposed rule was published in the **Federal Register** on April 25, 1991 (56 FR 19074). The proposed rule had a 60 day public comment period and public hearings were held in Anchorage and Fairbanks, Alaska.

Both the proposed and the final rules contain significantly more guidance relating to cabin management than existing regulations. However, only minor changes are made in permit application procedures. The existing requirement that individuals apply for nontransferable renewable five year special use permits is retained. However, this final rule requires two additional items (date of construction or acquisition of the cabin and the dimensions of the cabin and related structures) to be submitted in the application. In addition to the increased application requirements, the rule has additional requirements of permittees such as getting permission from the refuge manager before major modification or rehabilitation is conducted on existing cabins.

Summary of Public Comments

Four persons presented oral comments at the public hearings and the Service received an additional eight letters providing written comments from the public. A number of changes were made in the final rule from the proposed rule after consideration of all public comments received.

Some comments requested changes that were *not* made, however, and the Service first addresses these comments as noted below.

(a) Exemptions for Certain Types of Facilities

Comment: The regulations should exempt facilities such as headquarters sites, visitor centers, and state facilities used to support fish and wildlife related management.

Response: It is the Service's position that cabins used by the State for support of fish and wildlife related management are administrative cabins and should not be exempted from the regulations. Visitor centers and headquarters sites do not need to be exempted since they are not within the scope of the cabin regulations.

(b) Access

Comment: The final cabin regulations should address rights of access.

Response: The Service does not believe it is necessary to repeat such language in the cabin regulations since the intent of ANILCA Section 1110(a) regarding access is already articulated in 50 CFR 36.12 and 43 CFR Part 36.

(c) Definition of Family and Immediate Family

Comment: The definition of "family" should be broadened and the definition of "immediate family" should be deleted.

Response: The definitions, as proposed, fully meet the intent of ANILCA Section 1303(c)(1) regarding permit renewal for the life of claimants and immediate family. The definition of "immediate family" was broadened by deleting "legal" from the term "legal spouse."

(d) Public Use of Seasonally Permitted Cabins

Comment: The definition of "public use cabin" should be revised to allow seasonally permitted cabins to also be used as public use cabins during the other parts of the year.

Response: The Service does not have the authority to allow use of "existing" cabins which are privately owned. Although "new" cabins are government property, the permittees usually have a considerable amount of private property in and around the cabin. The Service does not believe it is reasonable to make the permittees' private belongings accessible to the public or require the permittees to seasonally remove all of their property.

(e) Permits for New Cabins Generally Only for Subsistence Purposes

Comment: The language "In general, new cabin permits will be given only to local residents to pursue a legitimate subsistence activity[.]" should be deleted.

Response: This statement meets the intent of ANILCA and the Service believes it is appropriate to include in the regulations.

(f) Construction and Use of Cabins in Wilderness Areas

Comment: The language which only allows new cabins to be constructed in wilderness areas that are built specifically for the administration of the area, for public safety, or for trapping where trapping has been a traditional and customary use should be deleted.

Response: The language as proposed meets the intent of the Wilderness Act, as well as ANILCA, and is appropriate to include in the regulations.

(g) Guests in Cabins

Comment: There was some objection to the requirement that guests occupying a cabin during the absence of the permittee are required to obtain a letter of authorization from the permittee.

Response: Unauthorized use and vandalism of permitted cabins has been a problem in the past. The Service believes this is a reasonable requirement to reduce the problem.

(h) Recreational Use

Comment: One commenter recommended revising the language "No special use permit will be issued for the construction of a cabin for private recreational use or for the private recreational use of an existing cabin" in order to comply with a recent court case.

Response: The language as proposed does comply with the decision of the court. The case simply made it clear that permittees and their guests have the right to recreate while occupying cabins for which permits were issued for purposes other than recreation.

(i) Nontransferable Permits

Comment: It was recommended that permits for existing cabins be transferable to another person at the election or death of the original permittee.

Response: Nontransferability is a condition of all Service special use permits, regardless of the use being authorized. The requirement is consistent with ANILCA and is appropriate to be included in the regulations.

(j) Compatibility Criteria

Comment: The criteria for determining cabin compatibility should be included in the regulations.

Response: Compatibility determinations are site specific and relate directly to the specific purposes for which each refuge was established. The 16 refuges established/redesignated by ANILCA have different purposes.

(k) Relationship of Proposed Regulations With Policy

Comment: The intent, clarifications, and directions in the Service's cabin policy should be included in the regulations or be adopted by reference.

Response: The Service's cabin policy was widely distributed to the public and is available by request to all interested parties. Some of the information in the policy is of a subjective nature which is not appropriate for regulations. All elements of the Service's cabin policy that were determined to be appropriate as regulatory language were included in the regulations.

(l) Environmental Protection Requirements

Comment: Language should be included that recognizes there are other Federal and State regulations governing environmental compliance with activities associated with cabins (e.g., disposal of sewage and solid waste, drinking water, fuel storage, etc.).

Response: Standard conditions of all special use permits issued by the Service require the permittees to follow other applicable State and Federal regulations. Therefore, the inclusion of regulatory language referencing other applicable regulations is not necessary.

(m) Late Application for Existing Cabins

Comment: The requirement that claimants who fail to meet application deadlines for "existing" cabins (within one year from the date these regulations are published) will only be allowed to apply for "new" cabins, no matter when the cabin was built or first used should be deleted.

Response: The regulations provide a one year application period following the effective date of the regulations. The Service believes that the deadline is reasonable since regulations requiring the permits have been in place since 1981 and considerable time and effort has been expended in notifying cabin occupants.

(n) Other Related Structures

Comment: The definition of "other related structures" should be revised to clarify that the term only includes those structures in the vicinity and directly related to the operation of a cabin. The commenter also requested clarification that temporary facilities may also occur under other regulations unrelated to the cabin regulations.

Response: The Service believes that the context of the definition makes it clear that the other related structures only include those associated with cabins. A statement that temporary facilities may be authorized under other regulations is irrelevant to the cabin regulations.

We appreciate these comments; however, as noted, the Service did not make substantive changes to reflect such requests for revisions for the reasons stated above.

The following is a section by section analysis of all substantive changes that the Service made in the final rule.

Analysis of Changes Made to the Proposed Rule

Section 36.33(a) Definitions

A definition for *commercial cabin* was included in this section for clarification purposes. The definition of *immediate family* was revised in response to two public comments. The definition of *guest* was revised in response to one public comment. A definition for the term *private recreational use* was included in this section in response to one public comment. The definition of *trespass cabin* was deleted, in response to one comment which pointed out that the term was not used in the regulations other than as a definition.

Section 36.33(b) All cabins.

A clarification was made that the regulations only apply on public lands within refuges and do not apply to temporary facilities in response to one comment. Descriptions of the terms "adequate notice" for unclaimed cabins and "administrative process" for permit revocation were included in response to one comment.

Section 36.33(c) Existing cabins.

A provision was included in paragraph (1) regarding the privileges and rights of existing cabin users in response to one comment. The period for applications for permits for existing cabins which are not currently under a valid permit was revised from 90 days to one year following the effective date of these regulations. This was done in response to two comments. Vandalism was included in paragraph (5) as a cause to reconstruct existing cabins in response to one comment.

Section 36.33(d) New cabins.

The sentence, "The activity must be traditional and customary for the applicant and the area, and the need for a cabin must be clearly proven." was deleted from the language of paragraph 1 in response to two public comments.

Section 36.33(e) Commercial cabins.

Clients were added to the list of persons that can occupy commercial cabins in response to one comment.

Conformance With Statutory and Regulatory Authorities

The impact of these regulations on subsistence uses has been evaluated as required by Section 810 of ANILCA. Subsistence use and access are expected to differ little from existing use. The regulations are consistent with the purposes and intent of Section 810 and will result in no significant restrictions on subsistence activities.

Properly regulated and managed cabin use is consistent with the purposes for which the various refuges in Alaska were established.

National Environmental Policy Act Compliance

The promulgation of these cabin management regulations would generally maintain the status quo existing under the current rules. Additionally, changes in environmental effects would be negligible. Therefore the implementation of regulations relative to cabin management on refuges in Alaska is determined to be a categorical exclusion as detailed in the Department of Interior Manual (516 DM 6, Appendix 1). An Environmental Action Memorandum documenting this decision was signed on June 7, 1990.

Paperwork Reduction Act

The collections of information contained in Section 36.33 have been approved by the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0077.

Economic Effects

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This rulemaking would have no significant effect on such entities as, in most cases, this merely continues pre-existing uses of public lands.

Technical Amendment

Section 36.3 *Information Collection* refers to § 36.21(f) with respect to receiving a benefit. This section has previously been removed; therefore, this rulemaking will revise Section 36.3 to remove all reference to that section.

Primary Author

Daryle Lons, Refuges and Wildlife, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

For the reasons set out in the preamble, Part 36 of Title 50 of the Code of Federal Regulations (CFR) is amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C 460(k) *et seq.*, 668dd *et seq.*, 742(a) *et seq.*, 3101 *et seq.*, and 44 U.S.C. 3501 *et seq.*

2. Section 36.3 is revised to read as follows:

§ 36.3 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. et seq. and assigned clearance number 1018–0077. The information is being collected to assist the Service in administering these programs and, particularly, in the issuance of permits and the granting of statutory or administrative benefits. The information requested in the application form is required to obtain a benefit. The public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, MS 224 ARLSQ, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0077), Washington, DC 20530.

3. Section 36.33 is revised to read as follows:

§ 36.33 Cabins and other related structures.

(a) *Definitions.* As used in this section, the term:

(1) *Administrative cabin* shall mean any cabin only used by refuge or other authorized personnel for the administration of the refuge.

(2) *Cabin* shall mean a small, usually single-story, three or more sided structure that is permanently and completely enclosed with a roof and walls. The roof and walls are not fabric, cannot be easily disassembled, and are not removed seasonally.

(3) *Commercial cabin* shall mean any cabin which is used in association with a commercial operation including but not limited to commercial fishing activities and recreational guiding services.

(4) *Existing cabin* shall mean any cabin situated on Federal lands before December 2, 1980. A cabin legally situated on lands that subsequently become refuge will also be considered an "existing" cabin providing the applicant meets the appropriate application deadlines.

(5) *Family* shall include the spouse (including what is known as a common-law relationship), children by birth or adoption, and other blood relatives within the second degree of kindred.

(6) *Guest* shall mean a person who occasionally visits the permittee in the cabin. This term does not include clients using commercial cabins.

(7) *Immediate family* shall include the spouse and children, either by birth or adoption, of the claimant residing in the cabin or structure.

(8) *New cabin* shall mean any permitted cabin constructed on refuge lands after December 2, 1980. This may also include a cabin whose claimant failed to meet the application deadline for existing cabins but is otherwise a permitted cabin.

(9) *Other related structures* shall mean those structures or devices essential to the activities for which the cabin special use permit is issued. This includes but is not limited to outdoor toilets, food caches, storage sheds, and fish drying racks.

(10) *Private recreational use* shall mean a use associated with leisure activities, not including bona fide subsistence uses or authorized commercial uses.

(11) *Public use cabin* shall mean a cabin owned and administered by the Fish and Wildlife Service and available for use by the public.

(b) *All cabins.* The regulations in this paragraph (b) shall apply to all cabins, claimants, occupants, and guests. The regulations in this paragraph (b) do not apply to temporary facilities: any structure or man-made improvement which can readily be completely dismantled and removed from the site when the period of authorized use is terminated.

(1) A special use permit is required to construct, use and/or occupy a cabin on Fish and Wildlife Service lands within the refuge. The permit may also authorize the use of related structures and other necessary appurtenances.

(2) After adequate public notice has been given, unclaimed cabins become the property of the Federal Government. Adequate public notice shall include: Posting notices of trespass on unclaimed cabins; publication of notices of trespass in Anchorage and Fairbanks newspapers and in at least one local newspaper if available; and posting notices of trespass at appropriate community post offices. A Government-owned cabin may be used for refuge administration, used for emergency purposes by the public, permitted to another applicant, designated a public use cabin, or destroyed. Disposal of excess cabins and structures will be according to regulations pursuant to Title 41, Chapter 114 of the Code of Federal Regulations.

(3) Willful noncompliance with the conditions and stipulations of a special use permit shall be considered grounds to invoke the administrative process leading to notice and hearing, and possible revocation of the permit. The refuge manager will attempt to resolve problems of noncompliance with the permittee as soon as possible after the situation becomes known. If this effort fails, the refuge manager shall provide written notice to the permittee within 30 days of that date, informing the permittee of noncompliance, giving specific instructions for compliance and providing appropriate time for the permittee to comply.

(4) No special use permit will be issued for the construction of a cabin for private recreational use or for the private recreational use of an existing cabin.

(5) Guests are allowed to occupy a cabin only during the activity period identified on the special use permit. Guests occupying a cabin during the absence of the permittee shall obtain a letter of authorization from the permittee. The guest must have a copy of the letter in his/her possession. In commercial cabins, the permittee or another person listed on the permit must be present when the cabin is occupied by guests or clients.

(6) A person whose permit application (new or renewal) for a cabin has been denied or whose cabin permit has been revoked by the refuge manager may appeal to the Regional Director as described in § 36.41(b).

(c) *Existing cabins.* In addition to paragraph (b) of this section, the regulations in this paragraph (c) shall apply to all existing cabins, claimants, occupants, and guests.

(1) Where a valid cabin permit or lease was in effect on December 2, 1980, or at the time the land was subsequently added to the refuge, the refuge manager shall provide for the continuation of the permit or lease under the same conditions. The new permit shall be nontransferable and renewable every five years unless the continuation would directly threaten or significantly impair the purposes for which the refuge was established. The cabin and related structures are the personal property of the claimant and can be removed by him/her upon non-renewal or revocation. The owner of a cabin may sell his/her interest in the cabin to another person; however, the new owner does not automatically qualify for a permit and must apply for a new one.

(2) To obtain a special use permit for a cabin that was not under permit or lease before December 2, 1980, or at the time the land was subsequently added to the refuge, a claimant should submit to the refuge manager an application that includes the following:

(i) Reasonable proof of possessory interest or right to occupy the cabin as shown by affidavit, bill of sale, or other document.

(ii) Date of construction or acquisition.

(iii) A sketch or photograph that accurately depicts the cabin and related structures.

(iv) The dimensions of the cabin and related structures.

(v) A U.S. Geological Survey topographic map that shows the geographic location of the cabin and related structures.

(vi) The claimant's agreement to vacate and remove all personal property from the cabin and related structures within one year from receipt of a non-renewal or revocation notice.

(vii) The claimant's acknowledgment that he/she has no legal interest in the real property on which the cabin and related structures are located.

(viii) A list of family members residing with the claimant in the cabin being applied for. It need only include those immediate family members who may be eligible to renew a permit for continued use and occupancy upon the original claimant's death (this is not applicable to cabins used for commercial purposes).

(3) Applications for permits for existing cabins, which are not currently under valid permits, will only be accepted for a period of one year following the effective date of these regulations. However, cabins that were legally located on lands that subsequently become refuge will also be considered "existing" cabins. The owners will have two years following the date the lands become refuge to apply for a permit. Following those dates, all applications for cabins will be for "new" cabins only, no matter when the cabin was built or first used. If ownership is not established within three years after the land becomes refuge, the cabin may be considered abandoned, and it will become Federal property in accordance with Federal regulations.

(4) The occupancy of a noncommercial cabin is limited to the permittee and his/her family, bona fide partners, and guests.

(5) Major modification or rehabilitation of an existing cabin must be approved by the refuge manager before construction begins. The modifications will be done by the permittee or designated agent and will remain the property of the permittee. Major additions (e.g., larger than the original cabin) may fall under the ownership provisions for new cabins. Although cabins destroyed by accidents, vandalism or natural causes may be reconstructed, they must be approved by the refuge manager before construction and must meet the construction guidelines for new cabins, even though remaining the property of the claimant.

(d) *New cabins.* In addition to paragraph (b) of this section, the regulations in this paragraph (d) shall apply to all new cabins, claimants, occupants, and guests.

(1) A nontransferable, five year special use permit shall only be issued upon a determination that the proposed construction, use and maintenance of the cabin is compatible with refuge purposes and that the cabin use is either directly related to refuge administration or is needed for continuation of an ongoing activity or use otherwise allowed within the refuge where the applicant lacks a reasonable off-refuge site. In addition, these activities must have historically been supported by the construction and use of cabins in the geographic area. In general, new cabin permits will be given only to local residents to pursue a legitimate subsistence activity. In determining whether to permit the construction, use,

and occupancy of cabins or other structures, the refuge manager shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to a permit are compatible with the purposes for which the refuge was established.

(2) To obtain a special use permit for a new cabin, an applicant should submit to the refuge manager an application that includes the following:

(i) A sketch that accurately depicts the proposed cabin and related structures.

(ii) The dimensions of the proposed cabin and related structures.

(iii) A U.S. Geological Survey topographic map that shows the geographic location of the proposed cabin and related structures.

(iv) The applicant's agreement to vacate and remove all personal property from the cabin and related structures within one year from receipt of a non-renewal or revocation notice.

(v) The applicant's acknowledgment that he/she has no legal interest in the cabin and related structures or in the real property on which the cabin and related structures are located.

(vi) A list of family members residing with the applicant in the cabin being applied for. It need only include those immediate family members who may be eligible to renew a permit for continued use and occupancy upon the original claimant's death.

(3) The permitting instrument shall be a nontransferable renewable five year special use permit. It shall be renewed every five years (upon request) until the death of the original claimant's last immediate family member unless the special use permit has been revoked or the cabin has been abandoned.

(4) No new cabins will be constructed in designated wilderness areas unless they are built specifically for the administration of the area, for public safety, or for trapping where trapping has been a traditional and customary use.

(5) New trapping cabins in wilderness will be available for public use to ensure public health and safety.

(6) The occupancy of a noncommercial cabin is limited to the permittee, and his/her family, bona fide partners, and guests.

(e) *Commercial cabins.* In addition to paragraph (b) of this section, the regulations in this paragraph (e) shall apply to all commercial cabins, permittees, clients, guests, and occupants.

(1) A special use permit is required for all cabins used for commercial purposes. Refuge managers may also issue special use permits that authorize additional commercial use of an existing cabin used for guiding, etc. The use of a new cabin shall be limited to the type of use specified in the original permit. The refuge manager may permit the use of an existing cabin on non-wilderness refuge lands for the exercise of valid commercial fishing rights. Such a permit may be denied if, after conducting a public hearing in the affected locality, it is found that the use is inconsistent with refuge purposes and is a significant expansion of commercial fishing activities within the unit beyond 1979 levels.

(2) When the commercial fishing or guiding rights associated with a permittee's existing cabin are acquired by a new party, the privilege of using the cabin cannot be sold and the new party does not necessarily qualify for a cabin permit. He/she must apply for a permit and meet the criteria described in this paragraph (e) before issuance of a special use permit by the refuge manager. He/she may not occupy the cabin before issuance of a permit.

(3) No new commercial cabins will be permitted in wilderness areas.

(4) Commercial cabins may be occupied only by persons legitimately involved in the commercial enterprise, assistants, employees, their families, guests and clients and only during the time that the authorized activity is occurring. The names of those individuals, excluding guests and clients, will be listed on the permit. The permittee or another individual listed on the permit must be present when the cabin is occupied.

(5) Special use permits for commercial cabins may be renewed annually in conjunction with the special use permit renewal for the commercial activity itself. The cabin permit may be issued for periods of up to five years and is a separate permit from one issued for the commercial activity.

(f) *Administrative and government-owned public use cabins.* In addition to paragraph (a) of this section, the regulations in this paragraph (f) apply to all administrative and government-owned cabins.

(1) The refuge manager can designate those cabins not under permit as administrative cabins to be used for official government business. Administrative cabins may be used by the public during life-threatening emergencies. On a case-by-case basis, they may also be designated as public use cabins when not needed for government purposes. In such cases, the refuge manager must inform the public and post dates or seasons when the cabins are available.

(2) The refuge manager may designate government-owned cabins as public use cabins. They are only intended for short-term public recreational use and occupancy. The refuge manager may develop an allocation system for managing public use cabins for short-term recreational use. No existing public use cabins shall be removed or new public use cabins constructed within wilderness areas designated by the Alaska National Interest Lands Conservation Act of 1980 or subsequently designated wilderness areas until the Secretary of the Interior notifies the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources.

Dated: February 11, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–18175 Filed 7–26–94; 8:45 am]

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federal register

Wednesday
July 27, 1994

Part VII

Committee for Purchase From People Who Are Blind or Severely Disabled

41 CFR Part 51–2, et al.
Revisions to Committee Regulations, Proposed Rule

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–3, 51–4, 51–5, 51–6, 51–8, and 51–9

Revisions to Committee Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed rule.

SUMMARY: This proposed rule updates the regulations of the Committee for Purchase From People Who Are Blind or Severely Disabled to reflect developments and changes in Committee procedures which have occurred since the regulations were last substantively revised in 1991, and to include wording changes that were overlooked in that revision. The new revisions were made necessary by changes in the Government procurement process, of which the Committee's program is a part, and by the Committee's experiences since 1991, including litigation, which have demonstrated that the regulations do not always clearly reflect the authorities given the Committee by the Javits-Wagner-O'Day (JWOD) Act and other laws as implemented in its procedures. The proposed rule will enable the JWOD Program to operate more efficiently to fulfill the Committee's mission of increasing employment opportunities for people with severe disabilities through the Government procurement process

DATES: Comments must be submitted on or before September 26, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–7740. Copies of this notice will be made available on request in Wordperfect 5.1 format on diskette.

SUPPLEMENTARY INFORMATION: The Committee's regulations were last substantively amended in 1991 (56 FR 48974, effective October 28, 1991). Those amendments were the result of the first comprehensive review of the regulations since their promulgation in 1973. The purpose of the current proposed revision to the regulations is to update them to reflect developments and changes in procedures since 1991, and to include changes that were overlooked in the last revision.

Among the changes to part 51–2 on Committee responsibilities, § 51–2.2(b) has been amended to make clear that the Committee authorizes and deauthorizes both central nonprofit agencies and nonprofit agencies employing people who are blind or have other severe disabilities to accept orders from Government agencies under the Committee's program. Section 51–2.3 is amended to indicate that the Committee publishes notices of proposed deletions and additions to the Procurement List and to require interested persons who submit bound comments on these proposals to also submit an unbound copy to be duplicated for staff use.

Sections 51–2.4, 51–2.7, and 51–3.2 have been amended to make them consistent with the JWOD Act, which considers a determination that a commodity or service is suitable for addition to the Procurement List and the establishment of an initial fair market price for the commodity or service to be two legally separate actions. The confusing term "current or most recent contractor" in § 51–2.4 has been changed to "current contractor." An explanation of those rare instances when "current contractor" means "most recent contractor" will be addressed in the Committee's procedural memoranda. The Committee's position that the "current contractor" includes affiliated companies and parent corporations is explicitly stated in the amended § 51–2.4. A provision has been added to § 51–2.4 to express the Committee's position that its discretion to determine what commodities and services are suitable for addition to the Procurement List is not totally constrained by the enumerated criteria in the section. Section 51–2.7 has also been rewritten to reflect current Committee pricing practices.

Section 51–2.5 has been amended to make clear that when the Committee decides that a proposed addition is likely to have a severe adverse impact on a current contractor, it will decide either to reduce the portion of the Government requirement for the commodity or service to be added to the Procurement List or will decline to add it. The Committee's standard for reconsidering a decision to add a commodity or service to the Procurement List, which appears in an internal memorandum, has been added to § 51–2.6.

Section 51–3.3, which deals with assignment of a commodity or service to a central nonprofit agency for possible addition to the Procurement List, and §§ 51–6.4 and 51–6.12, which deal with military resale commodities and specification changes respectively, have been rewritten to clarify their language. Small editorial changes for clarity have been made in §§ 51–4.2 and 51–5.2. Recordkeeping provisions in § 51–4.3 have been changed to permit acceptance of State certifications of disability to document individuals' disability status in accordance with recent changes in Federal disability regulations. The section title "Violations" used for both §§ 51–4.5 and 51–5.8 has been changed to indicate that the former applies to violations of Committee regulations by nonprofit agencies and the latter to violations by entities of the Government.

Section 51–5.3, which sets forth the scope of the mandatory procurement source requirement of the JWOD Program, has been amended to indicate that the requirement applies to items that are essentially the same as commodities identified on the Procurement List by a National Stock Number or other item designation. This change was made necessary by the increasing number of commercial items in the system which are essentially the same as Procurement List commodities. A similar change was made in § 51–6.13 on replacement and similar commodities. A new paragraph was added to § 51–5.3 to set forth the Committee's longstanding policy that Procurement List additions do not affect contracts in being before the effective date of the addition, or options exercised under those contracts.

The minimum figure for prior Committee approval of purchase exceptions granted by central nonprofit agencies in § 51–5.4 has been raised from $25,000 to $100,000. The $25,000 figure was set in the 1991 revision of the Committee regulations to correspond with the Government's small purchase limitation. The new figure corresponds with the simplified acquisition threshold which is expected to replace the small purchase limitation. Sections 51–5.5 and 51–5.6 on prices and shipping of commodities have been amended to allow for pricing and delivery on an FOB destination basis, consistent with recent developments in Government ordering procedures, as well as the Committee's traditional FOB origin practice.

Section 51–6.2 has been amended in paragraph (f) to correct an undetected typographical error in the 1991 amendments. Section 51–6.8 on deletions from the Procurement List has been amended by adding a paragraph making it clear that the Committee can delete a commodity or service from the Procurement List without a request from a central nonprofit agency. A new paragraph has been added to § 51–6.12 on specification changes to indicate that nonprofit agencies are to recommend

changes that will improve the commodity or service being provided, reduce costs, or improve overall value to the Government. The paragraph also requires contracting activities to respond promptly to the recommendations. Section 51–6.13 has been amended to clarify its language and to indicate that other colors, sizes, or variations of commodities on the Procurement List which have not been previously procured are considered to be on the Procurement List as well.

Section 51–8.3, consisting of definitions applicable only to part 51–8 on Committee actions under the Freedom of Information Act (FOIA), has been amended by removing the definition of the Committee, which also appears in the general definitions for the Committee's regulations at § 51–1.3, and by changing the title "Chairman" to "Chairperson" as the title of the Committee's presiding officer. The same change to "Chairperson" has also been made in §§ 51–8.7, 51–8.10, 51–8.11, and 51–9.405.

Changes have been made to §§ 51–8.1 and 51–8.4 and to paragraph (a) of § 51–8.5 to make clear the distinction between material which the Committee is required to make available for public inspection and material which the Committee provides in response to a FOIA request. The provision in § 51–8.14 for a minimum amount for FOIA processing costs below which no fee will be charged has been qualified to indicate that the minimum will apply to each Committee response to a FOIA request where it is necessary to make more than one response to a request. The Committee bills FOIA requesters separately for each response, which requires a decision each time as to whether the cost of collection would exceed the amount billed.

Regulatory Flexibility Act

I certify that this proposed revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revisions basically update and clarify program policies and procedures and do not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this proposed regulatory revision because it contains no information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the proposed revision to the Committee's regulations is not a significant regulatory action as defined in the Executive Order.

List of Subjects

41 CFR Parts 51–2 Through 51–6

Government procurement, Handicapped, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

41 CFR Part 51–8

Freedom of information.

41 CFR Part 51–9

Privacy.

For the reasons set out in the preamble, Parts 51–2 through 51–6, 51–8 and 51–9 of Title 41, Chapter 51 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for parts 51–2 through 51–6 continues to read as follows:

Authority: 41 U.S.C. 46–48C

PART 51–2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

2. Section 51–2.2 is amended by adding the following sentence at the end of paragraph (b):

§ 51–2.2 Powers and responsibilities.

* * * * *

(b) * * * Authorize and deauthorize central nonprofit agencies and nonprofit agencies to accept orders from contracting activities for the furnishing of specific commodities and services on the Procurement List.

* * * * *

3. Section 51–2.3 is revised to read as follows:

§ 51–2.3 Notice of proposed addition or deletion.

At least 30 days prior to the Committee's consideration of the addition or deletion of commodity or service to or from the Procurement List, the Committee publishes a notice in the **Federal Register** announcing the proposed addition or deletion and providing interested persons an opportunity to submit written data or comments on the proposal. Interested persons submitting comments in bound form should also submit an unbound copy that is capable of being legibly photocopied.

4. Section 51–2.4 is amended by removing paragraph (d), redesignating the introductory text and paragraphs (a) through (c) as paragraphs (a) through (a)(3), redesignating paragraphs (e) through (e)(3) as paragraphs (a)(4) through (a)(4)(ii), revising the newly redesignated paragraphs (a)(4) through (a)(4)(ii), and adding paragraph (b) to read as follows:

§ 51–2.4 Determination of suitability.

(a) For a commodity or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied:

* * * * *

(4) *Level of impact on the current contractor for the commodity or service*

(i) In deciding whether or not a proposed addition to the Procurement List is likely to have a severe adverse impact on the current contractor for the specific commodity or service, the Committee gives particular attention to:

(A) The possible impact on the contractor's total sales, including the sales of affiliated companies and parent corporations. In addition, the Committee considers the effects of previous Committee actions.

(B) Whether that contractor has been a continuous supplier to the Government of the specific commodity or service proposed for addition and is, therefore, more dependent on the income from such sales to the Government.

(C) Any substantive comments received as the result of the notice of the proposed addition in the **Federal Register**.

(ii) If there is not a current contract for the commodity or service being proposed for addition to the Procurement List, the Committee may consider the most recent contractor to furnish the item to the Government as the current contractor for the purpose of determining the level of impact.

(b) In determining the suitability of a commodity or service for addition to the Procurement List, the Committee also considers other information it deems pertinent, including comments on a proposal published in the **Federal Register** to add the commodity or service to the Procurement List and information submitted by Government personnel and interested persons.

5. Section 51–2.5 is revised to read as follows:

§ 51–2.5 Committee decision.

The Committee considers the particular facts and circumstances in each case in determining if a commodity or service is suitable for addition to the Procurement List. When the Committee

determines that a proposed addition is likely to have a severe adverse impact on a current contractor, it takes this fact into consideration in deciding not to add the commodity or service to the Procurement List, or to add only a portion of the Government requirement for the item. If the Committee decides to add a commodity or service in whole or in part to the Procurement List, that decision is announced in the **Federal Register** with a notice that includes information on the effective date of the addition.

6. Section 51–2.6 is amended by redesignating the current text of the section as paragraph (a) and adding paragraph (b) to read as follows:

§ 51–2.6 Reconsideration of Committee decision.

(a) * * *

(b) In reconsidering its decision, the Committee will balance the harm to the party requesting reconsideration if the item remains on the Procurement List against the harm which the nonprofit agency or its employees who are blind or have other severe disabilities would suffer if the item were deleted from the Procurement List. The Committee may also consider information bringing into question its conclusions on the suitability criteria on which it based its original decision as factors weighing toward a decision to delete the item, and information concerning possible harm to the contracting activity and the JWOD Program as factors weighing toward confirmation of the original decision.

7. Section 51–2.7 is revised to read as follows:

§ 51–2.7 Fair market price.

The Committee is responsible for determining the fair market prices, and changes thereto, for commodities and services on the Procurement List. The Committee establishes the initial fair market price at the time a commodity or service is added to the Procurement List. In cases where the prices are not based on competitive bids, the Committee considers recommendations from contracting activities and the central nonprofit agency concerned. Recommendations for fair market prices or changes thereto shall be submitted by the nonprofit agencies to the appropriate central nonprofit agency. The central nonprofit agency shall analyze the data and submit a recommended fair market price to the Committee accompanied by the information required by the Committee's pricing procedures to support the recommended price.

PART 51–3—CENTRAL NONPROFIT AGENCIES

8. Section 51–3.2 is amended by revising paragraph (d), designating paragraphs (e) through (m) as paragraphs (f) through (n), and adding a new paragraph (e) to read as follows:

§ 51–3.2 Responsibilities under the JWOD Program.

* * * * *

(d) Recommend to the Committee, with the supporting information required by Committee procedures, suitable commodities or services for procurement from its nonprofit agencies.

(e) Recommend to the Committee, with the supporting information required by Committee procedures, initial fair market prices for commodities or services proposed for addition to the Procurement List.

* * * * *

9. Section 51–3.3 is revised to read as follows:

§ 51–3.3 Assignment of commodity or service.

(a) The central nonprofit agencies shall determine by mutual agreement the assignment to one of them of a commodity or service for the purpose of evaluating its potential for possible future addition to the Procurement List, except that the Committee shall initially assign a commodity to National Industries for the Blind when NISH has expressed an interest in the commodity and National Industries for the Blind has exercised the blind priority.

(b) NISH shall provide National Industries for the Blind with procurement information necessary for a decision to exercise or waive the blind priority when it requests a decision. National Industries for the Blind shall normally notify NISH of its decision within 30 days, but not later than 60 days after receipt of the procurement information, unless the two central nonprofit agencies agree to an extension of time for the decision. Disagreements on extensions shall be referred to the Committee for resolution.

(c) If National Industries for the Blind exercises the blind priority for a commodity, it shall immediately notify the Committee and NISH and shall submit to the Committee a proposal to add the commodity to the Procurement List within nine months of the notification, unless the Committee extends the assignment period because of delays beyond the control of National Industries for the Blind. Upon expiration of the assignment period, the Committee shall reassign the commodity to NISH.

(d) The central nonprofit agency assigned a commodity shall obtain a decision from Federal Prison Industries on the exercise or waiver of its priority and shall submit the procurement information required by Federal Prison Industries when it requests the decision. Federal Prison Industries shall normally notify the central nonprofit agency of its decision within 30 days, but not later than 60 days after receipt of the procurement information, unless it agrees with the central nonprofit agency on an extension of time for the decision. The central nonprofit agency shall refer a disagreement over an extension to the Committee for resolution with Federal Prison Industries.

(e) The central nonprofit agency shall provide the Committee the decision of Federal Prison Industries on the waiver or exercise of its priority when it requests the addition of the commodity to the Procurement List. NISH shall also provide the decision of National Industries for the Blind waiving its priority.

PART 51–4—NONPROFIT AGENCIES

10. Section 51–4.2 is amended by revising paragraph (a)(1) introductory text, and (a)(2) introductory text, to read as follows:

§ 51–4.2 Initial qualification.

(a) * * *

(1) A privately incorporated nonprofit agency shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the corporation or chief executive:

* * * * *

(2) A State-owned or State-operated nonprofit agency, or a nonprofit agency established or authorized by a State statute other than the State corporation laws and not privately incorporated, shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the wholly-owned State corporation or an official of the agency that directs the operations of the nonprofit agency, as applicable:

* * * * *

11. Section 51–4.3 is amended by revising paragraphs (b)(6) and (c)(1) to read as follows:

§ 51–4.3 Maintaining qualification.

* * * * *

(b) * * *

(6) Maintain a file on each blind individual performing direct labor which contains a written report reflecting visual acuity and field of vision of each eye, with best correction,

signed by a person licensed to make such an evaluation, or a State certification of blindness.

* * * * *

(c) * * *

(1) A written report signed by a licensed physician, psychiatrist, or qualified psychologist, reflecting the nature and extent of the disability or disabilities that cause such person to qualify as a person with a severe disability, or a State certification listing the disability or disabilities.

* * * * *

12. Section 51–4.5 is amended by revising the section heading to read as follows:

§ 51–4.5 Violations by nonprofit agencies.

* * * * *

PART 51–5—CONTRACTING REQUIREMENTS

13. Section 51–5.2 is amended by revising the section heading and paragraph (a) and adding a second sentence to paragraph (e) to read as follows:

§ 51–5.2 Mandatory source requirement.

(a) Nonprofit agencies designated by the Committee are mandatory sources of supply for all entities of the Government for commodities and services included on the Procurement List, as provided in § 51–1.2 of this chapter.

* * * * *

(e) * * * This requirement applies both to contracting activities and to other persons providing such commodities to them by contract.

* * * * *

14. Section 51–5.3 is amended by revising the first sentence of paragraph (a) and adding paragraph (c) to read as follows:

§ 51–5.3 Scope of requirement.

(a) When a commodity is included on the Procurement List, the mandatory source requirement covers the National Stock Number or item designation listed and commodities that are essentially the same as the listed item. * * *

* * * * *

(c) When a commodity or service is added to the Procurement List, the addition does not affect contracts for the commodity or service awarded prior to the effective date of the Procurement List addition or options exercised under those contracts.

§ 51–5.4 [Amended]

15. Section 51–5.4 is amended by removing "$25,000" where it appears in paragraphs (d) and (f)(1) and replacing it with "$100,000" in both places.

16. Section 51–5.5 is amended by revising paragraph (b) to read as follows:

§ 51–5.5 Prices.

* * * * *

(b) Prices for commodities include applicable packaging, packing, and marking. Prices include transportation to point of delivery as specified in § 51–5.6 of this chapter.

* * * * *

17. Section 51–5.6 is revised to read as follows:

§ 51–5.6 Shipping.

(a) Except as provided in paragraph (c) of this section for commodities other than military resale commodities, delivery is accomplished when a shipment is placed aboard the vehicle of the initial carrier. Time of delivery is when the shipment is released to and accepted by the initial carrier.

(b) Method of transportation to destination shall normally be by Government bills of lading although the contracting activity may designate another method of transportation on its order, in accordance with Committee procedures. Government bills of lading may accompany orders or be otherwise furnished, but shall be supplied promptly. If the contracting activity fails to designate a method of transportation or furnish a Government bill of lading promptly, it shall constitute an excusable cause for delay in delivery.

(c) The Committee may determine that for certain commodity orders, delivery is accomplished when the shipment is delivered to the purchaser's facility (plant, warehouse, store, lot, or other location to which shipment can be made). Time of delivery for these orders is when the shipment is released by the carrier and accepted by the purchaser. Under this method of transportation, the nonprofit agency will normally ship by commercial bills of lading and will be responsible for any loss or damage to the goods occurring before receipt of the shipment at the delivery point specified. The nonprofit agency will prepare and distribute commercial bills of lading, furnish a delivery schedule and designate the mode of delivering carrier, and pay all charges to the specified point of delivery.

§ 51–5.8 Violations by entities of the Government.

18. Section 51–5.8 is amended by revising the section heading to read as set forth above.

* * * * *

PART 51–6—PROCUREMENT PROCEDURES

19. Section 51–6.2 is amended by revising the second sentence in paragraph (f) to read as follows:

§ 51–6.2 Allocation process.

* * * * *

(f) * * * When a request for allocation provides a delivery schedule (based on established lead times and time required for processing the allocation request) which cannot be met, the central nonprofit agency shall request a revision, which the contracting activity shall grant, if feasible, or the central nonprofit agency shall issue a purchase exception authorizing procurement from commercial sources as provided in § 51–5.4 of this chapter.

* * * * *

20. Section 51–6.4 is amended by revising paragraphs (a), (b), (c)(3), and (c)(4), and the second sentence of paragraph (e) to read as follows:

§ 51–6.4 Military resale commodities.

(a) Purchase procedures for ordering military resale commodities are available from the central nonprofit agencies. Authorized resale outlets (military commissary stores, Armed Forces exchanges and like activities of other Government departments and agencies) shall request the central nonprofit agency responsible for the military resale commodity being ordered to designate the nonprofit agency or its agent to which the outlets shall forward orders.

(b) Authorized resale outlets shall stock military resale commodities in as broad a range as practicable. Authorized resale outlets may stock commercial items comparable to the military resale commodities they stock, except that military commissary stores shall stock military resale commodities in the 900-series exclusively, unless an exception has been granted on an individual store basis for the stocking of comparable commercial items for which there is a significant customer demand.

(c) * * *

(3) Issue guidance requiring commissary store personnel to maximize sales potential of military resale commodities.

(4) Establish policies and procedures which reserve to its agency headquarters the authority to grant exceptions to the exclusive stocking of 900-series military resale commodities.

* * * * *

(e) * * * Zone pricing is used for delivery to Alaska and Hawaii.

21. Section 51–6.8 is amended by adding paragraph (e) to read as follows:

§ 51–6.8 Deletion of items from the Procurement List.

* * * * *

(e) The Committee may delete an item from the Procurement List without a request from a central nonprofit agency if the Committee determines that none of the nonprofit agencies participating in the JWOD Program are capable and desirous of furnishing the commodity or service to the Government, or if the Committee decides that the commodity or service is no longer suitable for procurement from nonprofit agencies employing people who are blind or have other severe disabilities. In considering such an action, the Committee will consult with the appropriate central nonprofit agency, the nonprofit agency or agencies involved, and the contracting activity.

22. Section 51–6.12 is amended by revising paragraphs (a), (c), and (d) and adding paragraph (e) to read as follows:

§ 51–6.12 Specification changes and similar actions.

(a) Contracting activities shall notify the nonprofit agency or agencies authorized to furnish a commodity on the Procurement List and the central nonprofit agency concerned of any changes to the specification or other description of the commodity.

* * * * *

(c) For services on the Procurement List, the contracting activity shall notify the nonprofit agency furnishing the service and the central nonprofit agency concerned at least 90 days prior to the date that any changes in the statement of work or other conditions of performance will be required.

(d) If an emergency makes it impossible for a contracting activity to give the 90-day notice required by paragraphs (b) and (c) of this section, the contracting activity shall inform the nonprofit agency and the central nonprofit agency concerned of the reasons it cannot meet the 90-day notice requirement when it places the order or change notice.

(e) Nonprofit agencies shall recommend changes in specifications, item descriptions, and statements of work that will improve the commodity or service being provided, reduce costs, or improve overall value to the Government. Contracting activities shall respond promptly to these recommendations and work with the nonprofit agencies to implement them when appropriate.

23. Section 51–6.13 is revised to read as follows:

§ 51–6.13 Replacement and similar commodities.

(a) When a commodity on the Procurement List is replaced by another commodity which has not been recently procured, and a nonprofit agency can furnish the replacement commodity in accordance with the Government's quality standards and delivery schedules, the replacement commodity is automatically considered to be on the Procurement List and shall be procured from the nonprofit agency designated by the Committee at the fair market price the Committee has set. The commodity being replaced shall continue to be included on the Procurement List until there is no longer a Government requirement for that commodity.

(b) If contracting activities desire to procure additional sizes, colors, or other variations of a commodity after the commodity is added to the Procurement List, and these similar commodities have not recently been procured, these commodities are also automatically considered to be on the Procurement List.

(c) In accordance with § 51–5.3 of this chapter, contracting activities are not permitted to purchase commercial items that are essentially the same as commodities on the Procurement List.

PART 51–8—PUBLIC AVAILABILITY OF AGENCY MATERIALS

24. The authority citation for part 51–8 continues to read as follows:

Authority: 5 U.S.C. 552.

25. Section 51–8.1 is revised to read as follows:

§ 51–8.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of material maintained by the Committee, provide for administrative appeal of initial determinations to deny requests for material, and prescribe fees to be charged by the Committee to recover search, review, and duplication costs.

26. Section 51–8.3 is amended by revising the introductory text of the section, removing paragraph (b), redesignating paragraphs (c) through (i) as paragraphs (b) through (h), and revising newly redesignated paragraph (b), to read as follows:

§ 51–8.3 Definitions.

As used in this part:

(a) * * *

(b) The term *Chairperson* means the Chairperson of the Committee for Purchase From People Who Are Blind or Severely Disabled.

* * * * *

27. Section 51–8.4 is revised to read as follows:

§ 51–8.4 Availability of materials.

Material described in 5 U.S.C. 552(a)(2) shall be available for inspection during normal business hours at the Committee's offices, Crystal Square 3, 1735 Jefferson Davis Highway, Suite 403, Arlington, Virginia 22202–3461. An individual who intends to visit the Committee offices to inspect this material shall make an appointment with the Executive Director at least one week in advance, except when the Committee has provided notification to the individual that the material is available for inspection in the Committee offices, in which case an appointment must be made at least 24 hours in advance.

28. Section 51–8.5 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 51–8.5 Requests for records.

(a) Requests to obtain copies of any material maintained by the Committee must be submitted in writing to the Executive Director at the Committee's offices, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461. * * *

* * * * *

§ 51–8.7 [Amended]

29. Section 51–8.7 is amended by removing "Chairman" where it appears in paragraph (e) and replacing it with "Chairperson."

§ 51–8.10 [Amended]

30. Section 51–8.10 is amended by removing "Chairman" where it appears in paragraphs (a), (b), (c), and (d) and replacing it with "Chairperson" in each place it occurs.

§ 51–8.11 [Amended]

31. Section 51–8.11 is amended by removing "Chairman" where it appears in paragraph (a) and replacing it with "Chairperson."

32. Section 51–8.14 is amended by revising paragraph (c) to read as follows:

§ 51–8.14 Fee waivers and reductions.

* * * * *

(c) Fees shall be waived in all circumstances where the amount of the fee is $10 or less as the cost of collection would be greater than the fee. This minimum shall be applied separately to each Committee response when it is necessary for the Committee to make more than one response to a request for records.

PART 51–9—PRIVACY ACT RULES

33. The authority citation for part 51–9 is amended to read as follows:

Authority: 5 U.S.C. 552a

§ 51–9.405 [Amended]

34. Section 51–9.405 is amended by removing "Chairman" wherever it appears in each paragraph of the section and replacing it with "Chairperson" in each place it occurs.

Dated: July 21, 1994.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–18246 Filed 7–26–94; 8:45 am]

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Part VIII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 571 and 953

Community Development Block Grants for Indian Tribes and Alaskan Native Villages; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 571 and 953

[Docket No. R-94-1530; FR-2880-I-05]

RIN 2577-AB31

Community Development Block Grants for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth the requirements and procedures for awarding Community Development Block Grant (CDBG) funds to Indian tribes and Alaskan native villages.

Following issuance of a proposed rule on June 21, 1991, the Department issued an interim rule on April 7, 1992, regarding the criteria for awarding CDBG funding to Indian tribes and Alaskan native villages. The Department has decided to issue another interim rule to address the comments received on the April 7, 1992 interim rule and to allow the public to see how the rule works in conjunction with the latest Notice of Fund Availability (NOFA). This interim rule will enable Indian tribes and Alaskan native villages to meet with representatives of the HUD Office of Native American Programs (ONAP) field offices to make suggestions for modification of the regulation before it is issued in final form.

DATES: Effective date: October 1, 1994.

Comments due date: December 27, 1994.

Expiration date: This interim rule will expire April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Dom Nessi, Director Office of Native American Programs, Room 4140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (202) 708-1015. TDD (202) 708-2565. (These are not toll-free numbers.)

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506-0043.

Background

The authority for the CDBG program for Indian tribes and Alaskan native villages was previously with the Office of Community Planning and Development; therefore, all previous issuances refer to it under 24 CFR part 571. However, that authority was transferred recently to the Office of Public and Indian Housing. Therefore, this interim rule is placed in 24 CFR part 953, and part 571 is removed.

Section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235) ("Reform Act"), as amended by the National Affordable Housing Act ("NAHA"), amended Title I of the Housing and Community Development Act of 1974 ("1974 Act"), by transferring the authority for making grants to Indian Tribes from the section 107 discretionary fund to the allocation and distribution of funds provisions of Section 106 of the 1974 Act. Under section 106, as so amended, one percent of the title I appropriation, excluding the amounts appropriated for use under section 107, is allocated for grants to Indian Tribes. The allocated amount is to be distributed to Indian Tribes/Villages on a competitive basis in accordance with selection criteria "contained in a regulation promulgated by the Secretary after notice and public comment." The Department issued the proposed rule on June 21, 1991, at 56 FR 28666, to comply with the requirement for publication for comment. The Department issued an interim rule, April 7, 1992, at 57 FR 11832, to give the public an additional opportunity to comment on the interim rule after it has been in effect for one round of competition. This revised interim rule is issued to address the comments and will allow the public to see how the interim rule works in conjunction with the latest NOFA.

Section 102 of the Reform Act requires the Secretary to publish in the **Federal Register** a NOFA regarding funding that is available. In addition to announcing the availability of funds, the NOFA will further define application procedures and selection criteria.

Relocation and Real Property Acquisition Policies

Section 953.602 describes applicable relocation and real property acquisition policies, including those implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). Under the government-wide URA rule at 49 CFR Part 24, any person (family, individual, business, nonprofit organizations, or farm) displaced on or after April 2, 1989 as a direct result of acquisition, rehabilitation or demolition for a project assisted under this part is entitled to URA relocation assistance. The acquisition of real property for a project assisted under this part is also subject to the URA. The URA policies are described in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

Public Comments

The Department of Housing and Urban Development (HUD) received 18 individual comments from 9 sources on the interim rule published on April 7, 1992. HUD received 6 letters from tribes, and 3 from regional and private organizations. General comments are discussed below and are followed by specific comments. The specific comments and the Department's responses are discussed under "Specific Comments," according to the section where they appear in the interim regulation.

General Comments

Numerous comments were received requesting more tribal involvement in the development of the final rule and NOFA. Also questioned was the need for a national NOFA since the program had operated with a regional competition in the past.

The passage of two statutes, NAHA and the Reform Act, created the need for a national NOFA and revised rule. These statutes changed the Indian Community Development Block (ICDBG) program selection process. The NAHA required the Secretary of HUD to promulgate a regulation containing selection criteria used to award funds in competitive programs. The Reform Act restricts the disclosure of information about HUD programs and discretionary funds. The current interim ICDBG rule contained changes reflecting the NAHA and Reform Act requirements. As a result of the written comments received and the consultation sessions held relative to this interim rule, a second interim rule is being published to continue the process of refining and developing a final rule. HUD is

committed to involving the public in this process to the extent practicable. In order to publish a fair and coherent NOFA, HUD Headquarters consulted extensively with HUD ONAP field offices throughout the NOFA's development. Since the ONAP field offices are in frequent contact with the tribes/villages within their jurisdiction, they were able to provide Headquarters with information on how various NOFA provisions would be received by ICDBG applicants. Following the publication of the NOFA and regulation and after the selection process has been completed, HUD field staff will hold public meetings to get suggestions on how to improve the NOFA.

To facilitate the Department's ability to more readily respond to the consultation process, changes to the rating criteria have been made in this Interim Rule. Sections 953.303, 953.304, and 953.305 have been modified to permit a wider range of changes to the rating criteria in the NOFA without changing the regulation. The separate rating criteria has been eliminated for Public Services activities at § 953.306. Eligible Public Service activities must still meet the submission criteria set out in this part.

Specific Comments

Section 953.4 Definitions

Comment: One comment was received concerning the requirement that the applicant must, when reporting income levels to HUD, include and identify the distribution of tribal or village income to families, households or individuals in the definition of low and moderate income beneficiary. The commenter pointed out the existence of a Federal statute that might preclude the use of portions of such payments from being considered income when determining eligibility for federal or federally assisted programs.

Response: It is recognized that such exclusions may exist and the statutory mandates will be followed where appropriate. Their existence would not necessarily indicate the need for additional language identifying the exclusions. These claimed exclusions would be identified by the applicant when reporting income to HUD when complying with this section of the interim rule.

Section 953.5 Eligible Applicants

Comment: One comment was received noting that Indians residing in urban areas and metropolitan cities and not on reservations do not receive adequate service or funding from IHS and no service from BIA. The commenter suggested that if HUD recognized these groups it would be beneficial in gaining acceptance with other agencies such as IHS and BIA.

Response: The Department does not have legislative authority to provide Federal recognition to Indian Tribes or Alaskan Native Villages, but deals with those tribes and villages recognized by the Treasury Department and the Bureau of Indian Affairs as stipulated in this section. The Indian groups residing in urban areas and metropolitan cities and not on reservations can receive, to the extent such persons are otherwise eligible as low income persons, benefits under the regular CDBG programs serving the area where they reside.

The commenter also indicated the desire to establish an entitlement program for the Indians. This proposal has been considered but cannot be adopted without amendments to existing legislation. For these reasons there are no changes proposed in this section of the interim rule.

Section 953.6 Technical Assistance

Comment: Four commenters requested that HUD give the field offices latitude in providing more technical assistance on responding to the NOFA and the submission requirements than presently permitted. Several felt that the tribes/villages are penalized for not having the sophistication needed to prepare successful applications. One commenter felt that the lack of technical assistance resulted in some tribes/villages not submitting applications for activities they felt were most appropriate to address their needs because of the uncertainty of their eligibility or rating. The majority of the commenters felt that expanded technical assistance was necessary for the tribes/villages to successfully compete in the program.

Response: The technical assistance provisions of the Reform Act limit the direct assistance that may be provided by the Department. New regulations providing in-depth guidance have been issued by the Department and are expected to more clearly define the technical assistance role of the Field staff. Technical Assistance during the application process will be provided to the greatest extent allowed by the Reform Act.

Section 953.100 Grant Ceilings

Comment: One commenter felt that the method of setting grant ceilings was not equitable because the established limits in their area would permit a tribe one fourth their size to apply for the same amount of grant funds as they could. The commenter proposed a revision to the method currently utilized by the field office that would increase the grant amounts they could apply for each funding cycle.

Response: Paragraph (b)(1) of this section gives the Assistant Secretary final authority to determine grant ceilings for each field office. Field offices recommend the ceilings for their jurisdiction. The reason for this process is to ensure that grant ceilings are appropriate on a national level. The Department has determined that the present procedure for establishing grant ceilings is the most appropriate method of establishing these limits and proposes no changes to this section.

Section 953.101 Regional Allocation of Funds

Comment: Paragraph (c) of this section states that population data will be used to allocate funds. Commenters asked which data sources HUD would use to count native populations.

Response: HUD will use Census data. HUD recognizes that Census data on Indian and Alaskan native populations may be incomplete or inaccurate. However, these are the only data that are consistently available, and they are reasonably representative when aggregated by region. HUD encourages tribes and villages to use their own survey or other locally collected data in their project applications, after consulting with the ONAP on appropriate data collection methods, if they believe these to be more reliable.

Section 953.102 Recaptures

Comment: One commenter suggested that in cases where recaptured funds became available and are offered to a standby applicant to fund a previously rated and ranked activity, the applicant should be funded on the new cost estimate and not the amount applied for initially.

Response: In all cases where recaptured funds are reallocated to fund a standby application, the Department must insure the criteria contained in the governing NOFA are met. If the amounts available are not sufficient to fund the application as proposed, the next highest ranked application would be considered for funding.

Section 953.300 Application Requirements

Comment: A comment was received that recommended that an applicant be allowed to submit its application with an unlimited number of projects but restrict the number approved to the grant limits established in the NOFA.

Response: This recommendation was considered but not included in the

revisions to the interim rule. The current application process is intended to promote a competition where all applicants have an equal chance for funding and not one that depends upon an applicant's ability to produce large numbers of projects that could be included in their application. The present application process leaves the decisions on the type of project to be submitted with the applicant and does not pass it on to HUD.

Comment: One commenter also expressed a concern about what they perceived as a short amount of time to submit applications after publication of the NOFA.

Response: The regulation gives applicants *at least* 30 days to submit their applications to the field office. This minimum level was established so that it is clear that under any circumstance an applicant would have at least this amount of time to prepare an application. The NOFA will establish the time in which the applicants have to prepare and submit their applications. The application submission deadline will continue to be established by Headquarters, since the NOFA is issued on a national basis.

In an effort to streamline this regulation, portions of § 953.300, Application requirements, will be moved to the NOFA. Since this information is directly related to the competitive process set out in the NOFA, it is felt that it will be more accessible to potential applicants in this location.

Section 953.301 Screening and Review of Applications

Comment: One comment was received indicating that the 14-day cure period was inadequate and should be increased to 20 days from date of receipt of the field office request.

Response: This process allows applicants to submit only that information requested by the field office to help clarify the application. HUD's regulations at 24 CFR 4.105(b)(3) allow authorized employees, during the selection process, to contact applicants to seek clarification of the terms of an applicant's submission. HUD policy requires each NOFA to include a cure period for technical deficiencies of at least 14 calendar days. Any deficiency that can be cured (e.g., the submission of a missing certification) cannot affect the rating of the application in either a positive or negative way and should by its nature be readily correctable within the present 14 day period.

Portions of § 953.301, Screening and review of applications, have been moved from this Interim Rule and will be placed in the NOFA. This change will provide for more flexibility in meeting the needs of the program as it continues to evolve and makes the requirements readily available to the applicant.

Section 953.302 Selection Process

Comment: One commenter suggested that a waiver of the threshold requirement regarding performance deficiencies described at § 953.302(a)(2)(ii)(A) be permitted.

Response: The subject provision appears to contain sufficient flexibility as written. Section 953.7 sets forth the conditions where a waiver of this interim rule would be permissible. A specific waiver provision for threshold requirements in the interim rule does not seem warranted.

Section 953.303 Housing Rating Category

Comment: The first paragraph of this section states that the applicant shall provide assistance only to tenants/homeowners whose payments are current, or who are current in a repayment agreement with HUD. One commenter noted the difficulty in obtaining current payment information.

Response: The Department expects the applicant to obtain the most recent payment information it can from the Indian Housing Authority (IHA). Note that the field office may grant exceptions to this requirement on a case-by-case basis.

Section 953.304 Community Facilities

Comment: Two commenters proposed that the regulations include museums, ecomuseums, cultural centers and archeological sites as appropriate, eligible community facilities.

Response: These are eligible activities under the current regulations.

Comment: One commenter requested a reconsideration of the portions of this section that relate to the definition of "neediest segment of the population" in the rating factors for community buildings. This rating factor required that more than 80% of the beneficiaries be very low income to receive the maximum points. Fifty-one to 79.9 percent of the beneficiaries must be very low income to receive moderate points.

Response: This section of the regulation has been revised to remove this definition of "neediest segment of the population".

Section 953.305 Economic Development Rating Category

Comment: One commenter suggested that the regulation is unfair in providing special opportunities for federally assisted housing residents.

Response: While this specific language has been removed from the regulation, it in no way diminishes HUD commitment to empower the poor residing in federally assisted housing. This factor remains in the NOFA to encourage applicants to provide opportunities for residents of federally assisted housing to improve their economic situation while possibly improving their units.

Comment: Two commenters stated that HUD should specifically allow tribes to apply for offices and other buildings that are not eligible as community facilities as economic development activities. While this activity would not appear to be prohibited by the regulations, there is not sufficient information provided to make a determination of eligibility.

Response: Because of the wide range of activities that are potentially eligible under this program, it is not possible to list them all in this interim rule. The ONAP field office should be provided with specific information so that a determination can be made.

Section 953.307 Funding Process

Comment: One commenter questioned the need to re-submit the data listed at § 953.307(b)(1) if the data had been submitted in the application and was still valid.

Response: Language has been added to make the pre-award process optional if HUD has determined that no additional data is needed or that current data does not need updating.

Comment: Section 953.307(b)(2) of the current regulation gives successful applicants at least 30 days to provide supporting documentation at the request of the field office, prior to execution of the grant agreement. One commenter suggested expanding the 30-day period because of the difficulty of preparing and submitting such information to make the application more competitive within the 30-day time period.

Response: Since the data requested would not be intended to improve the competitive position of the application, but rather to support the previously provided information, it was determined that increasing the 30 days would not be appropriate.

Other Changes Made By This Interim Rule

Subpart E—Imminent Threat Grants

Section 953.403, Availability of Funds, has been revised to allow the Office of Native American Programs to retain up to five percent of the funds

made available by this part at the national level. The NOFA will specify the amount of Imminent Threat funds to be retained during each funding cycle. This change is intended to insure the availability of imminent threat funding throughout the fiscal year.

Section 953.505 Program Income

The program income language in § 570.504, previously incorporated by reference, has been reproduced in § 953.505 of these regulations. This will hopefully make the ICDBG Regulation more user friendly by placing all program income requirements in one location.

Section 953.606 Conflict of Interest

Section 953.606 (e) has been modified to provide for a public disclosure of the nature of the assistance to be provided and the basis of the selection of persons to be assisted for housing rehabilitation or new housing. Evidence of the disclosure must be submitted with the application.

Other Matters

Justification for Interim Rule

The Department has decided to issue another interim rule to address the comments received on the April 7, 1992 interim rule and to allow the public to see how the rule works in conjunction with the latest Notice of Fund Availability (NOFA). This interim rule will enable Indian tribes and Alaskan native villages to meet with representatives of the HUD Office of Native American Programs (ONAP) field offices to make suggestions for modification of the regulation before it is issued in final form.

The Department has adopted a policy of setting a date for expiration of an interim rule unless a final rule is published before that date. This "sunset" provision appears in § 953.1 of the interim rule and provides that the rule will expire on a date 18 months from the date of publication.

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact 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.

Regulatory Flexibility

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. The interim rule establishes criteria for funding eligible recipients among Indian Tribes/Villages and has no impact on small entities.

Semiannual Agenda

This interim rule was listed as Item No. 1690 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20470) pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this interim rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the interim rule is not subject to review under the Order. While the interim rule has some direct effects on States and political subdivisions, those effects are limited to direct implementation of instructions contained in statutes governing the grant program. Given the lack of discretion in the Department to refrain from implementing these statutory instructions, further analysis of federalism concerns would serve no useful purpose.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this interim rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.223.

List of Subjects in 24 CFR Part 953

Alaska, Community development block grants, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, and under the authority of 42 U.S.C. 3535(d), title 24 of the Code of Federal Regulations is amended, as follows:

Part 571—[Removed]

1. Part 571 is removed.

2. Part 953, consisting of §§ 953.1 through 953.704, is added to read as follows:

PART 953—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

Subpart A—General Provisions

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953.1 Applicability and scope.
953.2 Program objectives.
953.3 Nature of program.
953.4 Definitions.
953.5 Eligible applicants.
953.6 Technical Assistance.
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Subpart B—Allocation of Funds

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953.303 Housing rating category.
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953.400 Criteria for funding.
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Subpart F—Grant Administration

953.500 General.
953.501 Designation of public agency.
953.502 Force account construction.
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Subpart G—Other Program Requirements

953.600 General.
953.601 Nondiscrimination.
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Subpart H—Program Performance

953.700 Reports to be submitted by grantee.
953.701 Review of recipient's performance.
953.702 Corrective and remedial actions.
953.703 Reduction or withdrawal of grant.

953.704 Other remedies for noncompliance.

Authority: 42 U.S.C. 3535(d) and 5301 et seq.

Subpart A—General Provisions

§ 953.1 Applicability and scope.

The policies and procedures described in this part apply only to grants to eligible Indian Tribes and Alaskan native villages under the Community Development Block Grant (CDBG) program for Indian Tribes and Alaskan native villages.

Expiration of interim rule. This interim rule will expire on April 1, 1996.

§ 953.2 Program objectives.

The primary objective of the Indian CDBG (ICDBG) Program and of the community development program of each grantee covered under this Act is the development of viable Indian and Alaskan native communities, including decent housing, a suitable living environment, and economic opportunities, principally for persons of low- and moderate-income. The Federal assistance provided in this part is not to be used to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of this assistance.

§ 953.3 Nature of program.

The ICDBG Program is competitive in nature. Therefore, selection of eligible applicants for funds will reflect consideration of the relative adequacy of applications in addressing locally determined need. Applicants for funding must have the administrative capacity to undertake the community development activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 953.4 Definitions.

Act means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*)

Chief executive officer means the elected official or legally designated official who has the prime responsibility for the conduct of the affairs of an Indian Tribe or Alaskan native village.

Eligible Indian populations means the most accurate and uniform population data available from reliable sources for Indian Tribes and Alaskan native villages eligible under this part.

Extent of overcrowded housing means the number of housing units with 1.01 or more persons per room, based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period of time.

Extent of poverty means the number of persons whose incomes are below the poverty level, based on data compiled and published by the United States Bureau of the Census referable to the same point or period in time and the latest reports from the Office of Management and Budget.

Field offices means the HUD Offices of Native American Programs or other HUD field offices having responsibility for the Indian CDBG Program.

HUD means the Department of Housing and Urban Development.

ICDBG Program means the Indian Community Development Block Grant Program.

Identified service area means:

(1) A geographic location within the jurisdiction of a Tribe (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a service area;

(2) The Bureau of Indian Affairs (BIA) service area, including residents of areas outside the geographic jurisdiction of the Tribe; or

(3) The entire area under the jurisdiction of a Tribe which has a population of members of under 10,000.

Low- and moderate-income beneficiary means a family, household, or individual whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families. However, the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low household or family incomes. In reporting income levels to HUD, the applicant must include and identify the distributions of Tribal or village income to families, households, or individuals.

Secretary means the Secretary of HUD.

Tribal government, Tribal governing body or *Tribal council* means the federally recognized governing body of an Indian Tribe or Alaskan native village.

Tribal resolution means the formal manner in which the Tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic documents, a written expression adopted pursuant to Tribal practices will be acceptable.

URA means the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended.

§ 953.5 Eligible applicants.

(a) Eligible applicants are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of the Treasury, Office of Revenue Sharing.

(b) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that act for funds under this part when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

(c) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaskan native village, as provided in paragraph (a) of this section, or as a Tribal organization, as provided in paragraph (b) of this section, by the application submission date. A list of eligible applicants is maintained by each ONAP field office.

§ 953.6 Technical assistance.

On an annual basis, each field office will provide technical assistance to eligible applicants for these purposes:

(a) To provide eligible applicants with information on how to apply for funds and how grants will be selected and awarded; and

(b) To inform eligible applicants of changes in the program.

§ 953.7 Waivers.

The Secretary may waive any requirement of this part not required by law whenever it is determined that undue hardship will result from applying the requirement, and where application of the requirement would adversely affect the purposes of the Act.

Subpart B—Allocation of Funds

§ 953.100 General.

(a) *Types of grants.* Two types of grants are available under the Indian CDBG Program.

(1) *Single purpose grants* provide funds for one or more single purpose projects consisting of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single purpose projects.

(2) *Imminent threat grants* alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after a field office determines that such conditions exist and if funds are available for such grants.

(b) *Size of grants*—(1) *Ceilings.* Each field office may recommend grant ceilings for single purpose grant applications. Field offices have the option of recommending different ceilings for different size tribes/villages (e.g. tribes 5,000+ will have one ceiling and tribes with less than 5,000 will have a smaller ceiling.) Single purpose grant ceilings for each field office shall be established in the NOFA.

(2) *Individual grant amounts.* In determining appropriate grant amounts to be awarded, the field office may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives and the administrative capacity of the applicant to complete the activities in a timely manner.

§ 953.101 Field Office allocation of funds.

(a) Except as provided in paragraph (b) of this section, funds will be allocated to the field offices responsible for the program on the following basis:

(1) Each field office will be allocated $1,000,000 as a base amount, to which will be added a formula share of the balance of the Indian CDBG Program funds, as provided in paragraph (a)(2) of this section.

(2) The amount remaining after the base amount is allocated will be allocated to each field office based on the most recent data available from reliable sources referable to the same point or period in time, as follows:

(i) Forty percent (40%) of the funds will be allocated based upon each field office's share of the total eligible Indian population;

(ii) Forty percent (40%) of the funds will be allocated based upon each field office's share of the total extent of poverty among the eligible Indian population; and

(iii) Twenty percent (20%) of the funds will be allocated based upon each field office's share of the total extent of overcrowded housing among the eligible Indian population.

(b) If funds are set aside by statute for a specific purpose in any fiscal year, the formula in paragraph (a) of this section will apply unless otherwise specified in the law, or unless it is determined that the formula is inappropriate to accomplish the purpose, in which case the Secretary may establish other criteria to determine an allocation formula for distributing funds to the field offices.

(c) Data used for the allocation of funds will be based upon the Indian population of those Tribes and villages that are determined to be eligible ninety (90) days before the beginning of each fiscal year.

§ 953.102 Recaptures.

(a) After the rating and ranking process is completed, use of funds that the field office obtains from recapture of obligated funds from grantees that fail to meet statutory or regulatory requirements, or return of unneeded funds, will be determined by the Assistant Secretary on a case-by-case basis. The funds may be used to fund the highest ranking unfunded project, an imminent threat, or other uses as determined by the Assistant Secretary.

(b) Undistributed funds (funds that are unobligated at the conclusion of the rating and ranking process) will be treated the same as recaptured funds.

(c) Recaptured and undistributed funds will remain with the field office that they came from unless the Assistant Secretary determines there is an overriding reason to redistribute the funds outside of the field office's jurisdiction.

Subpart C—Eligible Activities

§ 953.200 General.

The eligibility requirements of part 570, subpart C of this title—Eligible Activities—apply to grants under this part, except for those provisions which are specifically stated as applying only to the Entitlement Cities or Small Cities—HUD administered programs, and with the modifications stated in this subpart.

§ 953.201 Primary and national objectives.

(a) Not less than 70 percent of the funds of each single purpose grant must be used for activities that benefit low- and moderate-income persons under the criteria set forth in § 570.208(a) of this title. In determining the percentage of funds used for such activities, the provisions of § 570.200(a)(3)(i), (iv), and (v) of this title shall apply. The requirements of this paragraph (a) do not apply to imminent threat grants funded under Subpart E of this part.

(b) In addition to the requirement of paragraph (a) of this section, each activity must meet one of the national objectives pursuant to the criteria set forth in § 570.208 of this title.

§ 953.202 Nonprofit organizations.

Tribal-based nonprofit organizations replace neighborhood-based nonprofit organizations under § 570.204(c)(1) of this title. A Tribal-based nonprofit organization is an association or corporation duly organized to promote and undertake community development activities on a not-for-profit basis within an identified service area.

§ 953.203 Administrative costs.

(a) For purposes of this part, technical assistance costs associated with developing the capacity to undertake a specific funded program activity are not considered administrative costs. Therefore, these costs are not included in the twenty percent limitation on planning and administration stated in part 570, subpart C of this title.

(b) Technical assistance costs cannot exceed ten percent of the total grant award. As used in this part, "technical assistance" means the transfer of skills and knowledge in planning, developing, and administering the CDBG program to eligible Indian CDBG recipients who need them in order to undertake a specific funded program activity.

Subpart D—Single Purpose Grant Application and Selection Process

§ 953.300 Application requirements.

(a) *Application information.* Headquarters shall publish a Notice of Funding Availability (NOFA) in the **Federal Register** not less than 30 days before the deadline(s) for application submission. The NOFA will provide information relating to the date and time for application submission, the form and content requirements of the application, specific information regarding the rating and ranking criteria to be utilized, and any other information pertinent to the application process.

(b) *Costs incurred by applicant.* Notwithstanding any provision in Part 570 of this title, HUD will not reimburse or recognize any costs incurred before submission of the single purpose grant application to HUD.

(c) HUD will not normally reimburse or recognize costs incurred before HUD

approval of the application for funding. However, under unusual circumstances, the field office may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue hardship on the applicant. Such authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in accordance with 24 CFR 58.22 and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

§ 953.301 Screening and review of applications.

Each Field Office will screen and review applications for single purpose grants in accordance with the requirements specified in the annual NOFA.

§ 953.302 Selection process.

(a) *Threshold requirements.* (1)(i) In order for applications that have passed the initial screening tests of § 953.301 to be rated and ranked, field offices must determine that the following requirements have been met:

(A) *Community development appropriateness.*

(*1*) The costs are reasonable;

(*2*) The project(s) is appropriate for the intended use; and

(*3*) The project(s) is usable or achievable (generally within a two-year period).

(B) Reserved.

(ii) If in the judgment of the field office, available data indicate that the proposed project(s) costs are unreasonable, is inappropriate for the intended use, or is not usable generally within two years, the field office shall determine that the applicant has not met this threshold requirement, and shall reject such project(s) from further consideration.

(2) *Capacity and performance.* The applicant has the capacity to undertake the proposed program. Additionally, applicants that previously have participated in the Indian CDBG Program must have performed adequately or, in cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance.

(i) *Capacity.* The applicant possesses, or will acquire, the managerial, technical, or administrative staff necessary to carry out the proposed projects. If the field office determines that the applicant does not have or cannot obtain the capacity to undertake the project(s), such project(s) will be rejected from further consideration.

(ii) *Performance*—(A) *Community development.* Performance determinations are made through the field office's normal monitoring process. Applicants that have been advised in writing of negative findings on previous grants, for which a schedule of corrective actions has been established, will not be considered for funding if they are behind schedule as of the deadline date for filing applications.

(B) *Housing assistance.* The applicant must not have been found taking actions to impede the provision or operation of assisted housing for the low- and moderate-income members of the Tribe or Village. If inadequate performance is found, and the applicant has been notified in writing, they may be rejected from further consideration. Performance determinations are made through the field office's normal monitoring process.

(C) *Audits.* An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current and subsequent competitions until the obligations are current. An applicant whose response to an audit finding is overdue or unsatisfactory will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding(s). The field office administrator may provide exceptions to this disqualification requirement in cases where the applicant has made a good faith effort to clear non-monetary audit findings. In no instance, however, shall an exception be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made, and payments are current.

(b) *Application rating system.* (1) Applications that meet the threshold requirements established in paragraph (a) of this section will be rated competitively within each field office's jurisdiction.

(c) *Periodic NOFAs* will weigh and define the rating factors contained in this subpart. Each field office will rate applications on the basis of their responsiveness to the factors contained in this subpart and in the periodic NOFAs.

(d) *Set-aside selection of projects.* If funds have been set aside by statute for a specific purpose in any fiscal year, other criteria pertinent to the set-aside may be used to select projects for funding from the set-aside.

§ 953.303 Housing rating category.

(a)(1) The "housing rating" category consists of three components:

(i) Housing rehabilitation;

(ii) Land to support new housing; and

(iii) New housing construction.

(2) Housing rehabilitation and new housing construction consist of three parts:

(i) Project need and design;

(ii) Planning and implementation; and

(iii) Leveraging.

(3) Land to support new housing consists of two parts:

(i) Project need; and

(ii) Planning and implementation.

(4) Housing projects will be assigned to the appropriate component for rating and may receive a maximum of 100 points.

(b) The applicant shall assure that it will use project funds to rehabilitate units only when the homeowner's payments are current or the homeowner is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions on a case-by-case basis to this requirement.

(c) New housing construction can only be implemented through a nonprofit organization that is eligible under § 953.202 or is otherwise eligible under § 570.207(b)(3) of this title. All applicants for new housing construction grants shall adopt, by current tribal resolution, construction standards prior to submitting an application. All applications for new housing construction projects must document that:

(1) No other housing is available in the immediate reservation area that is suitable for the household(s) to be assisted; and

(2) No other sources can meet the needs of the household(s) to be served; and

(3) Rehabilitation of the unit occupied by the household to be housed is not economically feasible; or

(4) The household to be housed currently is in an overcrowded unit (sharing unit with other household(s)); or

(5) The household to be housed has no current residence.

(d) *Housing rehabilitation component.* (1) All applicants for housing rehabilitation projects shall adopt rehabilitation standards and rehabilitation policies, prior to submitting an application. The following criteria will be used to rate housing rehabilitation applications.

(i) Project need and design.

(ii) Planning and implementation.

(iii) Leveraging.

(2) The NOFA will contain the specific housing rehabilitation rating

criteria which are designed to measure need, cost of rehabilitating houses to a standard condition, benefit to low and moderate income persons and other factors.

(e) *Land to support new housing rating component.* (1) The following criteria will be used to rate applications for land to support new housing.

(i) Project need.

(ii) Planning and implementation.

(2) The NOFA will contain the specific rating criteria which are designed to measure need, cost, benefit to low and moderate income persons and other factors for applications for land to support new housing.

(f) *New housing construction rating component.* (1) New housing construction can only be implemented through a nonprofit organization that is eligible under § 953.202 or is otherwise eligible under § 570.207(b)(3) of this title. The following criteria will be used to rate applications for new housing construction.

(i) Project need and design.

(ii) Planning and implementation.

(iii) Leveraging.

(2) The NOFA will contain the specific rating criteria which are designed to measure need, cost, benefit to low and moderate income persons and other factors for applications for new housing construction.

§ 953.304 Community facilities rating category.

(a)(1) The "community facilities rating" category consists of two components:

(i) Infrastructure, such as water, sewer or roads; and

(ii) Buildings, such as a community center or child care facility.

(2) Each component consists of three parts:

(i) Project need and design;

(ii) Planning and implementation; and

(iii) Leveraging.

(3) Community facilities projects will be assigned to the appropriate component for rating and may receive a maximum of 100 points.

(b) *Infrastructure rating component.* (1) The following criteria will be used to rate applications for infrastructure construction.

(i) Project need and design.

(ii) Planning and implementation.

(iii) Leveraging.

(2) The NOFA will contain the specific community facilities-infrastructure rating criteria which are designed to measure need, benefit to low and moderate income persons, cost and other factors.

(c) *Buildings rating component.* (1) The following criteria will be used to rate applications for buildings.

(i) Project need and design.

(ii) Planning and implementation.

(iii) Leveraging.

(2) The NOFA will contain the specific community facilities-buildings rating criteria which are designed to measure need, benefit to low and moderate income persons, cost and other factors.

§ 953.305 Economic development rating category.

(a)(1) Economic development assistance may be provided only when an analysis is done which shows public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project, and the project has a reasonable chance of success. The applicant shall demonstrate the need for grant assistance by providing documentation to support a determination that the assistance is appropriate to implement an economic development project. Economic development projects may receive a maximum of 100 points.

(2) The economic development rating category has one component consisting of four parts.

(i) Project success.

(ii) Organization.

(iii) Leveraging.

(iv) Permanent full time job creation.

(b) The NOFA will contain the specific economic development rating criteria which are designed to measure need, benefit to low and moderate income persons, cost and other factors.

§ 953.306 Public services.

Public services activities may comprise no more than 15 percent of the total grant award. Such projects must therefore be submitted with one or more other projects, which must comprise at least 85 percent of the total grant award. A public service project will be funded only if the project(s) with which it is submitted rank high enough to be funded.

§ 953.307 Funding process.

(a) *Notification.* Field offices will notify applicants of the actions taken regarding their applications. Grant amounts offered may reflect adjustments made by the field offices in accordance with § 953.100(b).

(b) *Grant award.* (1) As soon as HUD determines that the applicant has complied with any pre-award requirements and absent information which would alter the threshold determinations under § 953.302, the grant will be awarded. These regulations (*i.e.*, 24 CFR Part 953) become part of the grant agreement.

(2) All grants shall be conditioned upon the completion of all environmental obligations and approval of release of funds by HUD in accordance with the requirements of part 58 of this title and, in particular, subpart J of Part 58 of this title, except as otherwise provided in:

(i) Section 58.33 of this title, "Emergencies";

(ii) Section 58.34 of this title, "Exempt activities"; or

(iii) Section 58.22 of this title, "Limitations on activities pending clearance" on the commitment of funds and which are reimbursable under subpart C of part 570 of this title.

(3) HUD may impose other grant conditions where additional actions or approvals are required prior to the use of funds.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0043.)

§ 953.308 Program amendments.

(a) Grantees shall request prior HUD approval for all program amendments involving the alteration of existing activities that will significantly change the scope, location, objective, or class of beneficiaries of the approved activities, as originally described in the application.

(b) Amendment requests shall include the information required under § 953.300(a).

(1) Amendments of $25,000 or more shall address all the rating parts and subparts of the last rating cycle. Approval is subject to the following:

(i) A rating equal to or greater than the lowest rating received by a funded project during the last rating cycle;

(ii) Capability to complete promptly the modified or new activities;

(iii) Compliance with the requirements of § 953.604 for citizen participation; and

(iv) The preparation of an amended or new environmental review in accordance with Part 58 of this title, if there is a significant change in the scope or location of approved activities.

(2) Amendments of less than $25,000 shall be approved subject to meeting the requirements of paragraphs (b)(1)(ii),(iii), and (iv) of this section.

(3) Amendments which address imminent threats to health and safety shall be reviewed and approved in accordance with the requirements of Subpart E of this part.

(c) If a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for amendment shall be returned to HUD.

Subpart E—Imminent Threat Grants

§ 953.400 Criteria for funding.

The following criteria apply to requests for assistance under this subpart:

(a) In response to requests for assistance, the ONAP may make funds available under this subpart to applicants to alleviate or remove imminent threats to health or safety that require an immediate solution. The urgency and immediacy of the threat shall be independently verified prior to the approval of an application. Funds may only be used to deal with imminent threats that are not of a recurring nature and which represent a unique and unusual circumstance, and which impact on an entire service area.

(b) Funds to alleviate imminent threats may be granted only if the applicant can demonstrate to the satisfaction of HUD that other local or Federal funding sources cannot be made available to alleviate the threat.

(c) The Office of Native American Programs will establish grant ceilings for imminent threat applications.

§ 953.401 Application process.

(a) *Letter to proceed.* The ONAP may issue the applicant a letter to proceed to incur costs to alleviate imminent threats to health and safety only if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration. Reimbursement of such costs is dependent upon HUD approval of the application.

(b) *Applications.* Applications shall be submitted in accordance with § 953.300(a). Applications which meet the requirement of this section may be approved by the ONAP without competition in accordance with the applicable requirements of § 953.307.

§ 953.402 Environmental review.

In accordance with 24 CFR 58.34(a)(8), grants for imminent threats to health or safety are exempt from some or all of the environmental review requirements of part 58 of this title, to the extent provided in that section.

§ 953.403 Availability of funds.

An amount not to exceed five percent of the funds made available by the NOFA for the ICDBG program may be retained by the Office of Native American Programs (ONAP) for grants under this part. The amount of imminent threat funds retained during each funding cycle will stated in the NOFA. Any remaining funds will be used as if they are a part of the new allocation of funds. Field offices must correctly indicate, however, the fiscal year in which the residual funds were originally allocated when the funds are awarded to applicants.

Subpart F—Grant Administration

§ 953.500 General.

The requirements of part 570, subpart J of this title—Grant Administration—apply to grants under this part except for those provisions that are specifically stated as applying to the Entitlement Cities or Small Cities—HUD administered programs, and with the modifications stated in this subpart.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0043.)

§ 953.501 Designation of public agency.

One or more Tribal departments or authorities may be designated by the chief executive officer of an Indian Tribe or Alaskan native village as the operating agency to undertake activities assisted under this part. The Indian Tribe or Alaskan native village itself, however, shall be the applicant. Designation of an operating agency does not relieve the Indian Tribe or Alaskan native village of its responsibility to assure that the program will be administered in accordance with all HUD requirements, including these regulations.

§ 953.502 Force account construction.

(a) The use of Tribal work forces for construction or renovation activities performed as part of the activities funded under this part shall be approved by HUD before the start of project implementation. In reviewing requests for an approval of force account construction or renovation, HUD may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be utilized;

(3) Information showing that the workers to be utilized are, or will be, listed on the Tribal payroll and are employed directly by a unit, department or other governmental instrumentality of the Tribe or village.

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part in accordance with § 953.308(b) or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include workman's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurement from outside vendors under this section, but not to other activities undertaken by force account. HUD may approve alternative requirements in lieu of bonding if compliance with the bonding requirements specified in § 85.36(h) of this title is determined by HUD to be infeasible or incompatible with the Indian preference requirements set forth in § 953.503.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0043.)

§ 953.503 Indian preference requirements.

(a) *Applicability.* HUD has determined that grants under this part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians; and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(b) *Definitions.* Indian organizations and Indian-owned economic enterprises include both of the following:

(1) Any economic enterprise as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93–262); that is, "any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership and control shall constitute not less than 51 percent of the enterprise"; and

(2) Any "Tribal organizations" as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638); that is, "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult

members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities."

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians and Alaskan natives.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to HUD field office one-time approval, the grantee's own method of providing preference.

(2) If the grantee selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(i) Re-bid the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-bid the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid is received, request field office review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding solicitation and the bidding documents.

(5) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises; however, this information need not be submitted to HUD. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership, control, and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians and Alaskan natives.

(iv) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(e) *Additional Indian preference requirements.* A grantee may, with prior HUD approval, provide for additional Indian preference requirements as conditions for the award of, or in the terms of, any contract in connection with a project funded under this part. The additional Indian preference requirements shall be consistent with the objectives of the Section 7(b) clause of the Indian Act and shall not result in a significantly higher cost or greater risk of non-performance or longer period of performance. The additional Indian preference requirements permitted by this part do not include the imposition of geographic preferences or restrictions to the procurement process.

§ 953.504 Grant closeout procedure.

Within 90 days of the date that HUD determines the grant has met the criteria for closeout, the grantee shall submit to HUD a completed Financial Status Report (SF–269). In addition, the requirements of § 570.509 of this title, Grant closeout procedures, apply to the ICDBG program where applicable.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0043.)

§ 953.505 Program income.

(a) Disposition of program income received by recipients.

(1) Program income received before grant closeout may be retained by the recipient if the income is treated as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds.

(2) If the recipient chooses to retain program income, that income shall affect withdrawals of grant funds from the U.S. Treasury as follows:

(i) Program income in the form of repayments to, or interest earned on, a revolving fund shall be substantially disbursed from the fund before additional cash withdrawals are made from the U.S. Treasury for the same activity. (This rule does not prevent a lump sum disbursement to finance the rehabilitation of privately owned properties as provided for in § 570.513 of this title.)

(ii) Substantially all other program income shall be disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury.

(3) Program income on hand at the time of closeout shall continue to be subject to the eligibility requirements in subpart C of this part and all other

applicable provisions of this part until it is expended.

(4) Unless otherwise provided in any grant closeout agreement, and subject to the requirements of paragraph (a)(5) of this section, income received after closeout shall not be governed by the provisions of this part, except that, if at the time of closeout the recipient has another ongoing CDBG grant received directly from HUD, funds received after closeout shall be treated as program income of the ongoing grant program.

(5) If the recipient does not have another ongoing grant received directly from HUD at the time of closeout, income received after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be governed by the provisions of this part, except that such income shall be used for activities that meet one of the national objectives in 24 CFR 570.208 and the eligibility requirements described in section 105 of the Act.

(b) All other program income received after closeout will not be governed by the provisions of this part.

Subpart G—Other Program Requirements

§ 953.600 General.

The following requirements of 24 CFR part 570, subpart K—Other Program Requirements—apply to grants under this part.

(a) 24 CFR 570.605, "National Flood Insurance Program."

(b) 24 CFR 570.608, "Lead-based paint."

(c) 24 CFR 570.609, "Use of debarred, suspended, or ineligible contractors or subrecipients."

(d) 24 CFR 570.610, "Uniform administrative requirements and cost principles." Non-federally recognized tribes shall follow the requirements of 24 CFR part 85 and OMB Circulars A–87 and A–128. Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332. (This is not a toll-free number.) There is a limit of two free copies.

§ 953.601 Nondiscrimination.

(a) Under the authority of section 107(e)(2) of the Act, the Secretary waives the requirement that recipients comply with section 109 of the Act except with respect to the prohibition of discrimination based on age, sex, or against an otherwise qualified disabled individual.

(b) A recipient shall comply with the provisions of title II of Pub. L. 90–284 (24 U.S.C. 1301—the Indian Civil Rights Act) in the administration of a program or activity funded in whole or in part with funds made available under this part. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient; and "funded in whole or in part with funds made available under this part" means that community development funds in any amount have been transferred by the recipient to an identifiable administrative unit and disbursed in a program or activity.

§ 953.602 Relocation and real property acquisition.

(a) *Minimize displacement.* Consistent with the other goals and objectives of this part, grantees shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs (e.g., rent/utility costs).

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, safe and habitable dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA)(42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide relocation payments and other relocation assistance to persons displaced by a project that is not subject to paragraph (c) of this section. The grantee may also provide relocation assistance to persons receiving assistance under paragraph (c) of this section at levels in excess of those required. For assistance that is not required by State or tribal law, the grantee shall adopt a written policy available to the public that describes the relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the grantee does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the grantee from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property. The grantee shall include with its request a copy of the appraisal(s) and, when applicable, a justification for any proposed acquisition payment that exceeds the fair market value of the property. HUD will promptly review the proposal and inform the grantee of it's approval or disapproval.

(f) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(g) *Responsibility of grantee.* (1) The grantee shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, (*i.e.*, provide assurance of compliance as required by 49 CFR part 24). The grantee shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the grantee from any other source.

(3) The grantee shall maintain records in sufficient detail to demonstrate compliance with this section.

(h) *Displaced person.* (1) For purposes of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from real property that is made:

(i) After notice by the grantee or property owner to move permanently from the property, if the move occurs on or after the date of the submission of an application for financial assistance by the grantee to HUD that is later approved for the project.

(ii) Before the date of the submission of the application requesting assistance, if either HUD or the grantee determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the assisted project.

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after execution of the agreement between the grantee and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of

(*1*) the tenant's monthly rent and estimated average monthly utility costs before the agreement; or

(*2*) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(*1*) the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or

(*2*) other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the application for financial assistance to HUD, and, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" or for any assistance provided under this section as a result of the project;

(ii) The person is not displaced, as defined under 49 CFR 24.2(g)(2).

(iii) The grantee determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A grantee may ask HUD, at any time, to determine whether a specific displacement is or would be covered under this section.

(i) *Initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term "initiation of negotiations" means the execution of the agreement covering the rehabilitation or demolition.

(ii) Reserved.

§ 953.603 Labor standards.

In accordance with the authority under section 107(e)(2) of the Act, the Secretary waives the provisions of section 110 of the Act (Labor Standards) with respect to this part, including the requirement that laborers and mechanics employed by the contractor or subcontractor in the performance of construction work financed in whole or in part with assistance received under this part be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

§ 953.604 Citizen participation.

(a) In order to permit residents of Indian Tribes and Alaskan native villages to examine and appraise the applicant's application for funds under this part, the applicant shall follow traditional means of resident involvement which, at the least, include the following:

(1) Furnishing residents with information concerning the amounts of funds available for proposed community development and housing activities and the range of activities that may be undertaken.

(2) Holding one or more meetings to obtain the views of residents on community development and housing needs. Meetings shall be scheduled in ways and at times that will allow participation by residents.

(3) Developing and publishing or posting a community development statement in such a manner as to afford affected residents an opportunity to examine its contents and to submit comments.

(4) Affording residents an opportunity to review and comment on the applicant's performance under any active community development block grant.

(b) Prior to submission of the application to HUD, the applicant shall certify by an official Tribal resolution that it has met the requirements of paragraph (a) of this section, and

(1) considered any comments and views expressed by residents and, if it deems it appropriate, modified the application accordingly, and

(2) made the modified application available to residents.

(c) No part of the requirement under paragraph (a) of this section shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the grant. Accordingly, the citizen participation requirements of this section do not include concurrence by any person or group in making final determinations on the contents of the application.

§ 953.605 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of block grant funds, the recipient shall comply with the Environment Review Procedures for the Community Development Block Grant Program (24 CFR Part 58). Upon completion of the environmental review, the recipient shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR part 58.

§ 953.606 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A–110 shall apply. Copies of OMB Circulars may be obtained from E.O.P. Publications, Room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332. (This is not a toll-free number.) There is a limit of two free copies.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A–110, the provisions of this section shall apply. Such cases include the provision of assistance by the recipient or by its subrecipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 570.202 of this title; or grants, loans, and other assistance to businesses, individuals, and other private entities under § 570.203 or § 570.204 of this title).

(b) *Conflicts prohibited.* Except for the use of ICDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to ICDBG activities assisted under this part or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from an ICDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, or of any designated public agencies, or subrecipients under § 570.204 of this title, receiving funds under this part.

(d) *Exceptions requiring HUD approval*—(1) *Threshold requirements.* Upon the written request of a recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(i) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate Tribal laws on conflict of interest, or applicable State laws.

(2) *Factors to be considered for exceptions:* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(v) Whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(vi) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply.* (1) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of Tribal or State laws on conflict of interest would result, the prohibition does apply. However, if the assistance to be provided is housing rehabilitation (or repair) or new housing, a public disclosure of the nature of the assistance to be provided and the specific basis for the selection of the proposed beneficiaries must be made prior to the submission of an application to HUD. Evidence of this disclosure must be provided as a component of the application.

(2) All records pertaining to the recipient's decision under this section shall be maintained for HUD review upon request.

Subpart H—Program Performance

§ 953.700 Reports to be submitted by grantee.

Grant recipients shall submit an annual status report of progress made on previously funded open grants at a time determined by the field office. The status report shall be in narrative form addressing three areas:

(a) *Progress.* The progress made in completing approved activities should be described including a listing of work remaining together with a revised implementation schedule, if necessary.

(b) *Expenditure of funds.* A breakdown of funds spent on each major project activity or category should be provided.

(c) *Grantee assessment.* If the project(s) has been completed, an evaluation of the effectiveness of the project in meeting the grantee's community development needs.

(Approved by the Office of Management and Budget under Control No. 2506–0043.)

§ 953.701 Review of recipient's performance.

(a) *Objective.* HUD will review each recipient's performance to determine whether the recipient has:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this part.

(b) *Basis for review.* In reviewing each recipient's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the recipient;

(3) Records maintained by the recipient;

(4) Results of HUD's monitoring of the recipient's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 953.702 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of the performance review, HUD determines that the recipient has not:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations, including the environmental responsibilities assumed under section 104(g) of title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Request the recipient to submit progress schedules for completing approved activities or for complying with the requirements of this part;

(2) Issue a letter of warning advising the recipient of the deficiency (including environmental review deficiencies and housing assistance deficiencies), describing the corrective actions to be taken, establishing a date for corrective actions, and putting the recipient on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;

(3) Advise the recipient that a certification of compliance will no longer be acceptable and that additional information or assurances will be required;

(4) Advise the recipient to suspend, discontinue, or not incur costs for the affected activity;

(5) Advise the recipient to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of Part 58 and provided that such reprogramming is subjected to the environmental review procedures of Part 58 of this title;

(6) Advise the recipient to reimburse the recipient's program account or line of credit in any amount improperly expended;

(7) Change the method of payment from a line of credit basis to a reimbursement basis; and/or

(8) Suspend the line of credit until corrective actions are taken.

§ 953.703 Reduction or withdrawal of grant.

(a) *General.* A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in § 953.702(b) has been taken and only then if the recipient has not made an appropriate and timely response. Before making such a grant reduction or withdrawal, the recipient also shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the field office determines, on the basis of a review of the grant recipient's performance, that the objectives set forth in § 953.701(a)(2) or (3) have not been met, the field office may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

§ 953.704 Other remedies for noncompliance.

(a) *Secretarial actions.* If the Secretary finds a recipient has failed to comply with any provision of this part even after corrective actions authorized under § 953.702 have been applied, the following actions may be taken provided that reasonable notice and opportunity for hearing is made to the recipient. (The Administrative Procedure Act (5 U.S.C. 551 et seq.), where applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take actions requiring reasonable notice and opportunity for a hearing.)

(1) Terminate the grant to the recipient;

(2) Reduce the grant to the recipient by an amount equal to the amount which was not expended in accordance with this part; or

(3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the recipient's line of credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe that a recipient has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with this part or for mandatory or injunctive relief.

Dated: July 18, 1994.

Henry G. Cisneros,

Secretary.

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H.R. 3567/P.L. 103–279

John F. Kennedy Center Act Amendments of 1994 (July 21, 1994; 108 Stat. 1409; 9 pages)

S. 273/P.L. 103–280

To remove certain restrictions from a parcel of land owned by the city of North Charleston, South Carolina, in order to permit a land exchange, and for other purposes. (July 22, 1994; 108 Stat. 1418; 2 pages)

S. 1402/P.L. 103–281

Twin Falls County Landfill Act of 1994 (July 22, 1994; 108 Stat. 1420; 2 pages)

H.R. 4322/P.L. 103–282

To amend the Small Business Act to increase the authorization for the development company program, and for other purposes. (July 22, 1994; 108 Stat. 1422; 1 page)

H.R. 4454/P.L. 103–283

Legislative Branch Appropriations Act, 1995 (July 22, 1994; 108 Stat. 1423; 25 pages)

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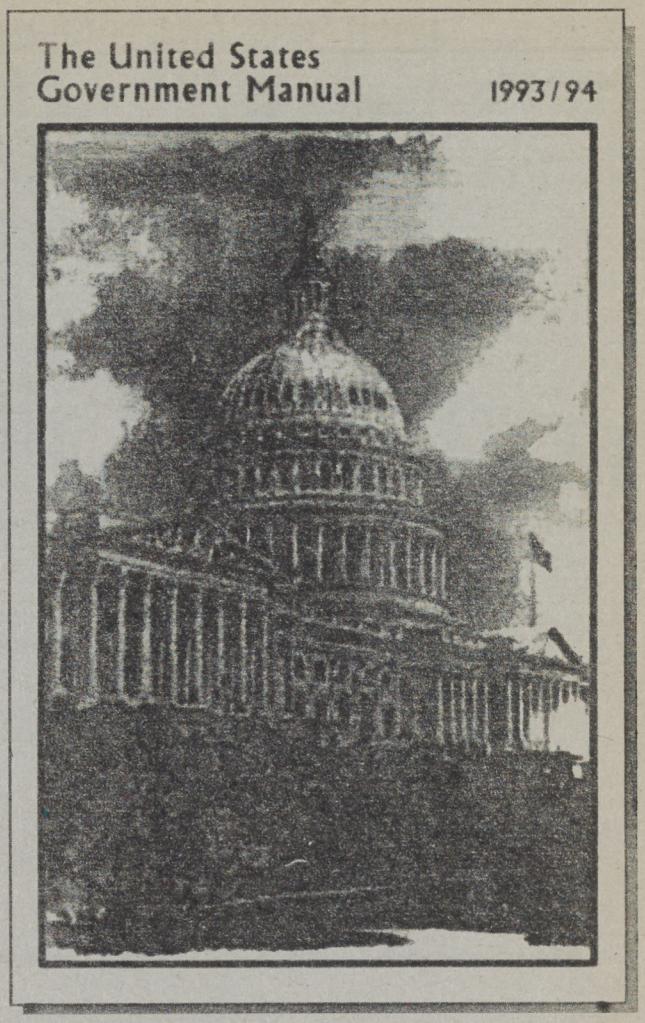

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