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8–18–94
Vol. 59 No. 159

federal register

Thursday
August 18, 1994

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(ISSN 0097–6326)

8–18–94
Vol. 59 No. 159
Pages 42487–42750

federal register

Thursday
August 18, 1994

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Chapter IV

Use of Direct Final Rulemaking

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Policy statement.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is implementing a new rulemaking procedure to expedite making noncontroversial changes to its regulations. Rules that FCIC judges to be noncontroversial and unlikely to result in adverse comments will be published as "direct final" rules. ("Adverse comments" are comments that suggest that a rule should not be adopted or suggest that a change should be made to the rule.) Each direct final rule will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**. This new policy should expedite the promulgation of routine or otherwise noncontroversial rules by reducing the time that is required to develop, review, clear, and publish separate proposed and final rules.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory Specialist, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 254–8450.

SUPPLEMENTARY INFORMATION: The FCIC is committed to improving the efficiency of its regulatory process. In pursuit of this goal, it plans to employ the rulemaking procedure known as "direct final rulemaking" to promulgate some FCIC rules.

The Direct Final Rule Process

Rules that FCIC judges to be noncontroversial and unlikely to result in adverse comments will be published as direct final rules. Each direct final rule will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the direct final rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**.

"Adverse comments" are comments that suggest that the rule should not be adopted, or that suggest that a change should be made to the rule. A comment expressing support for the rule as published will not be considered adverse. Further, a comment suggesting that requirements in the rule should, or should not, be employed by FCIC in other programs or situations outside the scope of the direct final rule will not be considered adverse.

In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), the direct final rulemaking procedure gives the public general notice of FCIC's intent to adopt a rule, and gives interested persons an opportunity to participate in the rulemaking process through submission of comments. The major feature of direct final rulemaking is that if FCIC receives no written adverse comments and no written notice of intent to submit adverse comments within 30 days of the publication of the direct final rule, the rule will become effective without the need to publish a separate final rule. However, FCIC will publish a document in the **Federal Register** stating that no adverse comments were received regarding the direct final rule, and confirming that the direct final rule is effective on the date stated in the direct final rule.

If FCIC receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the publication of a direct final rule, a notice of withdrawal of the direct final rule will be published in the **Federal Register**. If FCIC intends to proceed with the rulemaking, the direct final rule will be republished as a proposed rule and we will proceed with the normal notice-and-comment rulemaking procedures.

Determining When To Use Direct Final Rulemaking

Not all FCIC rules are good candidates for direct final rulemaking. FCIC intends to use the direct final rulemaking procedure only for rules that are considered to be noncontroversial and unlikely to generate adverse comments. The decision to use direct final rulemaking for a rule will be based on FCIC's past experience with similar rules.

Done in Washington, DC, this 29th day of July 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–20012 Filed 8–17–94; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1454C–94]

RIN 1115–AC72

Temporary Alien Workers Seeking H–1B, O, and P Classifications Under the Immigration and Nationality Act—Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Correction to final rule effective date.

SUMMARY: The Immigration and Naturalization Service (Service) published a final rule on August 15, 1994 at 59 FR 41818 which became effective upon publication. The effective date of this final rule should have been 30 days following the date of the rule's publication in the **Federal Register**. This document corrects the error by providing that the final rule shall not be made effective until 30 days following publication of this correction in the **Federal Register**.

EFFECTIVE DATES: The effective date of this correction is August 15, 1994. The effective date of the final rule published on August 15, 1994 is September 19, 1994.

Dated: August 12, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–20320 Filed 8–17–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 151

[Docket No. 94–057–1]

Recognized Breeds and Books of Record

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the "Recognition of Breeds and Books of Record of Purebred Animals" regulations by adding the following to the list of "recognized breeds and books of record": the Belgian Blue and Gelbvieh breeds of cattle, the Trakehner and Morab breeds of horses, the Herd Book of the Gelbvieh, the Trakehner Stud Book, and the Morab Stud Book. It has been determined that these breeds of cattle and horses and books of record qualify for such listing. This action will allow duty-free entry into the United States of horses and cattle which are registered in the books. We are also updating the address to which books of record are sent.

DATES: This rule will be effective on October 17, 1994, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before September 19, 1994. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your submission refers to Docket No. 94–057–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Morgan, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import and Export, Veterinary Services, APHIS, USDA, room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

Item 100.01 in Part 1, Schedule 1, of 19 U.S.C. 1202 (the Tariff Act of 1930, as amended) provides, in part, that animals (except for certain foxes) certified to the collector of customs by the Department of Agriculture as being pure bred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed, may be entered by a citizen or agency of the United States into the United States free of duty if imported for breeding purposes. Implementing regulations, captioned "Recognition of Breeds and Books of Record of Purebred Animals" (referred to below as the regulations), are set forth in 9 CFR part 151.

In accordance with § 151.2 of the regulations, the Administrator of the Animal and Plant Health Inspection Service (APHIS) issues certificates of pure breeding for certain animals. To be eligible for a certificate, § 151.8 of the regulations stipulates that an animal must be "purebred of a recognized breed and have been registered in good faith in a book of record listed in § 151.9 [of the regulations] and must not have been registered on inspection without regard to purity of breeding." The regulations contain lists of "recognized breeds and books of record" for cattle, horses, asses, sheep, goats, swine, dogs, and cats.

A "book of record" is defined in § 151.1 of the regulations as: "A printed book or an approved microfilm record sponsored by a registry association and containing breeding data relative to a large number of registered purebred animals used as a basis for the issuance of pedigree certificates."

Section 151.9, paragraph (a), of the regulations lists breeds and books of record in countries other than Canada. Section 151.9, paragraph (b), of the regulations lists breeds and books of record in Canada.

In accordance with the procedures described below under **EFFECTIVE DATE**, this direct final rule will amend § 151.9 of the regulations as follows: It will amend the list of "recognized breeds and books of record" in § 151.9(a) of the regulations by adding the Gelbvieh breed of cattle, and the Trakehner and Morab breeds of horses as recognized breeds. This document also will amend § 151.9(a) by adding, as books of record, the Herd Book of the Gelbvieh issued by the American Gelbvieh Association, the Trakehner Stud Book issued by the American Trakehner Association, and the Morab Stud Book issued by the North American Morab Horse Association, Inc. In addition, this document will amend § 151.9(b) of the regulations by adding the Belgian Blue and Gelbvieh breeds of cattle as recognized breeds. The books of record of the Canadian Live Stock Records, Ottawa, Canada, are already listed in § 151.9(b) as being recognized books of record for certain breeds in Canada and they will be the books of record for the Belgian Blue and Gelbvieh breeds as well.

In accordance with § 151.10 of the regulations, before a breed or book of record shall be added to the regulations, the custodian of the book of record must submit to APHIS "a complete copy of the book of record, consisting of any published printed volumes and any microfilm records issued by the registry association up to date of application, together with a copy of all rules and forms in force on said date affecting the registration of animals in said book."

The custodians of the book of record for the Gelbvieh breed of cattle, and the Trakehner and Morab breeds of horses each submitted to APHIS a complete copy of the book of record with a copy of all rules and forms affecting the registration of the animals in the book of record. Upon review, the agency has determined that both the breeds and books of record meet the requirements of the regulations for addition to the list of "recognized breeds and books of record."

This direct final rule also will update the address to which books of records are sent. The address, listed in § 151.9, will be changed from the United States Government Despatch Agency, 26 Federal Plaza, New York, New York 10007, U.S.A., to the Animal and Plant Health Inspection Service, United States Department of Agriculture, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Effective Date

We are publishing this rule without prior proposal because we view this action as noncontroversial and anticipate no adverse public comments. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse

comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document. Executive Order 12866 and Regulatory Flexibility Act

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

Certain cattle and horse owners, breeders, exporters, importers, and breed associations may experience a positive economic impact when Gelbvieh and Belgian Blue cattle, and Trakehner and Morab horses, receive official USDA recognition. Such recognition enhances the marketability of these animals. However, based on past experience, we do not anticipate any economic benefit to be significant. Further, these entities comprise less than one percent of the total number of cattle and horses imported into the United States annually.

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

Executive Order 12778

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 151

Animals, Imports, Reporting and recordkeeping requirements.

PART 151—RECOGNITION OF BREEDS AND BOOKS OF RECORD OF PUREBRED ANIMALS

Accordingly, 9 CFR part 151 is amended as follows:

1. The authority citation for part 151 continues to read as follows:

Authority: 19 U.S.C. 1202; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 151:9, the introductory text is amended by revising the last sentence, and the table in paragraphs (a) and (b) is amended by adding the following information, in alphabetical order by breed:

§ 151.9 Recognized breeds and books of record.

* * * All books of record sent to the Animal and Plant Health Inspection Service, United States Department of Agriculture, shall be submitted through the Animal and Plant Health Inspection Service, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(a) * * *

CATTLE

Code	Name of breed	Book of record	By whom published
*	*	*	* *
1113	Gelbvieh	Herd Book of the Gelbvieh.	American Gelbvieh Association, 10900 Dover Street, Westminster, CO 80021.
*	*	*	* *

HORSES

Code	Name of breed	Book of record	By whom published
*	*	*	* *
2112	Morab ..	Morab Stud Book.	North American Morab Horse Association, Inc., W 3174 Fero Springs Road, Hilbert, WI 54129.

HORSES—Continued

Code	Name of breed	Book of record	By whom published
*	*	*	* *
2113	Trakehner ...	Trakehner Stud Book.	American Trakehner Association, 2305 November Lane, Reston, VA 22091.

* * * * *

(b) * * *

CATTLE

Code	Name of breed	Code	Name of breed
*	*	*	* *
1110	Belgian Blue		
*	*	*	* *
1114	Gelbvieh		
*	*	*	* *

Done at Washington, DC, this 10th day of August 1994.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–20182 Filed 8–17–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ANM–24]

Amendments to Class D Airspace; Medford, Portland-Hillsboro, and Salem, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at the Medford, Portland-Hillsboro, and Salem Airports, Oregon. It will add information regarding hours of operation to the airspace description. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "control zone," replacing it with the description "Class D" airspace. The Class D airspace is depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–24, 1601 Lind Avenue S.W., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

History

SUPPLEMENTARY INFORMATION:

On May 10, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace for the Medford, Portland-Hillsboro, and Salem Airports, Oregon, (59 FR 24037). Interested parties were invited to participate in the rulemaking process by submitting such written data, views, or arguments as they desired. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "control zone," replacing it with the designation "Class D airspace." Class D airspace designations for airspace areas extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designations listed in this document will be published subsequently in the Order. The coordinates in this final rule are in North American Datum 83.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class D airspace at Medford, Portland-Hillsboro, and Salem, Oregon. It will provide information regarding hours of operation in these airspace descriptions. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of regulatory evaluation as the anticipated impact is so minimal. Since this is routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects In 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM OR D Medford, OR [Revised]
Medford-Jackson Airport, OR
(lat. 42°22'20" N, long. 122°52'21" W)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.1-mile radius of the Medford-Jackson Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM OR D Portland-Hillsboro, OR [Revised]
Portland-Hillsboro Airport, OR
(lat. 45°32'25" N, long. 122°56'59" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of the Portland-Hillsboro Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

* * * * *

ANM OR D Salem, OR [Revised]
Salem, McNary Field, OR
(lat. 44°54'34" N, long. 123°00'09" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4-mile radius of McNary Field. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on July 22,1994.

Charles Davis,

Acting Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 94–20306 Filed 8–17–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Food Safety and Applied Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to functions performed by officials in the Center for Food Safety and Applied Nutrition (CFSAN). The reorganization of CFSAN, outlined in the **Federal Register** of November 17, 1992, created a second Deputy Director, retitled several organizational units, and transferred responsibilities to newly created organizational units. These changes require a revision in the related delegations of authority. In addition, new authority delegations are made that are needed to allow the organization to handle routine and noncontroversial matters efficiently.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT:
Louis B. Brock, Office of Planning, Policy, and Strategic Initiatives (HFS–24), Food and Drug Administration, rm. 5830, 200 C St. SW, Washington, DC 20204, 202–205–4273; or
Ellen R. Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, rm. 3–50, 12420 Parklawn Dr., Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 17, 1992 (57 FR 54239), FDA outlined the reorganization of CFSAN and its new substructure. This technical amendment revises references in the delegations of authority to CFSAN officials to conform with their organizational placement and new titles. In some cases, authorities that were vested in one official are now shared by two or more officials.

The sections affected by this amendment are § 5.22 *Certification of*

true copies and use of Department seal (21 CFR 5.22); § 5.25 *Research, investigation, and testing programs and health information and health promotion programs* (21 CFR 5.25); § 5.26 *Service fellowships* (21 CFR 5.26); § 5.30 *Hearings* (21 CFR 5.30); § 5.31 *Petitions under part 10* (21 CFR 5.31); § 5.37 *Issuance of reports of minor violations* (21 CFR 5.37); § 5.61 *Food standards, food additives, generally recognized as safe (GRAS) substances, color additives, nutrient content claims, and health claims* (21 CFR 5.61); § 5.62 *Issuance of initial emergency permit orders and notices of confirmation of effective date of final regulations on food for human and animal consumption* (21 CFR 5.62); and § 5.66 *Approval of schools providing food-processing instruction* (21 CFR 5.66).

FDA is also amending the regulations on delegations of authority by adding new authority delegations from the Director and Deputy Directors, CFSAN, to specific office and division directors. These new authorities pertain to routine and noncontroversial matters and will allow the organization to operate more efficiently. The sections affected by adding these new authorities are §§ 5.22, 5.31, 5.61, 5.62, and 5.66. Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.22 is amended by revising paragraph (a)(8) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(8)(i) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN).

(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(iii) The Director, Office of Management Systems, CFSAN.

(iv) The Director, Office of Cosmetics and Colors, CFSAN.

(v) The Director, Office of Food Labeling, CFSAN.

(vi) The Director, Office of Premarket Approval, CFSAN.

(vii) The Director, Office of Plant and Dairy Foods and Beverages, CFSAN.

(viii) The Director, Office of Seafood, CFSAN.

(ix) The Director, Office of Special Nutritionals, CFSAN.

(x) The Director, Office of Special Research Skills, CFSAN.

(xi) The Director, Office of Constituent Operations, CFSAN.

(xii) The Director, Office of Field Programs, CFSAN.

(xiii) The Director, Office of Scientific Analysis and Support, CFSAN.

* * * * *

3. Section 5.25 is amended by revising paragraph (a)(4) to read as follows:

§ 5.25 Research, investigation, and testing programs and health information and health promotion programs.

(a) * * *

(4) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition.

* * * * *

4. Section 5.26 is amended by revising paragraph (e) to read as follows:

§ 5.26 Service fellowships.

* * * * *

(e) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN), and Director, Office of Management Systems, CFSAN.

* * * * *

5. Section 5.30 is amended by revising paragraphs (a)(1) and (c)(2) to read as follows:

§ 5.30 Hearings.

(a) * * *

(1) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN), and the Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

* * * * *

(c) * * *

(2) The Director and Deputy Directors, CFSAN.

* * * * *

6. Section 5.31 is amended by revising paragraphs (c)(2) and (e)(1) to read as follows:

§ 5.31 Petitions under part 10.

* * * * *

(c) * * *

(2) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN), and the Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

* * * * *

(e)(1) The following officials are authorized to issue 180-day tentative responses to citizen petitions on food and cosmetic matters under § 10.30(e)(2)(iii) of this chapter that relate to the assigned functions of that Center:

(i) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN).

(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(iii) The Director, Office of Cosmetics and Colors, CFSAN.

(iv) The Director, Office of Food Labeling, CFSAN.

(v) The Director, Office of Premarket Approval, CFSAN.

(vi) The Director, Office of Plant and Dairy Foods and Beverages, CFSAN.

(vii) The Director, Office of Seafood, CFSAN.

(viii) The Director, Office of Special Nutritionals, CFSAN.

* * * * *

7. Section 5.37 is amended by revising paragraphs (a)(3)(i) through (a)(3)(iii) and by adding new paragraph (a)(3)(iv) to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) * * *

(3)(i) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition, (CFSAN).

(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(iii) The Director, Office of Field Programs, CFSAN.

(iv) The Director, Division of Enforcement, Office of Field Programs, CFSAN.

* * * * *

8. Section 5.61 is amended by revising paragraphs (a), (b)(1), (b)(2), (c)(1), (d), (e), (f)(1), and (g) to read as follows:

§ 5.61 Food standards, food additives, generally recognized as safe (GRAS) substances, color additives, nutrient content claims, and health claims.

(a)(1) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs under section 409 and 721 of the Federal Food, Drug, and Cosmetic Act (the act) regarding the issuance of notices of filing (including notices of extension of, or reopening of, the comment period), and of voluntary withdrawal, of petitions on food additives, generally recognized as safe (GRAS) substances, and color additives that relate to the assigned functions of the respective Center:

(i) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN).

(ii) The Director, Office of Policy, Planning and Strategic Initiatives, CFSAN.

(iii) The Director, Office of Premarket Approval, CFSAN.

(iv) The Director and Deputy Director, Center for Veterinary Medicine (CVM).

(2) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN), and the Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN are authorized to perform all the functions of the Commissioner of Food and Drugs under section 401 of the act regarding the issuance of proposed rulemaking (including notices of extension of, or reopening of, the comment period) pertaining to food standards.

(b)(1) The Director and Deputy Directors, CFSAN, and the Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN are authorized to perform all of the functions of the Commissioner of Food and Drugs under sections 409 and 721 of the act regarding the approval of the use of food additives under section 409(e) of the act and the listing of color additives under section 721(d) of the act where the listing does not involve novel or controversial issues and does not involve any questions about the applicability of the Delaney Anti-Cancer Clause.

(2) The following officials are authorized to perform all of the functions of the Commissioner of Food and Drugs under section 401 of the act regarding the issuance of notices of temporary permits for foods varying from standards of identity under § 130.17 of this chapter:

(i) The Director and Deputy Directors, CFSAN.

(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(iii) The Director, Office of Food Labeling, CFSAN.

* * * * *

(c)(1) The following officials are authorized to issue 90-day letters to food additive petitioners under section 409(c)(2) of the act or to color additive petitions under section 721(d)(1) of the act that relate to the assigned functions of the Center:

(i) The Director and Deputy Directors, CFSAN.

(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(iii) The Director, Office of Premarket Approval, CFSAN.

(iv) The Director, Division of Product Policy, Office of Premarket Approval, CFSAN.

(v) The Director, Division of Petition Control, Office of Premarket Approval, CFSAN.

* * * * *

(d) The following officials are authorized to certify batches of color additives under section 721 of the act:

(1) The Director and Deputy Directors, CFSAN.

(2) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(3) The Director, Office of Cosmetics and Colors, CFSAN.

(e) The following officials are authorized to issue advance notices of proposed rulemaking pertaining to Codex Alimentarius food standards and notices terminating consideration of such standards when comments fail to support the desirability and need for proposing their adoption, under § 130.6 of this chapter:

(1) The Director and Deputy Directors, CFSAN.

(2) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(3) The Director, Office of Food Labeling, CFSAN.

(f) * * *

(1) The Director and Deputy Directors, CFSAN, and the Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

* * * * *

(g)(1) The following officials are authorized to perform all of the functions of the Commissioner of Food and Drugs under section 403(r)(4) of the act regarding the issuance of decisions to grant or deny petitions for nutrient content claims and health claims that do not present controversial issues and regarding the issuance of any notices of proposed rulemaking that result from such action:

(i) The Director and Deputy Directors, CFSAN.

(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(2) The following officials are authorized to perform all of the functions of the Commissioner of Food and Drugs under section 403(r)(4) of the act regarding the issuing of letters of filing in response to petitions for nutrient content claims and health claims:

(i) The Director and Deputy Directors, CFSAN.

(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(iii) The Director, Office of Food Labeling, CFSAN.

* * * * *

9. Section 5.62 is revised to read as follows:

§ 5.62 Issuance of initial emergency permit orders and notices of confirmation of effective date of final regulations on food for human and animal consumption.

(a) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN), the Director, Office of Field Programs, CFSAN, and the Director, Division of Enforcement, Office of Field Programs, CFSAN, are authorized to issue initial emergency permit orders under § 108.5 of this chapter.

(b) The following officials are authorized to issue notices of confirmation of effective date of final regulations on food matters promulgated under section 701(e) of the Federal Food, Drug, and Cosmetic Act:

(1) The Director and Deputy Directors, CFSAN.

(2) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(3) The Director, Office of Food Labeling, CFSAN.

(4) The Director, Office of Special Nutritionals, CFSAN.

(5) The Director, Office of Plant and Dairy Foods and Beverages, CFSAN.

(6) The Director, Office of Seafood, CFSAN.

(7) The Director, Office of Field Programs, CFSAN.

(8) The Director, Office of Premarket Approval, CFSAN.

10. Section 5.66 is revised to read as follows:

§ 5.66 Approval of schools providing food-processing instruction.

The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs under § 113.10 of this chapter regarding the approval of schools giving instruction in retort operations, processing systems

operations, aseptic processing and packaging system operations, and container closure inspections:

(a) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN).

(b) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(c) The Director, Office of Plant and Dairy Foods and Beverages, CFSAN.

Dated: August 12, 1994.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 94–20348 Filed 8–17–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 520

Oral Dosage Form New Animal Drugs; Penicillin G Potassium in Turkey Drinking Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by I. D. Russell Co. Laboratories. The ANADA provides for use of penicillin G potassium powder to make a turkey drinking water for the treatment of erysipelas caused by *Erysipelotrix rhusiopathiae*.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center For Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: I. D. Russell Co. Laboratories, 1301 Iowa Ave., Longmont, CO 80501, filed ANADA 200–106 which provides for use of a penicillin G potassium powder to make a medicated drinking water for turkeys used for the treatment of erysipelas in turkeys caused by *Erysipelothrix rhusiopathiae*.

Approval of I. D. Russell's ANADA 200–106 for penicillin G potassium powder to make a turkey drinking water is as a generic copy of Solvay's NADA 55–060 for the same product. The ANADA is approved as of July 21, 1994, and the regulations are amended by revising § 520.1696b(b)(21 CFR 520.1696b(b)) to reflect the approval.

In addition, the infective agent of turkey erysipelas has been renamed from *Erysipelothrix insidiosa* to *E. rhusiopathiae*. The labeling of the pioneer and the generic products use the new name. The regulations are amended in § 520.1696b(c)(2) to reflect the new name.

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

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

List of Subjects in 21 CFR Part 520

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 part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. Section 520.1696b is amended by revising paragraph (b) and in paragraph (c)(2) by removing the word "*insidiosa*" and adding in its place the word "*rhusiopathiae*" to read as follows:

§ 520.1696b Penicillin G potassium in drinking water.

* * * * *

(b) *Sponsors.* See Nos. 017144 and 053501 in § 510.600(c) of this chapter.

* * * * *

Dated: August 10, 1994.

Richard H. Teske,

Deputy Director, Pre-market Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 94–20260 Filed 8–17–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–027]

Oregon State Plan: Approval of Revised Compliance Staffing Benchmarks

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

ACTION: Final rule; approval of revised State compliance staffing benchmarks.

SUMMARY: This document amends agency regulations to reflect the Assistant Secretary's decision to approve revised compliance staffing benchmarks for the Oregon State plan.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 ("the Act," 29 U.S.C. 651 *et seq.*) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) of the Act sets forth the statutory criteria for plan approval, and among these criteria is the requirement that the State's plan provide satisfactory assurances that the state agency or agencies responsible for implementing the plan have "* * * the qualified personnel necessary for the enforcement of * * * standards," 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S Court of Appeals and the resultant implementing order issued by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel necessary to assure a "fully effective" enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish "fully effective" compliance staffing levels, or benchmarks, for each State plan.

In 1980 OSHA submitted a Report to the Court containing these benchmarks and requiring Oregon to allocate 47 safety and 60 health compliance personnel to conduct inspections under the plan. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for State plan final approval consideration under section 18(e) of the Act.

Both the 1978 Court Order and the 1980 Report to the Court explicitly contemplate subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983 OSHA, together with State plan representatives, initiated a comprehensive review and revision of the 1980 benchmarks. The State of Oregon participated in this benchmark revision process, which resulted in a methodology whereby a State could submit data that would justify revision of its 1980 benchmarks. In October 1992, Oregon proposed to the Assistant Secretary revised compliance staffing levels for a "fully effective" program responsive to the occupational safety and health needs of the State. (A complete discussion of both the 1980 benchmarks and the present revision system process is set forth in the January 16, 1985 **Federal Register** (50 FR 2491) regarding the Wyoming occupational safety and health plan.)

Proposed Revision of Benchmarks

In 1980, OSHA submitted a report to the Court containing the benchmarks and requiring Oregon to allocate 47 safety compliance officers and 60 industrial hygienists. Pursuant to the initiative begun in August 1983 by the State plan designees as a group, and in accord with the formula and general principles established by that group for individual State revision of benchmarks, Oregon reassessed the compliance staffing necessary for a "fully effective" occupational safety and health program in the State.

In October 1992, the Occupational Safety and Health Division of the Oregon Department of Consumer and Business Services (the designated agency or "designee" in the State) completed, in conjunction with OSHA, a review of the compliance staffing benchmarks approved for Oregon in 1980. This reassessment resulted in a proposal to OSHA of a revised health compliance staffing benchmark of 28 health compliance officers for the State of Oregon. The State determined that there was no compelling reason to revise the existing 1980 safety benchmark of 47 safety compliance officers.

History of the Present Proceedings

On March 29, 1994, the Occupational Safety and Health Administration published notice in the **Federal Register** of its proposal to approve revised compliance staffing benchmarks for Oregon (59 FR 14589). A detailed description of the methodology and State-specific information used to develop the revised compliance staffing levels for Oregon was included in the notice. In addition, OSHA submitted, as a part of the record, detailed submissions containing both narrative explanation and supporting data for Oregon's proposed revised benchmarks (Docket No. T–027). A summary of the benchmark revision process is set forth in the January 16, 1985 **Federal Register** notice concerning the Wyoming State plan (50 FR 2491). An informational record was established in a separate docket (Docket No. T–018) and contained background information relevant to the benchmark issue and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process, a copy of Oregon's complete record was maintained in the OSHA Docket Office in Washington, DC. Copies of Oregon's record were also maintained in the OSHA Region X Office in Seattle, Washington, and in the Office of the Oregon Department of Consumer and Business Services, Occupational Safety and Health Division, in Salem, Oregon.

The March 29 proposal invited interested parties to submit, by May 3, 1994, written comments and views regarding whether Oregon's proposed revised compliance staffing benchmark levels should be approved. No comments were received regarding Oregon's proposed benchmarks.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings. In light of all the facts presented on the record, including the absence of any objections from interested parties, the Assistant Secretary has determined that the revised health compliance staffing level proposed for Oregon meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of health compliance officers for a "fully effective" enforcement program. Therefore, the revised health benchmark staffing level of 28 health compliance officers for Oregon is approved, and the safety benchmark staffing level of 47 safety compliance officers which was established in the 1980 Report to the Court to the U.S. District Court for the District of Columbia will remain unchanged.

Effect of Decision

The approval of the revised staffing levels for Oregon, set forth elsewhere in this notice, establishes the requirement for a sufficient number of adequately trained and qualified compliance personnel as set forth in Section 18(c) of the Act and 29 CFR 1902.37(b)(1). These benchmarks are established pursuant to the 1978 Court Order in *AFL–CIO* v. *Marshall* and define the compliance staffing levels necessary for a "fully effective" program in Oregon. The allocation of sufficient staffing to meet the benchmarks is one of the conditions necessary for States to receive an 18(e) determination (final State plan approval) with its resultant relinquishment of concurrent Federal enforcement jurisdiction.

Explanation of Changes to 29 CFR Part 1952

29 CFR 1952 contains, for each State having an approved occupational safety and health plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. This notice makes several changes to Subpart D to reflect the approval of Oregon's revised compliance staffing benchmarks, as well as to reflect minor editorial modifications to the structure of the Subpart.

A new § 1952.393, *Compliance staffing benchmarks*, has been added to Subpart D to reflect the approval of the revised benchmarks for Oregon.

While most of the existing subparts have been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps and certification of completion of developmental steps) are set forth in chronological order.

Related editorial changes to the subparts include modification of the heading of § 1952.100 to clearly identify the initial plan approval of Oregon. The addresses of locations where the Oregon plan may be inspected have been updated and are found at § 1952.106.

Regulatory Flexibility Act

OSHA certifies, pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*), that this rulemaking will not have significant economic impact on a substantial number of small entities. Approval of the revised compliance staffing benchmarks for Oregon will not place small employers in the State under any new or different requirements nor would any additional burden be

placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736))

Signed at Washington, D.C., this 11th day of August, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1952—[AMENDED]

Accordingly, Subpart D of 29 CFR Part 1952 is amended as follows:

Subpart D—Oregon

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 19033).

2. Section 1952.100 is amended by revising the heading to read:

§ 1952.100 Description of the plan as initially approved.

§ 1952.105 [Redesignated as § 1952.107]

§ 1952.102 [Redesignated as § 1952.105]

3. Section 1952.105 is redesignated as § 1952.107 and Section 1952.102 is redesignated as § 1952.105.

§ 1952.102 [Redesignated from § 1952.104]

§ 1952.104 [Reserved]

4. Section 1952.104 ("Completion of developmental steps and certification") is redesignated as § 1952.102, and a new § 1952.104 is added and reserved.

§ 1952.101 [Redesignated as § 1952.106]

5. Section 1952.101 is redesignated as § 1952.106 and revised to read as follows:

§ 1952.106 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Suite 715, 1111 Third Avenue, Seattle, Washington 98101–3212; and Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Room 430, Labor and Industries Building, 350 Winter Street NE, Salem, Oregon 97310.

§ 1952.101 [Redesignated from § 1952.103]

6. Section 1952.103 is redesignated as § 1952.101 and a new § 1952.103 is added to read as follows:

§ 1952.103 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall*, compliance staffing levels ("benchmarks") necessary for a "fully effective" enforcement program were required for each State operating an approved State plan. In October 1992, Oregon completed, in conjunction with OSHA, a reassessment of the health staffing level initially established in 1980 and proposed a revised health benchmark of 28 health compliance officers. Oregon elected to retain the safety benchmark level established in the 1980 Report to the Court of the U.S. District Court for the District of Columbia in 1980 of 47 safety compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994.

[FR Doc. 94–20142 Filed 8–17–94; 8:45 am]

BILLING CODE 4510–25–M

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29 CFR Part 1952

[Docket No. T–025]

New Mexico State Plan: Approval of Revised Compliance Staffing Benchmarks

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

ACTION: Final rule; approval of revised State compliance staffing benchmarks.

SUMMARY: This document amends agency regulations to reflect the Assistant Secretary's decision to approve revised compliance staffing benchmarks for the New Mexico State plan.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue NW., Washington, D.C. 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 ("the Act," 29 U.S.C. 651 *et seq.*) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) of the Act sets forth the statutory criteria for plan approval, and among these criteria is the requirement that the State's plan provide satisfactory assurances that the state agency or agencies responsible for implementing the plan have " * * * the qualified personnel necessary for the enforcement of * * * standards," 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals and the resultant implementing order issued by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel necessary to assure a "fully effective" enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish "fully effective" compliance staffing levels, or benchmarks, for each State plan.

In 1980 OSHA submitted a Report to the Court containing these benchmarks and requiring New Mexico to allocate 11 safety and 17 health compliance personnel to conduct inspections under the plan. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for State plan final approval consideration under section 18(e) of the Act.

Both the 1978 Court Order and the 1980 Report to the Court explicitly contemplate subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983 OSHA, together with State plan representatives, initiated a comprehensive review and revision of the 1980 benchmarks. The State of New Mexico participated in this benchmark revision process, which resulted in a methodology whereby a State could submit data that would justify revision of its 1980 benchmarks. In May 1992, New Mexico proposed to the Assistant Secretary revised compliance staffing levels for a "fully effective" program responsive to the occupational safety and health needs of the State. (A complete discussion of both the 1980 benchmarks and the

present revision system process is set forth in the January 16, 1985 **Federal Register** (50 FR 2491) regarding the Wyoming occupational safety and health plan.)

Proposed Revision of Benchmarks

In 1980, OSHA submitted a report to the Court containing the benchmarks and requiring New Mexico to allocate 11 safety compliance officers and 17 industrial hygienists. Pursuant to the initiative begun in August 1983 by the State plan designees as a group, and in accord with the formula and general principles established by that group for individual State revision of benchmarks, New Mexico reassessed the compliance staffing necessary for a "fully effective" occupational safety and health program in the State.

In May 1992, the New Mexico Environmental Department (the designated agency or "designee" in the State) completed, in conjunction with OSHA, a review of the compliance staffing benchmarks approved for New Mexico in 1980. This reassessment resulted in a proposal to OSHA of revised compliance staffing benchmarks of 7 safety and 3 health compliance officers for the State of New Mexico.

History of the Present Proceedings

On March 29, 1994, the Occupational Safety and Health Administration published notice in the **Federal Register** of its proposal to approve revised compliance staffing benchmarks for New Mexico (59 FR 14587). A detailed description of the methodology and State-specific information used to develop the revised compliance staffing levels for New Mexico was included in the notice. In addition, OSHA submitted, as a part of the record, detailed submissions containing both narrative explanation and supporting data for New Mexico's proposed revised benchmarks (Docket No. T–025). A summary of the benchmark revision process is set forth in the January 16, 1985 **Federal Register** notice concerning the Wyoming State plan (50 FR 2491). An informational record was established in a separate docket (Docket No. T–018) and contained background information relevant to the benchmark issue and the current benchmark revision process.

To assistant and encourage public participation in the benchmark revision process, a copy of New Mexico's complete record was maintained in the OSHA Docket Office in Washington, D.C. Copies of New Mexico's record were also maintained in the OSHA Region VI Office in Dallas, Texas, and in the Office of the New Mexico Environment Department, Occupational Safety and Health Bureau, in Santa Fe, New Mexico.

The March 29 proposal invited interested parties to submit, by May 3, 1994, written comments and views regarding whether New Mexico's proposed revised compliance staffing benchmark levels should be approved. No comments were received regarding New Mexico's proposed benchmarks.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings. In light of all the facts presented on the record, including the absence of any objections from interested parties, the Assistant Secretary has determined that the revised compliance staffing levels proposed for New Mexico meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of safety and health compliance officers for a "fully effective" enforcement program. Therefore, the revised compliance staffing levels of 7 safety and 3 health for New Mexico are approved.

Effect of Decision

The approval of the revised staffing levels for New Mexico, set forth elsewhere in this notice, establishes the requirement for a sufficient number of adequately trained and qualified compliance personnel as set forth in Section 18(c) of the Act and 29 CFR 1902.37(b)(1). These benchmarks are established pursuant to the 1978 Court Order in *AFL–CIO* v. *Marshall* and define the compliance staffing levels necessary for a "fully effective" program in New Mexico. The allocation of sufficient staffing to meet the benchmarks is one of the conditions necessary for States to receive an 18(e) determination (final State plan approval) with its resultant relinquishment of concurrent Federal enforcement jurisdiction.

Explanation of Changes to 29 CFR Part 1952

29 CFR 1952 contains, for each State having an approved occupational safety and health plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. This notice makes several changes to Subpart DD to reflect the approval of New Mexico's revised compliance staffing benchmarks, as well as to reflect minor editorial modifications to the structure of the Subpart.

A new § 1952.393, *Compliance staffing benchmarks*, has been added to Subpart DD to reflect the approval of the revised benchmarks for New Mexico.

While most of the existing subparts have been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps and certification of completion of developmental steps) are set forth in chronological order.

Related editorial changes to the subparts include modification of the heading of § 1952.360 to clearly identify the initial plan approval of New Mexico. The addresses of locations where the New Mexico plan may be inspected have been updated and are found at § 1952.366.

Regulatory Flexibility Act

OSHA certifies, pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*), that this rulemaking will not have significant economic impact on a substantial number of small entities. Approval of the revised compliance staffing benchmarks for New Mexico will not place small employers in the State under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736))

Signed at Washington, DC, this 11th day of August 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1952—[AMENDED]

Accordingly, Subpart DD of 29 CFR Part 1952 is amended as follows:

Subpart DD—New Mexico

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

2. Section 1952.360 is amended by revising the heading to read:

§ 1952.360 Description of the plan as initially approved.

§ 1952.365 [Redesignated as § 1952.367]

§ 1952.362 [Redesignated as § 1952.365]

3. Section 1952.365 is redesignated as § 1952.367 and § 1952.362 is redesignated as § 1952.365.

§ 1952.362 [Redesignated from § 1952.364]

§ 1952.364 [Reserved]

4. Section 1952.364 ("Completion of developmental steps and certification") is redesignated as § 1952.362, and a new § 1952.364 is added and reserved.

§ 1952.361 [Redesignated as § 1952.366]

5. Section 1952.361 is redesignated as § 1952.366 and revised to read as follows:

§ 1952.366 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Room 602, 525 Griffin Street, Dallas, Texas 75202; and New Mexico Environment Department, Occupational Safety and Health Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

§ 1952.361 [Redesignated from § 1952.363]

6. Section 1952.363 is redesignated as § 1952.361 and a new § 1952.363 is added to read as follows:

§ 1952.363 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall*, compliance staffing levels ("benchmarks") necessary for a "fully effective" enforcement program were required for each State operating an approved State plan. In May 1992, New Mexico completed, in conjunction with OSHA, a reassessment of the staffing levels initially established in 1980 and proposed revised benchmarks of 7 safety and 3 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994.

[FR Doc. 94–20143 Filed 8–17–94; 8:45 am]

BILLING CODE 4510–25–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG29

Claims Based on Chronic Effects of Exposure to Mustard Gas or Lewisite

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning compensation for disabilities or deaths resulting from the chronic effects of in-service exposure to mustard gas and Lewisite. This regulation is based on a National Academy of Sciences (NAS) study of the long-term health effects of exposure to these vesicant (blistering) agents, commissioned by VA, which found a relationship between such exposure and the subsequent development of certain conditions. The intended effect of this amendment is to expand the list of conditions covered and apply the presumption to a broader group of veterans.

EFFECTIVE DATE: This amendment is effective January 6, 1993.

FOR FURTHER INFORMATION CONTACT: Donald England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: On July 31, 1992, VA published a final regulation (38 CFR 3.316) authorizing service connection in claims from veterans who underwent full-body exposure to mustard gas during field or chamber experiments to test protective clothing or equipment during World War II, and who subsequently develop chronic forms of laryngitis, bronchitis, emphysema, asthma, conjunctivitis, keratitis, or corneal opacities (See 57 FR 1699–1700 and 57 FR 33875–77). VA also contracted with NAS to conduct a review of the world medical and scientific literature, including that published in languages other than English, to determine the long-term health effects of exposure to mustard agents and Lewisite. After reviewing almost 2,000 medical and scientific papers, consulting with outside experts, and conducting public hearings, NAS issued its report, entitled "Veterans at Risk: The Health Effects of Mustard Gas and Lewisite", on January 6, 1993.

After reviewing the NAS report, VA published a proposal to amend 38 CFR 3.316 to expand compensation eligibility based on the long-term health effects of exposure to vesicant agents in the **Federal Register** of January 24, 1994 (59 FR 3532–34). Interested persons were invited to submit written comments, suggestions or objections concerning the proposal on or before March 25, 1994. We received nine comments: One from the American Legion, one from the Disabled American Veterans, and seven from concerned individuals

One commenter stated that the proposed rule seems very confusing and is filled with terms that the normal citizen would not understand.

Based on this comment we have revised the heading of the regulation, substituting the phrase "mustard gas or Lewisite" for the term "vesicant agents," to make it easier for the average individual to identify the topic of the regulation from the table of contents. However, because the NAS study was based on a comprehensive review of scientific and medical literature that uses highly technical medical terms both for specific disabilities and for vesicant agents with different but similar chemical composition, we found it necessary to use the same terms in the regulation in order to accurately and precisely express the Secretary's decision. In simple terms, this amendment provides presumptive service connection for certain respiratory conditions, eye conditions and cancers based on full-body exposure to mustard gas and Lewisite.

Two commenter stated that the proposed regulation does not adequately provide for veterans who have one of the requisite conditions but cannot verify exposure to mustard gas or Lewisite because they lack access to government records. One of them suggested that service connection not be denied if their is no clear and convincing evidence of intercurrent cause.

VA does not concur. Generally, a presumption eases the burden of proof on a veteran by attaching certain consequences to the establishment of certain basic evidentiary facts. In the case of this regulation, establishment of certain basic evidentiary facts—full-body exposure to a vesicant agent during military service and the subsequent development of a specified disease—triggers the presumption that the disease is due to that exposure even where there is no medical evidence of an association between the veteran's disease and his or her military service.

The presumption does not work in reverse, however. A presumption that the presence of a condition indicates prior exposure to a specific substance

might be possible in the case of a condition associated exclusively or almost exclusively with a single cause. The only known cause of asbestosis or mesothelioma, for example, is exposure to asbestos. There is no basis for a presumption of in-service exposure to mustard gas or Lewisite based solely on the presence of any of the conditions specified in this regulation, however, because medical science recognizes other plausible causes for all of them.

Another commenter, a medical doctor and professor of medicine, pointed out that Lewisite contains arsenic and stated that exposure to arsenic is associated with increased malignancy in humans. He suggested, based upon his own clinical experience with a patient exposed to potassium arsenite, that service connection based on exposure to vesicant agents be established for chronic leukemia, primary cancers of the liver, bronchogenic cancer and skin cancers (based on exposure to Lewisite), accelerated atherosclerosis, and neurasthenia. To support this suggestion, he cited a published case study: Regelson W., Kim U., Ospina J., Holland J.F., 1968. Hemangioendothelial Sarcoma of Liver from Chronic Arsenic Intoxication by Fowler's Solution. *Cancer* 21: 514–522.

VA does not concur. The NAS report and recommendations which the Secretary relied upon were based upon a comprehensive literature review covering almost 2,000 medical and scientific papers including numerous epidemiological studies, industrial studies of workers in chemical factories, and studies of soldiers exposed to mustard gas in warfare. NAS found that there is so little literature of these types concerning the health risks associated with exposure to Lewisite that with few exceptions it is not possible to determine the relationship between Lewisite exposure and the onset of particular diseases. In essence, this commenter asks us to accept his medical judgment over that of a distinguished panel of experts in a wide range of specialties that had conducted an extensive literature search and review. In our judgment, the clinical experience of one person does not approach the probative weight of either the literature review conducted by NAS or the consensus opinion of the panel of specialists assembled by NAS. We also note that case studies, such as that submitted by the commenter, are anecdotal in nature and have no statistical significance. For these reasons, we find that the evidence is not sufficient to warrant presumptive service connection for the additional conditions recommended by this commenter.

Another commenter suggested that no claim based on verified mustard gas exposure be denied solely because there is insufficient data to establish a correlation between the claimed conditions and exposure to vesicant agents. Other commenters suggested that VA recognize additional conditions stating that veterans should not be penalized because of gaps in the medical literature.

VA does not concur. NAS found that there are few data to argue either for or against a casual relationship between exposure to vesicant agents and other conditions mentioned by the commenters, and recommended that VA conduct morbidity and mortality studies in order to resolve some of the remaining questions about the health risks associated with exposure to vesicant agents. The Veterans Health Administration is preparing to conduct morbidity and mortality studies as recommended by NAS. Should those studies indicate a relationship between exposure to vesicant agents and additional conditions, we will determine whether a regulatory presumption of service connection for those disabilities is warranted at that time.

Another commenter recommended that VA recognize additional conditions by applying VA's benefit of the doubt doctrine and resolving all doubt in favor of veterans exposed to mustard gas or Lewisite.

Again, we note that NAS found that there are few data to argue either for or against a casual relationship between exposure to vesicant agents and other conditions. VA regulations at 38 CFR 3.102 (See also 38 U.S.C. 5107(b)) define reasonable doubt as a doubt which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim; a substantial doubt within the range of probability as distinguished from pure speculation or remote possibility. Although the primary purpose of the regulation is to resolve doubt in favor of a claimant when there is a balance of positive and negative evidence, it was never intended for use when there is insufficient evidence to support a conclusion one way or the other.

One commenter stated that even though VA indicated that the proposal represented a liberalization of the previous criteria, verified full-body exposure is, in fact, a higher standard and would place a greater burden of proof on veterans seeking benefits under this amendment.

The requirement for full-body exposure was included in the July 31, 1992, version of this regulation, and its retention does not place a greater burden of proof on those veterans seeking benefits under this regulation. We had proposed to add the word "verified," but that change was intended as a clarification and represented no substantive change in VA's position on the type of evidence required to establish entitlement to the presumption of service connection set forth in this regulation. To avoid creating the impression that we have imposed a greater burden of proof, however, we have deleted the term "verified" from the final regulation.

The regulation published on July 31, 1992, applied only to those veterans who experienced full-body exposure to mustard gas while participating in secret tests of protective equipment during World War II. This amendment expands that regulation to cover any full-body exposure to mustard gas or Lewisite during military service, and it now applies to veterans exposed under battlefield conditions in World War I, those present at the German air raid on the harbor of Bari, Italy, in World War II, those engaged in manufacturing and handling vesicant agents during their military service, etc. By expanding the number of conditions, vesicant agents, and veterans covered, this amendment clearly represents a significant liberalization of the previous criteria.

Since July 1992 both VA and the Department of Defense (DoD) have initiated projects which will make it easier for veterans to establish entitlement to benefits under this regulation. DoD is searching its records for exposure data on mustard gas and Lewisite testing, to include the names of exposed military personnel, test protocols, etc., and will share the information it discovers with VA. VA has instituted a project, under the direction of the Environmental Epidemiology Service of Veterans Health Administration (VHA), to consolidate information about mustard gas testing as it becomes known into a central source. VHA officials have visited several locations where testing is known to have been conducted and/or where records might be found. The information resulting from these visits is available to VA regional offices as they attempt to establish the exposures of veterans who have filed claims.

There is an additional protection for veterans elsewhere in VA's regulations. If a claim is disallowed because exposure cannot be established but new evidence establishing exposure later becomes available from service

department records, VA will reopen the claim and authorize benefits based on the date of the original claim. (See 38 CFR 3.400(q)(2)).

One commenter suggested that the regulation should apply to oral ingestion of vesicants; another suggested that exposure via drop or patch testing should also be covered. A third commenter, a medical doctor, agreed with VA that the presumption should apply only to full-body exposures.

As explained in the preamble to the proposed rule, the literature upon which the NAS report is based covered animal studies and two types of human studies: (1) Industrial studies of workers in chemical factories which manufactured mustard gas; and (2) studies of soldiers exposed to mustard gas in warfare, primarily during World War I. The subjects of these studies were subjected to full-body exposure and NAS determined that the exposures of participants in chamber and field tests were equivalent to the full-body exposure of soldiers in World War I. Since the NAS report addressed only full-body exposures, in our judgment there is no basis for applying the presumption of service connection to those who received less extensive exposures.

Another commenter questioned why VA is restricting the presumption that acute nonlymphocytic leukemia is service-connected only to those veterans exposed to nitrogen mustard.

The NAS report found that the evidence indicated a causal relationship between the development of acute nonlymphocytic leukemia and exposure to nitrogen mustard only (See Table 12–1, Summary of Findings Regarding Specific Health Problems, Veterans at Risk: The Health Effects of Mustard Gas and Lewisite, NAS). Because of the use of nitrogen mustard in cancer chemotherapy, there is an extensive body of literature concerning the effects of nitrogen mustard in humans after systematic administration. This literature documents an increased incidence of acute nonlymphocytic leukemia in patients who were treated with nitrogen mustard as a chemotherapeutic agent. NAS noted, however, that as a therapeutic agent nitrogen mustard has a different systemic pharmacology than sulfur mustard, and that it is difficult to make quantitative extrapolations to the carcinogenicity of sulfur mustard or to which tumors sulfur mustard would be expected to produce. For those reasons, we have limited the presumption that acute nonlymphocytic leukemia is service connected to only those veterans exposed to nitrogen mustard.

Another commenter stated that the NAS report outlined and underscored a list of compelling ethical questions regarding the WWII tests of clothing and equipment that are now being ignored: why there was no formal long-term follow-up and medical monitoring in spite of clear evidence (as early as 1933) regarding delayed onsets of debilitating disease; why these subjects were treated so disrespectfully when they gave so much; and how many additional soldiers were physically harmed and morally abused from the end of World War II to 1975? The commenter decried the fact that these questions were not addressed by formal recommendations in the NAS report, although they caused the problems that have given rise to VA's efforts to expand compensation eligibility.

It is unquestionably beyond VA's ability to modify historical events by regulation; however, we believe that this regulation is an appropriate government response to these issues. VA recognizes that because the tests were secret and no follow-up examinations were conducted, veterans who took part in them are at a disadvantage when attempting to establish entitlement to compensation. This regulation addresses that situation by establishing a regulatory framework which recognizes that specific conditions are likely to result from exposure to vesicant agents and relieves veterans of the burden of submitting evidence to establish those associations in individual claims.

VA appreciates the comments submitted in response to the proposed rule which is now adopted with the corrections noted above, as corrected at 59 FR 10675, and with the following change to the effective date.

The proposed rule stated that the amendment would be effective on the date of publication of the final rule. In a letter of May 12, 1994, the Honorable John D. Rockefeller IV, Chairman of the Senate Committee on Veterans' Affairs, expressed his concern over the delay in publishing the final regulation as well as his belief that VA could establish an earlier effective date for the amendments. We share Senator Rockefeller's concern over the delay in the rulemaking process, and have therefore determined that it would be both appropriate and more equitable for this amendment to be effective January 6, 1993, the date of the decision to modify 38 CFR 3.316.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: July 15, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.316 is revised to read as follows:

§ 3.316 Claims based on chronic effects of exposure to mustard gas and Lewisite.

(a) Except as provided in paragraph (b) of this section, exposure to the specified vesicant agents during active military service under the circumstances described below together with the subsequent development of any of the indicated conditions is sufficient to establish service connection for that condition:

(1) Full-body exposure to nitrogen or sulfur mustard during active military service together with the subsequent development of chronic conjunctivitis, keratitis, corneal opacities, scar formation, or the following cancers: Nasopharyngeal; laryngeal; lung (except mesothelioma); or squamous cell carcinoma of the skin.

(2) Full-body exposure to nitrogen or sulfur mustard or Lewisite during active military service together with the subsequent development of a chronic form of laryngitis, bronchitis, emphysema, asthma or chronic obstructive pulmonary disease.

(3) Full-body exposure to nitrogen mustard during active military service together with the subsequent development of acute nonlymphocytic leukemia.

(b) Service connection will not be established under this section if the claimed condition is due to the veteran's own willful misconduct (See § 3.301(c)) or there is affirmative evidence that establishes a nonservice-related supervening condition or event as the cause of the claimed condition (See § 3.303).

[FR Doc. 94–20229 Filed 8–17–94; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO27–1–5754a; FRL–5012–6]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; New Source Review and Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this document, EPA is partially approving revisions to the State Implementation Plan (SIP) submitted by the Governor of Colorado on January 14, 1993. The submittal included revisions to the State's new source review (NSR) and prevention of significant deterioration (PSD) regulations, which were made to bring the State's regulations up-to-date with the amended Clean Air Act (Act) and the Federal regulations. EPA finds that the revised State rules meet the Federal nonattainment NSR permitting requirements of the Act for the State's carbon monoxide and ozone nonattainment areas. EPA also finds that the State regulations only partially meet the nonattainment NSR requirements of the Act for the State's PM–10 nonattainment areas because the State has not addressed the NSR requirements for new and modified major sources of PM–10 precursors in some of the State's PM–10 nonattainment areas. Last, EPA finds that the other revisions submitted are consistent with the amended Act and the Federal regulations in 40 CFR 51 and that the revisions correct previous EPA disapprovals promulgated in 40 CFR 52, Subpart G—Colorado.

DATES: This action will become effective on October 17, 1994 unless adverse or critical comments are received by September 19, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be addressed to Vicki Stamper, 8ART-AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466. Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations: Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

A. Nonattainment NSR Requirements of the Amended Act

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this notice and the supporting rationale. A brief discussion of the specific elements required in a State's NSR program is also included in Section II.B. of this notice.

EPA is currently developing rule revisions to implement the changes under the 1990 Clean Air Act Amendments in the NSR provisions of parts C and D of title I of the Act. The EPA anticipates that the proposed rule will be published for public comment in the fall of 1994. If EPA has not taken final action on States' NSR submittals by that time, EPA may generally refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. EPA expects to take final action to promulgate the rule revisions to implement the part C and D changes sometime during 1995. Upon promulgation of those revised regulations, EPA will review NSR SIPs to determine whether additional SIP revisions are necessary to satisfy the requirements of the rulemaking.

Prior to EPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, EPA does not believe Congress intended to mandate the more stringent title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent with requirements in their current NSR SIPs during that period, or to apply 40 CFR 51, Appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3, 1992 memorandum also addressed the situation where States did not submit the part D NSR SIP revisions by the applicable statutory deadline. For permit applications complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, EPA will consider the source to be in compliance with the Act where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the amended Act. EPA believes this guidance continues to apply to permitting pending final action on Colorado's NSR SIP submittal.

B. Correction of Deficiencies in Colorado's NSR/PSD Regulations

Aside from the new provisions of the amended Act, EPA has previously identified many deficiencies in the State's NSR and PSD permitting regulations. On June 28, 1985, EPA disapproved certain provisions in the State's NSR rules (see 50 FR 26734), and on February 13, 1987, EPA disapproved specific provisions in the State's PSD rules (see 52 FR 4622). In addition, after completing a thorough evaluation of the State's NSR and PSD regulations, EPA notified the State on February 17, 1988 of various other deficiencies in Regulation No. 3 and the Common Provisions Regulation.

On May 26, 1988, EPA issued a SIP call to the State due to the failure of many areas to attain the national ambient air quality standards (NAAQS) for ozone and carbon monoxide (CO). Pursuant to the SIP call, EPA required the State to correct all of the

deficiencies in its PSD and NSR permitting rules.

The State subsequently adopted some of the required NSR and PSD rule revisions on August 17, 1988. These revisions were submitted to EPA for approval in the SIP on November 17, 1988. However, EPA found in its review of the State submittal that many of the previously identified deficiencies had not been corrected.

Thus, on March 26, 1991, EPA again notified the State of all outstanding deficiencies and disapprovals in its NSR and PSD regulations and required that the State provide EPA with a commitment and a schedule for correcting these deficiencies. On April 29, 1991, Colorado responded with a list of the deficiencies that the Air Quality Control Commission (AQCC) had the existing authority to address and a list of deficiencies that would require changes in the State statute before the State regulations could be revised. The State committed in that letter to adopt the revisions for which they had the existing authority to correct by October of 1991. The State also committed to present the statutory revisions necessary to correct the remaining NSR and PSD deficiencies to the Colorado legislature in January of 1992 and to revise the regulations subsequent to the enactment of the statutory revisions. EPA subsequently approved the November 1988 revisions on June 17, 1992 (57 FR 27000), based on the State's April 29, 1991 letter of commitments.

On October 17, 1991, the State adopted the revisions to its NSR and PSD rules for which the State had the existing authority to correct. The Governor of Colorado subsequently submitted the revisions to EPA for approval on April 9, 1992, and EPA approved these revisions on September 27, 1993 (58 FR 50270).

The State also enacted legislation in August of 1992 which, among other things, addressed the remaining NSR and PSD statutory deficiencies. Subsequently, the State adopted regulatory revisions addressing the remaining deficiencies on November 19, 1992 and submitted those revisions, along with other revisions necessary to bring the State's NSR regulations up-to-date with the amended Act and amended Federal regulations, on January 14, 1993.

II. Analysis of State Submission

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566).

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR 51, Appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) if a completeness determination is not made by EPA within 6 months after receipt of the submission.

The State of Colorado held a public hearing on November 19, 1992 to entertain public comment on the proposed revisions to the SIP. Following the public hearing, the plan was adopted by the State and submitted by the Governor on January 14, 1993 as a revision to the SIP.

Specifically, the State submitted revisions to its NSR and PSD permitting regulations in Colorado Regulation No. 3 and the Common Provisions Regulation. Also submitted was a revision to the list of volatile organic compounds which have been determined to have negligible photochemical reactivity, to be consistent with the Federal definition of "volatile organic compounds" (VOCs), in Regulation No. 7. The revisions to the State's NSR and PSD regulations were made to bring the State's rules up-to-date with the amended Act and revised Federal regulations, to correct outstanding deficiencies in the State's regulations previously identified by EPA, and to make other minor changes to the State's permitting rules.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal. The submittal was found to be complete, and a letter dated March 11, 1993 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. In this action, EPA partially approves the State's SIP submittal. EPA finds that the revisions provide for consistency with the Act and corresponding Federal regulations, and that the revisions meet the new nonattainment NSR provisions for all of the State's nonattainment areas, with one exception: The State's regulations do not meet the NSR provisions for new and modified major sources of PM–10 precursors in the State's PM–10 nonattainment areas for which EPA has not made a determination that such sources do not contribute significantly to exceedances of the PM–10 NAAQS. EPA is also deleting previous EPA disapprovals of the State's regulations which the State has corrected in this submittal.

B. Nonattainment NSR Requirements of the Act

The general statutory requirements for nonattainment NSR SIPs and permitting as amended by the 1990 Amendments are found in sections 172 and 173 of the Act. These requirements apply in all nonattainment areas. The State of Colorado's nonattainment NSR regulations which had been approved prior to the 1990 Amendments were not written to be nonattainment area-specific; the NSR permitting requirements applied to new or modified sources proposing to locate in any nonattainment area in the State, including those designated pursuant to enactment of the 1990 Amendments.

Thus, in order to meet the nonattainment NSR program submittal requirements, the State only needed to revise its existing-approved NSR regulations to address the new NSR requirements of the amended Act that were not included in its existing-approved regulations, rather than submitting a comprehensive NSR SIP submittal for each of its nonattainment areas.

Since some of the revisions to sections 172 and 173 of the Act as discussed in the General Preamble clarified previously existing Federal regulations and policy, many of the new NSR requirements had already been included in the State's regulations and approved by EPA in the SIP. Thus, the following represents EPA's review of the State's submittal and/or existing approved regulations in meeting the new requirements of the amended Act:

(1) The amended Act repealed the construction ban provisions previously found in section 110(a)(2)(I) with certain exceptions.

[1] Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

No construction bans are currently imposed in Colorado, so this requirement is inapplicable.

(2) Section 173(a)(1)(A) of the Act requires a demonstration for permit issuance that the new source growth does not interfere with reasonable further progress (RFP) for the area (e.g., greater than 1:1 emission offsets should insure no interference with RFP). In addition, calculations of emissions offsets must be based on the same emissions baseline used in the demonstration of RFP.

In previously-approved Sections IV.D.2.a.(iii) and V.E.2. of Regulation No. 3, the State has established provisions which adequately address section 173(a)(1).

(3) Section 173(c)(1) of the Act requires that offsets must generally be obtained by the same source or other sources in the same nonattainment area. However, offsets may be obtained from other nonattainment areas if: the area in which the offsets are obtained has an equal or higher nonattainment classification; and emissions from the nonattainment area in which the offsets are obtained contribute to a NAAQS violation in the area in which the source would construct.

In Sections IV.D.2.a.(iii)(B) and (C) of Regulation No. 3, the State has established provisions that adequately meet the requirements of section 173(c)(1).

(4) Section 173(c)(1) of the Act requires that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation.

In previously-approved Sections IV.D.2.a.(iii) and (v) of Regulation No. 3, the State has established provisions that adequately meet the requirements of section 173(c)(1).

(5) Section 173(c)(1) of the Act requires that emissions increases from new or modified major stationary sources are offset by real reductions in actual emissions.

In previously-approved Section V.E.1.b. of Regulation No. 3, the State has established provisions for nonattainment areas with approved demonstrations of attainment which adequately meet the requirements of section 173(c)(1). For areas which need but lack an approved demonstration of attainment, previously-approved Section V.F.13.k. of Regulation No. 3 provides that emissions trades, including offsets, can only be approved through SIP revisions. Thus, such offsets would be subject to EPA's criteria, including the requirements of Section 173(c)(1).

(6) Section 173(c)(2) of the Act prohibits emissions reductions otherwise required by the Act from being credited for purposes of satisfying the part D offset requirements.

In Sections V.E.9 of Regulation No. 3, the State has established provisions that adequately meet the requirements of section 173(c)(2).

(7) Revised sections 172(c)(4), 173(a)(1)(B), and 173(b) of the Act limit and invalidate use of certain growth allowances in nonattainment areas.

This requirement is inapplicable because the State of Colorado has not established any growth allowances in its nonattainment area SIPs.

(8) Revised section 173(a)(5) of the Act requires that, as a prerequisite to issuing any part D permit, an analysis of alternative sites, sizes, production processes, and environmental control techniques for a proposed source must be completed which demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

In previously-approved Section IV.D.2.a.(iv) of Regulation No. 3, the State has established provisions which adequately address the requirements of section 173(a)(5).

(9) Section 173(d) of the Act requires States to submit control technology information from permits to EPA for the purposes of making such information available through the RACT/BACT/LAER clearinghouse.

Colorado and EPA have established provisions in the annual State-EPA agreement requiring the State to submit information from nonattainment NSR permits to EPA's RACT/BACT/LAER clearinghouse. EPA believes this is acceptable to meet this requirement.

(10) Section 173(e) of the Act provides that States may allow any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning, under certain conditions.

In lieu of imposing any alternative offset measures the permitting authority may impose an emission limit amounting to no more than 1.5 times the average cost of stationary control measures adopted in that area during the previous three years.

The State has not adopted provisions for innovative offsetting for rocket engine and motor firing because there are no such sources in the State of Colorado.

(11) Section 328 requires that sources located on the outer continental shelf (OCS) must be subject to the same requirements as would be applicable if the source were located in the corresponding onshore area.

Since the State of Colorado is land-locked and not adjacent to any oceans, this requirement is inapplicable.

(12) Revised section 302(z) of the Act set forth a new definition of "stationary source" reflecting Congressional intent that certain internal combustion engines must be subject to control under State permit programs, while requiring the exclusion of the newly defined category of "nonroad engines."

This submittal did not include any revisions to the State's definition of "stationary source" relating to non-road engines. However, the State intends to revise its regulations to exempt nonroad engines from construction permitting requirements during its annual update of its regulations in 1994. Further, EPA believes it is difficult for states to make the regulatory revisions to exclude nonroad engines until EPA promulgates regulatory revisions for the definition and exclusion of "non-road engines." When the Federal regulations concerning "non-road engines" and new source review permitting requirements are promulgated, EPA will re-evaluate the State's regulations for consistency with the Federal requirements. If revisions are needed, EPA will require the State to make the necessary changes to its regulations and the SIP.

In addition to all of the general nonattainment NSR provision mentioned above, there are also nonattainment area-specific NSR provisions in subparts 2, 3, and 4 of part D of the Act, some of which supersede these general NSR provisions because they are more stringent. The following provisions are the additional NSR provisions that apply in Colorado's nonattainment areas:

1. Ozone Nonattainment Areas

The State of Colorado currently has one ozone nonattainment area. It is defined as the Denver-Boulder area, and it is currently classified as transitional. (See 40 CFR 81.306 for Colorado's ozone nonattainment area designations.) States with transitional ozone nonattainment areas were required to submit NSR rules meeting the general NSR requirements discussed above by November 15, 1992. These rules must reflect the 100 tons per year (tpy) major stationary source threshold for emissions of VOCs for determining NSR applicability. In addition, States must establish a 40 tpy significance level for defining major modifications, in order to be consistent

with the current significance level in 40 CFR 51.165(a)(1)(x). None of the additional NSR provisions of subpart 2 of part D apply in transitional ozone nonattainment areas.

In previously-approved Section I.B.3.d. of Regulation No. 3, the State has established a provision which states that any source that is major for VOCs is considered major for ozone, and the State has established a major stationary source threshold of 100 tpy in previously-approved Section I.B.3.a. In addition, in the previously-approved definition of "significant" in the Common Provisions Regulation, the State has established a major modification significance level of 40 tpy for VOCs. Because the State has adequately addressed all of the other general NSR requirements, EPA finds that the State's NSR program meets all of the requirements for its transitional ozone nonattainment area.

2. Carbon Monoxide Nonattainment Areas

The State of Colorado has five CO nonattainment areas, four of which are currently designated as moderate: Denver Metro/Boulder, Longmont, Colorado Springs, and Fort Collins; and one of which is currently not classified: Greeley. (See 40 CFR 81.306 for Colorado's CO nonattainment area designations.) States with moderate CO nonattainment areas are required to submit NSR rules meeting the general NSR requirements discussed above and any additional requirements of subpart 3 of part D by either November 15, 1992 or November 15, 1993, depending on the design value for the area. (For those nonattainment areas with a design value of 12.7 parts per million (ppm) or less, States were required to submit the NSR revisions by November 15, 1993. Otherwise, the NSR revisions were to be submitted by November 15, 1992.) States with "not classified" CO nonattainment areas were required to submit the NSR revisions meeting the general NSR requirements discussed above by November 15, 1993. These rules must reflect the 100 tpy major stationary source threshold for emissions of CO for determining NSR applicability. In addition, States must establish a 100 tpy significance level for defining major modifications, in order to be consistent with the current significance level in 40 CFR 51.165(a)(1)(x). No additional NSR provisions in subpart 3 of part D apply.

In Section I.B.3.a. of Regulation No. 3, the State has established a major stationary source threshold of 100 tpy. Also, in the previously-approved definition of "significant" in the Common Provisions Regulation, the State has established a major modification significance level of 100 tpy. Of the State's CO nonattainment areas, only the Denver area had a design value of greater than 12.7 ppm. Thus, the nonattainment NSR provisions for the other CO nonattainment areas were not due until November 15, 1993. However, the State's NSR regulations are not written to be nonattainment area-specific; the State regulations apply in all nonattainment areas. Because the State has adequately addressed all of the other general NSR requirements, EPA finds that the State's NSR rules meets all of the requirements for all of its CO nonattainment areas.

3. PM–10 Nonattainment Areas

The State of Colorado has seven PM–10 nonattainment areas, all of which are currently designated as moderate: Denver Metro, Aspen, Canon City, Lamar, Pagosa Springs, Telluride, and Steamboat Springs. (See 40 CFR 81.306 for Colorado's PM–10 nonattainment area designations.) States with moderate PM–10 nonattainment areas which were designated upon enactment of the 1990 Amendments were required to submit NSR rules meeting the general requirements discussed above and any additional requirements of subpart 4 of part D by June 30, 1992. However, for the Steamboat Springs PM–10 nonattainment area, whose designation was not effective until January 20, 1994, the State has eighteen months after the date of redesignation (or until July 20, 1995) to submit a PM–10 attainment plan for the area which must include, among other things, provisions meeting the NSR requirements of part D (see section 189(a)(2)(B) of the Act). States' NSR rules for moderate PM–10 nonattainment areas must include a definition of "major stationary source" reflecting the section 302(j) 100 tpy PM–10 threshold for determining NSR applicability.

In addition, section 189(e) of the amended Act requires that the control requirements applicable to major stationary sources of PM–10 must also apply to major stationary sources of PM–10 precursors, except where the Administrator of EPA has determined that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. Thus, unless the EPA Administrator finds otherwise, States must submit rules meeting all of the NSR provisions mentioned above, including the section 302(j) 100 tpy threshold, for new and modified major stationary sources of PM–10 precursors. PM–10 precursors may include VOCs, which form secondary organic compounds, SO_2, which forms sulfate compounds, and nitrogen oxides (NO_x), which form nitrate compounds.

Since the State's NSR regulations are not written to be nonattainment area-specific, the State's NSR regulations apply in all of its nonattainment areas. The State has established a 100 tpy threshold for major stationary sources in Section I.B.3.a. of Regulation No. 3, as well as a 15 tpy major significance level for major modifications of PM–10 in the previously-approved definition of "significant" in the Common Provisions Regulation. In addition, the State has adequately addressed all of the other general NSR provisions. Thus, EPA believes the State regulations adequately address the nonattainment NSR requirements for new and modified sources of PM–10 in all of its moderate PM–10 nonattainment areas. However, the State's submittal did not include NSR regulations for new and modified major stationary sources of PM–10 precursors.

EPA plans to make findings of whether major stationary sources of PM–10 precursors do not contribute significantly to PM–10 levels in excess of the NAAQS (and thus whether the requirements of section 189(e) do not apply) concurrent with EPA's action on the State's PM–10 SIP submittals.[2] As of the date of this notice, EPA has promulgated findings that such sources of PM–10 precursors do *not* contribute significantly to PM–10 exceedances in the Canon City, Pagosa Springs, and Lamar PM–10 nonattainment areas (see, respectively, 58 FR 68037 (December 23, 1993), 59 FR 26127 (May 19, 1994), and 59 FR 29734 (June 9, 1994)). Further, EPA has proposed to find that such sources of PM–10 precursors also do not contribute significantly in the Aspen and Telluride PM–10 nonattainment areas (see 58 FR 68098 (December 23, 1993) and 59 FR 32402 (June 23, 1994), and EPA anticipates to promulgate those findings. However, on December 20, 1993, EPA indicated that major stationary sources of PM–10 precursors (specifically NO_x and SO_2) *do* contribute significantly to exceedances of the PM–10 NAAQS in the Denver metro PM–10 nonattainment area (see 58 FR 66331). Thus, the State is required to submit nonattainment NSR provisions for sources of PM–10 precursors for at least one of its nonattainment areas. Since the State is not required to submit NSR provisions for the Steamboat Springs

[2] Note that EPA's findings are based on the current character of an area including, for example, the existing mix of sources in an area. It is possible, therefore, that future growth could change the significance of precursors in an area.

PM–10 nonattainment area until July 20, 1995, EPA will determine the approvability of the State's NSR provisions for that nonattainment area when EPA takes action on the Steamboat Springs' attainment plan.

On February 17, 1994, the State adopted nonattainment NSR provisions for sources of PM–10 precursors (specifically, SO_2 and NO_x) in the Denver metro PM–10 nonattainment area. The State believes that such sources contribute significantly to PM–10 exceedances only in the Denver metro nonattainment area. While EPA does not anticipate any disagreement with the State on this matter, until EPA promulgates findings on whether such sources contribute significantly in the Aspen and Telluride PM–10 nonattainment areas, the State is required to adopt NSR provisions meeting the requirements of section 189(e) for these PM–10 nonattainment areas also. Because the State has not yet submitted these NSR provisions for sources of PM–10 precursors for those areas subject to the June 30, 1992 submittal deadline, EPA is only partially approving the State's NSR submittal. Once the State submits adequate nonattainment NSR provisions for new and modified major stationary sources of PM–10 precursors in the PM–10 nonattainment areas where EPA has not found that such sources do not contribute significantly to PM–10 exceedances, EPA will be able to fully approve the State's NSR program as meeting all of the nonattainment NSR requirements of the amended Act. As noted above, EPA will address the applicability of section 189(e) of the Act in the Steamboat Springs nonattainment area at the time EPA takes action on the State's attainment plan for that area.

Thus, EPA finds that the State has met all of the nonattainment NSR requirements for the Canon City, Lamar, and Pagosa Springs PM–10 nonattainment areas, and EPA finds that the State has only partially met the nonattainment NSR requirements for the Aspen, Denver, and Telluride PM–10 nonattainment areas. Because the State has adopted nonattainment NSR provisions for the Denver PM–10 nonattainment area and since EPA does not anticipate any disagreement with the State on whether such provisions should apply in the Aspen or Telluride PM–10 nonattainment areas, EPA is not partially disapproving the State's submittal at this time. If the State fails to timely submit the recently adopted rules and/or if EPA does not promulgate findings that source of PM–10 precursors do not contribute significantly in the Aspen and Telluride PM–10 nonattainment areas, then EPA will promulgate the partial disapproval that is the companion of this approval.

For further information on these requirements and the State's provisions which meet these requirements, please see the Technical Support Document (TSD) accompanying this notice.

C. Correction of Deficiencies in Colorado's NSR/PSD Regulations

EPA's review of the State's submittal found that the State had corrected all of the deficiencies that the State had committed to correct in its April 29, 1991 letter. These corrections addressed numerous EPA disapprovals which were promulgated at 40 CFR 52.329 and 52.343. Specifically, the State addressed the following disapprovals:

1. The definition of "stationary source" in the Common Provisions Regulation was revised to delete an exemption due to right-of-way provisions. This revision addresses an EPA disapproval promulgated at 40 CFR 52.343(a)(4). However, EPA is not acting on this revision in this notice because the State has previously made other revisions in the definition of "stationary source" which the State has not yet formally submitted for approval in the SIP. When the State formally submits the other revisions to this definition for approval, EPA will act on this deficiency correction.

2. In the definition of "major modification" in Regulation No. 3, the alternative fuel exemption in Section I.B.2.c.(vii) was deleted. This addresses EPA disapprovals promulgated at 40 CFR 52.329(a)(1) and 40 CFR 52.343(a)(3).

3. The definitions of "major modification" and "major stationary source" in Sections I.B.2. and I.B.3 of Regulation No. 3 were revised to delete the exemption of fugitive emissions in determining major stationary source and major modification applicability for certain source categories. This addresses EPA disapprovals promulgated at 40 CFR 52.329(a)(2), and 40 CFR 52.343(a)(1), (2), and (8).

4. Section IV.H.4. of Regulation No. 3, which allowed an administrative compliance waiver for as long as six months to a new source which violated a term of its permit, was deleted. This addresses an EPA disapproval promulgated at 40 CFR 52.343(a)(7).

5. The State deleted Section IV.D.3.b.(i)(B) of Regulation No. 3, which contained an exemption from PSD requirements for sources whose emissions consisted of fugitive dust. EPA only allows a PSD exemption for sources considered to be major based on fugitive emissions that are not included in the list of 28 sources categories in the definition of "major stationary source" (see 51.166(b)(1)(iii)). (See 51.166(i)(4)(ii).) This addresses an EPA disapproval promulgated at 40 CFR 52.343(a)(2).

6. The State deleted Section IV.F. of Regulation No. 3, which provided for default issuance of a permit if the State failed to issue the permit in accordance with set timelines. This addresses an EPA disapproval promulgated at 40 CFR 52.343(a)(6).

7. The State deleted the exemption of fugitive dust from increment consumption in Section XI.A.4 of Regulation No. 3, in order to be consistent with 40 CFR 51.166(f). This addresses an EPA disapproval promulgated at 40 CFR 52.343(a)(2).

EPA is deleting all of these disapprovals, except 40 CFR 52.343(a)(4), from 40 CFR 52.

The State also included revisions to address other revisions to the Act and to Federal regulations. Those revisions included:

1. To be consistent with sections 162(a) and 164(a) of the Act, Section VIII.A. of Regulation No. 3 was revised to delete the August 7, 1977 effective date of the boundaries of Class I areas, thus clarifying that the Class I area boundaries for those areas designated by the 1977 Act must now conform to all boundary changes made between August 7, 1977 and November 15, 1990, as well as all future boundary changes to these areas.

2. Section 112(b)(6) of the amended Act excludes the hazardous air pollutants listed in Section 112(b)(1) of the Act from the PSD requirements of part C of the Act. Thus, certain pollutants, which were previously regulated under PSD because the pollutants were covered by the section 112 national emission standards for hazardous air pollutant (NESHAP) requirements, are no longer regulated under PSD. The State has addressed these new provisions by deleting the significance levels for asbestos, beryllium, mercury, and vinyl chloride from the definition of "significant" in the Common Provisions Regulation.

3. On March 18, 1991, EPA revised a previously-issued policy statement and added 5 halocarbon compounds and 4 classes of perfluorocarbons to the list of organic compounds considered to be negligibly reactive. On February 2, 1992, EPA promulgated a revised definition of "VOCs" to specifically exclude these compounds from the definition of VOCs in 40 CFR 51.100(s), as well as to make other clarifications. The State has revised its regulations to be consistent with the new definition as follows:

Section IV.D.4. of Regulation No. 3, the definition of "net emissions increase" in the Common Provisions Regulation, and Section II.B. of Regulation No. 7 were revised to incorporate the list of negligibly reactive VOCs. In addition, the definition of "VOCs" in the Common Provisions Regulation and Regulation No. 7 were revised to be consistent with the definition in 40 CFR 51.100(s).

4. The State revised the definition of "significant" in the Common Provisions Regulation to add the significance levels for municipal waste combustor emissions, which were promulgated with the New Source Performance Standard (NSPS) on February 11, 1991 (56 FR 5507).

Other revisions which were made to the State's regulations were made to bring the State's regulations up-to-date with the State's recently amended Act. EPA is approving these revisions because they provide for clarity and consistency with the Federal requirements in the Act and 40 CFR 51.165 and 51.166. For further information on the revisions and the deficiencies addressed in this submittal, please see the TSD accompanying this notice.

Final Action

EPA is partially approving the revisions to Colorado Regulations No. 3 and 7 and the Common Provisions Regulation, which were submitted by the Governor on January 14, 1993 for approval in the SIP. Specifically, EPA is approving the State's submittal for meeting the NSR requirements of the amended Act for the State's CO and ozone nonattainment areas and for the Canon City, Lamar, and Pagosa Springs PM–10 nonattainment areas. However, for those PM–10 nonattainment areas where EPA has not promulgated findings that major sources of PM–10 precursors do not contribute significantly to PM–10 exceedances in the area (which currently include the Aspen, Denver, and Telluride PM–10 nonattainment areas), EPA is only partially approving the submittal because it did not include NSR provisions for new and modified major sources of PM–10 precursors proposing to locate in these areas. EPA is approving the other revisions to the State's PSD and minor source NSR regulations, as well as the revisions to Regulation No. 7.

This submittal also adequately addresses deficiencies in the State's PSD and NSR regulations, which EPA previously identified in a March 26, 1991 letter and which the State committed to correct in an April 29, 1991 letter. Therefore, EPA is deleting the disapprovals promulgated at 40 CFR 52.329(a) (1) and (2) and at 40 CFR 52.343 (a)(1)–(a)(3) and (a)(6)–(a)(8).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective on October 17, 1994, unless within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 17, 1994.

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

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 17, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be file, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: July 6, 1994.

Kerrigan G. Clough,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(66) to read as follows:

§ 52.320 Identification of Plan.

* * * * *

(c) * * *

(66) On January 14, 1993, the Governor of Colorado submitted revisions to the new source review and prevention of significant deterioration requirements in the Common Provisions Regulation and Regulation No. 3, as well as a revision to Regulation No. 7 pertaining to volatile organic compounds of negligible photochemical reactivity.

(i) Incorporation by reference.

(A) Air Quality Control Commission Common Provisions Regulation, Section I.C. and Section I.G., definitions of "adverse environmental effect," "air pollutant," "best available control technology," "federal act," "federally enforceable," "hazardous air pollutant," paragraph h. in "net emissions increase," "ozone depleting compound," and "significant;" revised 11/19/92, effective 12/30/92.

(B) Air Quality Control Commission Regulation No. 3 Air Contaminant Emission Notices, Sections I.B.1., I.B.2.c-e., I.B.3.e-f., IV.B.3-5, IV.D.2.a.(iii), IV.D.2.c., IV.D.3., IV.D.4., IV.E., IV.F., IV.H., V.E.9., VI.B.1., VI.B.4., VI.B.5., VI.C., VII.C., VIII.A., VIII.C.1., XI.A., and XIII.A. and B.; revised 11/19/92, effective 12/30/92.

(C) Air Quality Control Commission Regulation No. 7 Emissions of Volatile Organic Compounds, Section II.B.; revised 11/19/92, effective 12/30/92.

3. Section 52.329 is amended by removing paragraphs (a) (1) and (2) and revising paragraph (a) to read as follows:

§ 52.329 Rules and regulations.

(a) On January 14, 1993, the Governor of Colorado submitted revisions to the State's nonattainment area new source review permitting regulations to bring the State's regulations up to date with the 1990 Amendments to the Clean Air Act. With these revisions, the State's regulations satisfy the part D new source review permitting requirements for the following nonattainment areas: the Canon City, Lamar, and Pagosa Springs moderate PM-10 nonattainment areas, the Denver/Metro Boulder, Longmont, Colorado Springs, and Fort Collins moderate carbon monoxide nonattainment areas, the Greeley not classified carbon monoxide nonattainment area, and the Denver transitional ozone nonattainment area.

§ 52.343 [Amended]

4. Section 52.343 is amended by removing paragraphs (a)(1) through (a)(3) and (a)(6) through (a)(8) and by redesignating paragraphs (a)(4) as (a)(1), (a)(5) as (a)(2), (a)(9) as (a)(3), and (a)(10) as (a)(4).

[FR Doc. 94-20344 Filed 8-17-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR PART 52

[IN39-1-6337A; FRL-5012-1]

Clean Air Act Approval and Promulgation of Employee Commute Options Program; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves the State Implementation Plan (SIP) revision request submitted by the State of Indiana on February 25, 1994, for the purpose of establishing an Employee Commute Options Program (ECO Program) in Lake and Porter Counties. The SIP request was submitted by Indiana to satisfy the statutory mandate that an ECO Program be established for employers in severe and extreme ozone nonattainment areas with 100 or more employees. Compliance plans developed by these employers must be designed to convincingly demonstrate an increase in the average passenger occupancy (APO) of vehicles used by their employees who commute to work during the peak period by no less than 25 percent above the average vehicle occupancy (AVO) of the nonattainment area. The rationale for the approval is set forth in this final rule; additional information is available at the address indicated in the **ADDRESSES** section. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address the comments received in response to this final rule in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

DATES: This action will be effective October 17, 1994, unless notice is received by September 19, 1994, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the ECO Program SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Jessica Radolf at (312) 886-3198 before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR-18J), Regulation Development Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the ECO Program SIP revision is available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jessica Radolf (312) 886-3198.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the section 182(d)(1)(B) of the Clean Air Act, as amended in 1990 (amended Act), requires employers with 100 or more employees in Lake and Porter Counties to participate in a trip reduction program. The concerns that lead to the inclusion of this ECO provision in the amended Act are that more people are driving than ever before and they are driving longer distances. The increase in the number of drivers and the increase in the number of vehicle miles traveled (VMT) currently offset a large part of the emissions reductions achieved through the production and sale of vehicles that operate more cleanly. It is widely accepted that shortly after the year 2000, without limits on increased travel, the increased emissions caused by more vehicles being driven more miles under more congested conditions will outweigh the fact that each new vehicle pollutes less, resulting in an overall increase in emissions from mobile sources. The ECO provision outlines the requirements for a program designed to minimize the use of single occupancy vehicles in commuting trips in order to gain emissions reductions beyond what can be and will be obtained via stricter tailpipe and fuel standards.

Section 182(d)(1)(B) of the amended Act requires that employers in severe and extreme ozone and serious carbon monoxide (CO) nonattainment areas submit their compliance plans to the State two years after the SIP is submitted to USEPA. These compliance plans developed by employers are designed to convincingly demonstrate an increase in the APO of vehicles used by their employees who commute to work during the peak period by no less than 25 percent above the AVO of the nonattainment area. These compliance plans must convincingly demonstrate that the employers will meet the target

no later than 4 years after the SIP is submitted. Where there are important differences in terms of commute patterns, land use, or AVO, the States may establish different zones within the nonattainment area for purposes of calculation of the AVO.

Section 110(k) of the amended Act contains provisions governing USEPA's action on SIP submittals. The USEPA can take one of three actions on ECO Program SIP submittals. If the submittal satisfactorily addresses all of the required ECO Program elements, the USEPA shall grant full approval. If the submittal contains approvable commitments to implement all required ECO Program elements, but the State does not yet have all of the necessary regulatory authority to do so, the USEPA may grant conditional approval. Finally, if the submittal fails to adequately address one or more of the mandatory ECO Program elements, the USEPA shall issue a disapproval.

On February 25, 1994, the State of Indiana submitted a SIP revision request including Rule 326 IAC 19–1 to USEPA in order to satisfy the requirements of section 182(d)(1)(B) of the amended Act in Lake and Porter Counties. The Indiana ECO regulations include a number of definitions that USEPA has determined to be consistent with section 182(d)(1)(B).

In order to gain approval, the State submittal must contain each of the following ECO Program elements: (1) The AVO for each nonattainment area or for each zone if the area is divided into zones; (2) the target APO which is no less than 25 percent above the AVO(s); (3) an ECO Program that includes a process for compliance demonstration; and, 4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers. The USEPA issued guidance on December 17, 1992, interpreting various aspects of the statutory requirements (Employee Commute Options Guidance, December, 1992).

A copy of this guidance has been included in this rulemaking docket.

II. Analysis

The State has met the requirements of section 182(d)(1)(B) of the amended Act by submitting a SIP revision that implements all required ECO Program elements as discussed below.

1. The Average Vehicle Occupancy

Section 182(d)(1)(B) requires that the State determine the AVO at the time the SIP revision is submitted. The State has met this requirement by determining that the AVO for Lake and Porter Counties at the time of SIP submittal was 1.17.

2. The Target APO

Section 182(d)(1)(B) indicates that the target APO must be not less than 25 percent above the AVO for the nonattainment area. An approvable SIP revision for this program must include the target APO. The State has met this requirement by setting the target APO at 1.46, which is 25 percent above the AVO of 1.17.

3. ECO Program

State or local law must establish ECO Program requirements for employers with 100 or more employees at a worksite within severe and extreme ozone nonattainment areas and serious carbon monoxide areas. In the ECO Program Guidance issued December 1992, USEPA states that automatic coverage of employers of 100 or more should be included in the law.[1] In addition, States should develop procedures for notifying subject employers regarding the ECO Program requirements.

State and/or local laws must require that initial compliance plans convincingly demonstrate prospective compliance. Approval of the SIP revision depends on the ability of the State/local regulations to ensure that the Act requirement that initial compliance plans convincingly demonstrate compliance will be met. This demonstration can take on any of four forms or any combination of these.

One option is for the State to include in the SIP evidence that State agency resources are available for the effective plan-by-plan review of employer-selected measures to ensure the high quality of compliance plans, and that plans that are not convincing will be rejected.

A second option is for the regulations in the SIP to contain a convincing minimum set of measures that all employers must implement. These measures will be subject to review and approval by USEPA as adequate when the SIP is processed.

A third option is for the regulations in the SIP to provide that failure by the employer to meet the target APO will result in implementation of a regulation-specified, multi-measure contingency plan. This plan will be reviewed by USEPA for adequacy when the SIP is processed.

A fourth option is for the regulations in the SIP to include financial penalties for employers who fail to meet the target APO and/or compliance incentives that are large enough to result in a significant prospective incentive for the employer to design and implement an effective initial compliance plan of its own.

Indiana has met these requirements by providing evidence in the SIP that Indiana Department of Environmental Management resources are available to implement the first option. Indiana will contract with the Northwestern Indiana Regional Planning Commission (NIRPC) to implement the ECO program in Lake and Porter Counties. One year after the effective date of the ECO regulations, November 29, 1994, NIRPC will begin requesting compliance plans from the approximately 170 employers in Lake and Porter Counties with 100 or more employees at a worksite. Upon receiving written notice by certified mail, employers meeting the applicability requirements of the regulations will submit to NIRPC a compliance plan within one hundred twenty (120) days of receipt of notification. The ECO plan will be implemented within one year of the plan's approval by NIRPC.

4. Enforcement Procedures

States and local jurisdictions need to include in their ECO regulations penalties and/or compliance incentives for an employer who fails to submit a compliance plan or an employer who fails to implement an approved compliance plan according to the compliance plan's implementation schedule. Penalties should be sufficient to provide an adequate incentive for employers to comply and no less than the expected cost of compliance. Indiana's ECO SIP has met this requirement by including in its ECO regulations substantial penalties for failure to comply with any provision of the regulation. A violator may be subject to a fine of up to $25,000 per day per violation as provided under the authority of Indiana Code (IC) 13–7–13–1(a). Violations include: 1) failure to submit an approvable plan or approvable plan update; 2) failure to implement an approvable plan or approvable plan update; 3) failure to provide any measure in an approved plan or approved plan update; 4) falsification of information on employment; and, 5) failure to respond to an order to comply. If an employer complies with all provisions of the approved ECO plan or plan update, but fails to meet the target APO, such failure is not a violation of this rule.

[1] The December 17, 1992, ECO guidance developed by USEPA allows that a de minimis exemption may be made at the State's option where by employers with worksites at which fewer than 33 employees report to work during the peak travel period are not subject to the ECO requirements.

5. Clarifications of Indiana ECO Regulations

Because USEPA found some parts of Indiana's submittal unclear, a letter of clarification was requested from the State. This letter was submitted to USEPA on June 29, 1994, from Timothy J. Method, Assistant Commissioner, Office of Air Management, Indiana Department of Environmental Management (IDEM). The contents of this letter are summarized below. The letter is available for public inspection in the docket for this action at the Region 5 address listed above:

(1) Definition (b)(1) of the "applicable employee population" *excludes* for the purpose of calculating the APO employees who are off work because of jury duty, work action, vacation or sick leave; definition (m), the "verifiable estimate of average passenger occupancy", *includes* these same employees in the employee trip record surveys used to calculate the APO. There is effectively no inconsistency between definitions (b) and (m). Definition (m) requires that employees who are off work because of jury duty, work action, vacation or sick leave must be included in the documentation of the employee trip surveys that are used to calculate the APO. However, because these employees are not reporting to the worksite between 6:00 a.m. and 10:00 a.m., they are recorded as zero persons arriving in zero vehicles and are, therefore, effectively excluded in the calculation of the APO.

(2) Definition (d) of the "average vehicle occupancy" requires that the survey used to determine the AVO, must be conducted during a period that excludes any holidays and occurs during a time without holidays bordering the weekend on either side of the selected week. Definition (c) of the "average passenger occupancy" states only that national holidays may be excluded from the survey period. The survey periods for the APO and the AVO should have the same restrictions. The State program guidance instructs employers to conduct their APO survey during a week that excludes holidays and that does not have a holiday bordering the weekend on either side of the selected week.

(3) The definition for "employee" refers to any full-time or part-time person working ten or more days per thirty day period who report to work or is assigned primarily to a worksite on a regular schedule over a thirty day period. A regular schedule refers to the total number of days per 30 day period worked regularly. Regardless of how the hours are scheduled, employees who work regularly ten or more days per thirty day period are included in the employee definition.

(4) Definition (o) of a "worksite" means (1) and (2) or (1) or (2). If worksite means (1) or (2) then is it required that buildings owned or operated by the same employer or by employers under common control must be in the same nonattainment area. Indiana has confirmed that the definition of a worksite means (1) and (2). Therefore, to be considered a worksite a building or group of buildings must be in the same nonattainment area.

(5) Sections (3)(d) and (5) (a) and (d) do not state a limit on the amount of time that could be granted to an employer for an extension or postponement of a plan submittal. IDEM intends to allow another 30 to 60 days maximum for extensions or postponements of plan submittals.

(6) Both Section (3)(e) and Section (5)(d), regarding the submittal of initial compliance plans and plan updates, respectively, state that failure by IDEM to respond to a plan, in writing, within 60 days, would result in automatic approval of the plan. It is IDEM's intention to review all plans and to send out letters to all employers within the 60 day period. The affected worksites in Northwest Indiana will be notified in 4 staggered periods that are 60 days apart. Because employers must submit their plan 120 days after notification, there will be minimal overlap of submissions by the four groups and responses by IDEM will be spread over a ten month period. It is expected that it will take no longer than one day to review a plan and two staff persons, one at 75% time and one at 50% time, will be reviewing the plans.

It should be noted that the Indiana legislation includes a provision allowing an employer's compliance plan to be deemed approved in the absence of a response following the 120 day evaluation period. USEPA believes that this provision is intended to expedite the approval process for only those plans which convincingly demonstrate compliance, being deemed approved in the event that a notice of inadequacy on such a plan is not provided within the 120 day evaluation period. It is, therefore, important that the State or designated regional planning agency review and take action promptly on submitted employer compliance plans. The USEPA intends to audit Indiana's ECO program to assure that compliance plans are being evaluated as required, and notice is provided to employers whose compliance plans do not convincingly demonstrate compliance. If USEPA finds that such requirements are not being complied with, USEPA will issue a SIP Call pursuant to Section 110(k)(5) of the amended Act, requiring Indiana to submit a revision to the ECO SIP eliminating the provision for approval of compliance plans based on a 120 day time lapse.

III. Final Rulemaking Action

The USEPA approves the SIP revision submitted by the State of Indiana. The State of Indiana has submitted a SIP revision that includes each of the ECO Program elements required by Section 182(d)(1)(B) of the amended Act. The SIP includes a verifiable estimate of the areawide AVO at the time that the SIP was submitted and a target APO that is at least 25 percent above the areawide AVO. Employers with more than 100 employees are required to submit compliance plans to the State that convincingly demonstrate that the plan will increase the APO per vehicle in commuting trips between home and the worksite during peak travel periods to a level not less that 25 percent above the areawide AVO for all such trips. Employee notification will begin on November 27, 1994 and initial compliance plans are due 120 days after notification is received. The plan must be implemented within one year of approval by the State. Substantial penalties that will provide an adequate incentive for employers to comply and are no less than the expected cost of compliance are included in the regulation. USEPA is, therefore, approving this submittal.

Procedural Background

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on October 17, 1994. However, if the USEPA receives adverse comments by September 19, 1994. Then the USEPA will publish a document that withdraws the action, and will address the comments received in response to this final rule in the final rule on the requested SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. The comment period will not be extended or reopened.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these

tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. The OMB has exempted this regulatory action from Executive Order 12866 review.

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Ozone.

Dated: June 30, 1994.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(92) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(92) On February 25, 1994, Indiana submitted an employee commute option rule intended to satisfy the requirements of section 182(d)(1)(B) of the Clean Air Act Amendments of 1990.

(i) Incorporation by reference.

(A) Title 326 of the Indiana Administrative Code, Article 19 MOBILE SOURCE RULES, Rule 1, Employee Commute Options. Filed with the Secretary of State, October 28, 1993. Effective November 29, 1993.

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[FR Doc. 94–19909 Filed 8–17–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 75

[FRL–5040–3]

Acid Rain Program: Continuous Emissions Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended November 15, 1990, requires the Environmental Protection Agency (EPA or Agency) to establish an Acid Rain Program to reduce the adverse effects of acidic deposition. On January 11, 1993, the Agency promulgated final rules implementing the program, including the General Provision and Permit rule and the Continuous Emission Monitoring (CEM) rule (58 FR 3590–3766). Technical corrections were published on June 23, 1993 (58 FR 34126) and July 30, 1993 (58 FR 40746–40752). This notice of direct final rulemaking contains an extension to the certification compliance deadline for NO_X and CO_2 emissions monitoring of gas-fired units and oil-fired units affected under title IV. EPA believes that this compliance deadline extension will give the regulated community more time to meet their obligations under title IV and will allow more thorough Agency review of certification application submissions, resulting in the likelihood of higher quality data. EPA believes this deadline extension is non-controversial and therefore is publishing this notice of direct final rulemaking.

DATES: If no adverse comments are received by September 19, 1994, the effective date of these revisions will be October 17, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Any written comments on these rule revisions must be identified with the document control number "A–94–16" and must be submitted in duplicate to: EPA Air Docket (6102), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sharon Saile, CEM Section Chief, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (202) 233–9180.

SUPPLEMENTARY INFORMATION: In the Proposed Rules Section of this **Federal Register**, EPA is proposing to revise the Continuous Emission Monitoring provisions. The Agency views these revisions as noncontroversial and anticipates no adverse comments. However, if EPA does receive adverse comments, EPA will publish a document in the **Federal Register** withdrawing the direct final rule. All public comments received will be treated as comments on the proposed rule as published in the Proposed Rules Section of this **Federal Register** and will be addressed in a subsequent final rulemaking notice. The EPA will not institute a second comment period on the document in the Proposed Rules Section of this **Federal Register** or on any subsequent final rule addressing withdrawn portions of this final rule. Any parties interested in commenting on these revisions to Part 75 should do so at this time.

I. Acid Rain Program Background

On January 11, 1993, EPA promulgated the "core" regulations that implemented the major provisions of Title IV of the Clean Air Act Amendments of 1990 (CAAA or the Act), including the Continuous Emission Monitoring (CEM) Regulation at 40 CFR Part 75 authorized under section 412 and 821 of the Act. The CEM rule specifies how each affected

utility unit must install a system to continuously monitor the emissions and to collect, record, and report emissions data to ensure that the mandated reductions in SO_2 and NO_x emissions are achieved, that opacity and CO_2 emissions are measured, and that SO_2 emissions are accurately measured so that the allowance system functions in an orderly manner.

Since the CEM rule was promulgated, the operation of Phase I utility units have essentially completed the first stage of implementation of the rule, having submitted monitoring plans, conducted certification testing, submitted certification applications, and submitted their first quarterly reports. In addition, many Phase II utility units have also begun implementation. As a result of issues arising during implementation of part 75, EPA is revising part 75 to extend the monitoring certification deadline for certain classes of units for some pollutants.

II. Changes to Part 75—Certification Deadlines for Gas-Fired and Oil-Fired Units

Affected units under title IV of the Clean Air Act Amendments are required to install and operate continuous emission monitoring systems or alternative monitoring systems approved by the Administrator. Part 75 specifies that all monitoring systems must be tested and approved through a certification process. In the January 11, 1993 final rule, EPA specified that required monitoring systems for units with emission limitations beginning January 1, 1995 (Phase I units) must be installed, operated, certified, and maintained by November 15, 1993 [40 CFR 74.4(a)(1)]. Similarly, units with emission limitations beginning January 1, 2000 (Phase II units) must be installed, operated, certified, and maintained by January 1, 1995 [40 CFR 75.4(a)(3)].

During the process of implementing part 75, the Agency learned that many utilities with Phase II units were having difficulty planning and performing certification testing early. Many utilities found the testing procedures in Appendix E sufficiently confusing that they were delaying testing for gas-fired and oil-fired peaking units. In other cases, software vendors were still assisting their Phase I unit clients and did not focus on the problems of Phase II units, causing further delays. In addition, both utilities and stack emission testing firms expressed concern that there might be a shortage of stack testers because of the large number of unit all requiring stack testing at the same time. There will be a total of approximately 1000 oil-fired and gas-fired units submitting certification applications in Phase II, compared to 5 oil-fired units in Phase I and 1300 Phase II coal-fired units compared to 263 coal-fired units in Phase I. If review of all these applications were done at the same time, the review might be severely limited because of the resources required and the short time period for review.

As a result of these concerns, the Agency is postponing the certification deadline for two categories of monitoring: NO_X and CO_2 monitoring of gas-fired and oil-fired Phase II units. Although these units must monitor NO_X and CO_2 emissions [40 CFR 75.10], they do not have NO_X emission limitations under Title IV of the Act. Gas-fired and oil-fired units are being monitored for NO_X and CO_2 to provide quality-assured NO_X and CO_2 emissions data for informational purposes. This data will also allow the Agency to assess progress toward the NO_X emission reduction goals of the Act. Furthermore, the Act requires EPA to establish a public database of CO_2 emissions data. EPA believes that delaying the certification of NO_X and CO_2 CEMS and Appendix E and G monitoring for these units still meets these purposes, and helps to ensure higher quality NO_X and CO_2 emission data than might be obtained if the January 1, 1995 deadline were still required because a phased schedule for certifications submissions will allow more thorough and complete review of the submissions for each time period. The revised deadline does not apply to coal-fired units or to monitoring of SO_2, opacity, or heat input for gas-fired and oil-fired units.

EPA believes that it is reasonable for utilities to begin to monitor the NO_X emissions in ozone nonattainment areas and the ozone transport region of the northeast U.S. earlier than in other areas. An accurate account of NO_X emissions is environmentally significant in such areas because NO_X helps ozone to form (see docket item "Title IV Affected Utility Plants in Nonattainment Areas or in OTR"). As a result, EPA is extending the certification deadline for NO_X monitoring of gas-fired and oil-fired units in ozone nonattainment areas and ozone transport regions by six months only, until July 1, 1995. Other gas-fired and oil-fired units that are not in these environmentally critical areas may postpone their certification testing until one year after the original deadline, until January 1, 1996. By instituting this phased-in approach, two purposes are accomplished—certification applications will receive thorough review and NO_X information will be available first for the areas with the greatest need for that information.

EPA has also included a delayed certification deadline for CO monitoring from oil-fired units and gas-fired units in today's revision to part 75. A CO_2 monitor may be used both as a CO_2 diluent monitor in a NO_X continuous emission monitoring system and as a CO_2 continuous emission monitoring system. If the NO_X monitoring deadline were extended but the CO_2 monitoring deadline were not extended, then the owner or operator of a gas-fired unit or and oil-fired unit would still be required to install the CO_2 monitor and stack test it before its certification as part of the NO_X monitoring system. In effect, an owner or operator would need to go through stack testing and certification twice for the same CO_2 monitor. In order to make the NO_X monitoring certification deadline extension more useful and to avoid unnecessary duplication of testing and certification activities, EPA is also extending the certification deadline for CO_2 monitoring.

Gas-fired and oil-fired peaking units may choose to use the procedures in Appendices E and G of part 75 to estimate NO_X and CO_2 emissions using means other than continuous emission monitoring. Appendix E requires a utility to develop a correlation between unit load and NO_X emission rate. Appendix G allows any utility, not just peaking units, to estimate CO_2 mass emissions from a unit using fuel sampling and analysis and fuel usage data. Both of these methods require the development of software that is different from that already developed and implemented for use under Phase I of the program. In contrast, software programmers have already developed software for units with continuous emission monitoring systems and for units using Appendix D of part 75 for determination of SO_2 emissions from oil-fired or gas-fired units. In order to allow software programmers more time to develop software to implement Appendices E and G of part 75, EPA is extending the certification deadline for NO_X monitoring and CO_2 monitoring from these methods, as well as for CEMS.

EPA is not extending the certification deadlines for coal-fired units. Phase I utilities overwhelmingly were able to meet the statutory deadline for monitoring with CEMS—95% of Phase I units completed testing by the deadline of November 15, 1993. There are no class-wide issues delaying implementation for coal-fired units

using CEMS. Therefore, EPA expects that all Phase II coal-fired units will meet the certification deadline of 1/1/95. Furthermore, coal-fired units have emission limitations for SO_2 and NO_x under the Acid Rain Program. Coal-fired units emit large amounts of SO_2 and NO_x.

EPA also is not extending the certification deadlines for SO_2 and opacity monitoring for gas-fired units and oil-fired units. Gas-fired and oil-fired units have SO_2 emission reduction obligations under title IV of the Act. Oil-fired units, in particular, have significant SO_2 emissions. Many of these units have the opportunity to implement Appendix D of part 75 (an optional SO_2 emissions estimation protocol using fuel sampling and analysis), thereby avoiding stack testing for CEMS. Some Phase I units were oil-fired units using Appendix D. The Agency has issued guidance to the regulated community that allows them to implement Appendix D. Furthermore, software has already been developed to implement Appendix D requirements. Opacity monitors do not require the services of special stack testers or new software. Extending the deadline for SO_2 and opacity monitoring for gas-fired units and oil-fired units will not reduce competition for stack testers or require development of software that has not been developed for Phase I units. Because of these reasons, EPA expects gas-fired units and oil-fired units to meet the January 1, 1995 certification deadline for SO_2 and opacity monitoring.

III. Impact Analyses

A. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements as specified by the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

B. Executive Order Requirements

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to results in a rule that may:

(1) Have an annual effect on the economy of $100 million of more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies on August 4, 1994, that this rule revision will not have a significant economic impact on a substantial number of small entities.

EPA performed an analysis of the effects upon small utilities of the Acid Rain Core Rules (58 FR 3649, January 11, 1993), including permitting, allowances, and continuous emission monitoring. The earlier document concluded that significant costs would occur to small utilities as a result of statutory requirements. For example, based upon a worst case for model utilities, total regulatory costs could represent as much as 6 to 7 percent of the average value of electricity produced in the year 2000. About one-third of the 105 small utilities currently affected could face impacts of up to this magnitude.

Today's revisions to part 75 have either no impact or a beneficial impact on small entities by extending the time for complying with the Acid Rain Program monitoring requirements for approximately 800 small utility units. EPA expects today's revision to part 75 to maintain the same cost of compliance as under the promulgated rule of January 11, 1993.

IV. Supporting Information

List of Subjects in 40 CFR Part 75

Environmental protection, Air pollution control, Carbon dioxide, Continuous emission monitors, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: August 4, 1994.

Carol M. Browner,

Administrator, U. S. Environmental Protection Agency.

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

PART 75—CONTINUOUS EMISSION MONITORING

1. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7651k and note.

Subpart A—General [Amended]

2. Section 75.4 is amended by revising paragraph (a)(3) to read as follows:

§ 75.4 Compliance dates.

(a) * * *

(3) For either a Phase II unit, other than a gas-fired unit or an oil-fired unit, or a substitution or compensating unit that is not a substitution or compensating unit under paragraph (a)(2) of this section: January 1, 1995.

* * * * *

3. Section 75.4 is amended by adding paragraph (a)(4) to read as follows:

(a) * * *

(4) For a gas-fired Phase II unit or an oil-fired Phase II unit, January 1, 1995, except that certification tests for continuous emission monitoring systems for NO_X and CO_2 or excepted monitoring systems for NO_X under appendix E or CO_2 estimation under Appendix G of this part shall be completed as follows:

(i) For an oil-fired Phase II unit or a gas-fired Phase II unit located in an ozone nonattainment area or the ozone transport region, not later than July 1, 1995; or

(ii) For an oil-fired Phase II unit or a gas-fired Phase II unit not located in an ozone nonattainment area or the ozone transport region, not later than January 1, 1996.

* * * * *

[FR Doc. 94–20167 Filed 8–17–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 0E3859/R2077; FRL–4907–3]

RIN 2070–AB78

Procymidone; Pesticide Tolerance for Wine Grapes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a permanent tolerance for residues of the

fungicide procymidone, *N*-(3,5-dichlorophenyl)-1,2-dimethylcyclopropane-1,2-dicarboximide, in or on the raw agricultural commodity (RAC) wine grapes at 5.0 parts per million (ppm). Sumitomo Chemical Co., Ltd., petitioned EPA to establish this regulation setting the maximum permissible level for residues of procymidone in or on wine grapes.

EFFECTIVE DATE: This regulation becomes effective August 12, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 0E3859/R2077], 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 requests 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: Steve Robbins, Acting Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 31, 1994 (59 FR 15145), EPA issued a proposed rule that gave notice that the Sumitomo Chemical Co., Ltd., had petitioned EPA under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, to establish a permanent tolerance for procymidone in or on wine grapes at 5.0 ppm. Because EPA has added additional documentation to the public docket on the proposed tolerance under section 408 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a) for residues of the fungicide procymidone on wine grapes, EPA reopened and extended for 30 days the comment period on the proposed rule. The announcement of the reopening/extension was published in the **Federal Register** of June 30, 1994 (59 FR 33723).

I. Commments on the Proposal

In response to the March 31, 1994 proposed rule, seven comments were received.

1. Four comments supported establishing a permanent tolerance.

2. The National Coalition Against the Misuse of Pesticides (NCAMP) lodged a five-point comment addressing enforceability of the tolerance, the risk assessment, the exposure calculation, the Agency's tolerance-setting procedures, and international trade versus health concern issues. The paraphrased comments and the EPA responses follow:

NCAMP Comment 1. EPA is proposing an unenforceable tolerance. EPA is setting a tolerance on grapes to be used in imported wine, not on the wine itself. We believe that the EPA, with the information it now has, is unable to make determinations about the residues on the grapes. At no time do the grapes themselves enter the U.S. or come within its legal arm. A tolerance which cannot be regulated or enforced is meaningless and not protective of public health and the environment. The tolerance should be set on the product that can be regulated, i.e., the wine.

EPA's Response. NCAMP is mistaken on the enforceability of the procymidone tolerance for wine grapes. This tolerance is fully enforceable against wine. Wine containing procymidone residues at a level greater than the 5-ppm wine grape tolerance would be adulterated as a matter of law under the FFDCA. See 21 U.S.C. 342(a)(2). Any other commodity found to contain residues of procymidone, including fresh table grapes, grape juice, and raisins, would be considered adulterated and subject to seizure by the FDA. Moreover, EPA does have adequate data on procymidone residues in wine grapes. Field trial data from 39 locations in France, Germany, Hungary, Italy, Spain, Bulgaria, Australia, Argentina, and Chile (multiple plots in some locations) were submitted for review and were determined overall to reflect adequately the use patterns of procymidone. Wine grapes were treated at 1 to 2 times the maximum label rate, which varied by location (typical 1 X rate was 0.7 lb ai/A/yr, multiple applications), according to label directions. Grape samples were harvested at Post Harvest Intervals (PHIs) generally ranging from 5 to 28 days and analyzed for procymidone. Details of the analyses and storage stability data were submitted and adequately support the residue data. The appropriate tolerance level for wine grapes was determined to be 5 ppm.

NCAMP Comments 2 and 3. EPA conducted a risk assessment on wine grapes assuming residues at less than half the proposed legal limit. It is not protective of the public health to set a tolerance at a level at which the effects are unknown. EPA used averages to calculate exposure. Procymidone residues may concentrate when grapes are processed into wine. Finally, EPA should have considered individuals and groups who consume greater than "average" amounts of wine and individuals who are more sensitive to pesticide exposures.

EPA's Responses. A residue level of 2.4 ppm was used to estimate chronic dietary and cancer risks. Since imported wine grapes will not be directly consumed, and study data indicate that residues of procymidone are significantly reduced upon processing to wine, use of the tolerance level of 5.0 ppm would have produced unrealistic estimates. Therefore, a typical, or anticipated, residue level of 2.4 ppm supported by the field trial data on wine grapes was used to estimate dietary risks. Some data on levels in wine were submitted, but were fewer in quantity, in comparison to the field trial data. EPA routinely performs chronic and cancer risk estimates using anticipated residues since tolerance levels do not reflect actual or typical residue levels found in foods. Averaging of residue levels (here, an average from field trials using maximum application rates) is appropriate for estimating chronic risks because with chronic risks, EPA is concerned with exposure over a person's lifetime. Over a lifetime, exposure will likely be an average of the range of residue values, not the high end residue value. Moreover, averaging is particularly appropriate where the food through which most exposure will occur (here, wine) results from the blending of the commodity.

In addition to the study data submitted for the Agency's consideration, FDA monitoring data also suggest that the actual residue levels in wine will be even lower. During 1990, when procymidone residues were first detected in wine, FDA analyzed approximately 1,100 imported wine samples. The highest level found was 0.6 ppm. The incidence of positive samples (greater than 0.02 ppm) was 9%, and the average positive finding was 0.06 ppm. A time-limited tolerance of 7 ppm was established on April 26, 1991 (56 FR 19518) for wine grapes grown in 1989 or before. FDA continued to monitor wine for procymidone residues in 1991. A total of 501 samples

was analyzed. Of the 501 samples, 51 were compliance and 450 were surveillance. Of the compliance samples, 37% had no detectable residues and 12% had violative residues (likely due to having been tested prior to the April 1991 establishment of the time-limited tolerance). The remaining 51% had residues below the tolerance level. The highest residue in any 1991 compliance sample was 0.06 ppm. The 450 surveillance samples included 75% with no detectable residues and 3% with violative residues up to 0.10 ppm (again, violative residues were likely to have resulted from sampling performed prior to the April 1991 establishment of the time-limited tolerance). The remaining 22% had residues below the tolerance level. Using the highest average residues from all the monitoring data (0.6 ppm) and estimating that 3,5-dichloroaniline (DCA, a procymidone metabolite potentially of toxic concern) levels will be approximately 20% of the levels of procymidone found, typical residue levels of procymidone and DCA in wine are expected to be less than 1 ppm. Therefore, the risk estimates provided using 2.4 ppm are actually overestimates and adequately consider the toxicity of both procymidone and DCA.

A number of field trials were held in which procymidone was applied to grapes, which were then made into wine. In general, procymidone levels in wine were found to be much lower than corresponding procymidone levels in grapes. The average concentration factor when grapes were processed into wine was found to be 0.35 from field trials held during 1990 in Bulgaria, Hungary, Italy (2), and Spain (2). The average concentration factor from field trials held during 1991 in France (2), Spain (2), Italy (2), and Hungary was found to be 0.19.

The proposed tolerance level of 5 ppm was used to estimate the risk of developmental toxicity, which is presently considered an acute effect. The estimated margin of exposure (MOE) was 370, even with use of this unrealistically high exposure value. A MOE of 100 is typically acceptable.

EPA did consider more than the average wine consumer. The carcinogenic risk for high consumers was addressed in the March 31, 1994 proposed rule (59 FR 15145). As for individuals who are more sensitive to pesticide exposures, EPA uses conservative risk assessment assumptions to protect such individuals. For example, when extrapolating from animal data, EPA generally uses an uncertainty factor of 10 for inter-species differences and an additional uncertainty factor of 10 in establishing an RfD to account for different sensitivities in humans.

NCAMP Comment 4. We also question the efficacy of EPA's residue tolerance-setting procedure in general and request clarification thereof, with references to applicable regulations and policy documents. The EPA process in this case, which appears to be a conflation of product residues and human exposure, raises the concern that EPA itself is not clear on its own tolerance-setting procedures. This internal confusion raises the concern that EPA's tolerance-setting mechanisms are disjointed, inadequately understood, and poorly managed and, therefore, the EPA is unable to protect public health and the environment.

EPA's Response. The sole basis stated for the allegation that EPA's tolerance-setting process is "unable to protect the public health" is the claim that for this tolerance EPA has "conflat[ed] product residues and human exposure." In the case of procymidone, as well as all other pesticides, the Agency attempted to make reasonable estimates of dietary exposure for risk assessment purposes. As explained above, there was ample data to support EPA's assumption concerning residue levels in wine. Further, EPA did not only consider average consumers of wine in its risk estimates.

NCAMP Comment 5. NCAMP is concerned that the true reason for setting the tolerance at 5.0 ppm is unrelated to health or environmental concerns, but rather is designed to appease international trading partners by using the Codex Alimentarius Commission's international standard.

EPA's Response. In determining appropriate tolerance levels to be used by FDA and United States Department of Agriculture (USDA) in their enforcement programs, the Agency evaluates data from controlled field trials, metabolism studies, and processing studies. These data are also used, in conjunction with food consumption and toxicology data, to estimate dietary exposure and risk. Any consideration of Codex standards occurs within this context. In other words, international harmonization is not a primary consideration and is only done in those instances where dietary risk and tolerance enforcement capability will not be compromised. The proposal to establish a wine grape tolerance at a level (5 ppm) that is compatible with the corresponding Codex Maximum Residue Limit (MRL) was no exception to this practice. EPA did receive several comments from foreign governments and growers in support of the procymidone tolerance. However, the reason EPA is establishing this tolerance is the reason set forth in the preamble to the proposed rule: EPA believes that exposure to procymidone residues under this tolerance poses no greater than a negligible risk.

3. Following closure of the comment period, EPA received supplemental comments from Sumitomo responding to comments filed by NCAMP.

4. Sumitomo suggested that two errors appeared in the proposed rule.

No comments were received in response to the June 30, 1994 notice announcing the reopening and extension for an additional 30 days of the comment period for the procymidone proposed rule.

II. Corrections to the Preamble to the Proposed Rule

1. Sumitomo suggested that two errors appeared in the March 31, 1994 preamble to the proposed rule.

The Agency concurs with Sumitomo that the supplementary reproductive toxicity from the rat developmental (teratology) study was observed at 125 mg/kg/day (rather than the published value of 12.5 mg/kg/day).

The Agency maintains that the second value questioned by Sumitomo is correct as published. A multigeneration reproduction study in rats indicates that the NOEL for systemic/reproductive toxicity is 50 ppm (2.5 mg/kg).

2. In addition, the Agency identified and hereby corrects two errors to the following values for a reproductive toxicity study in rats: The reproductive NOEL = 50 ppm, and the reproductive LOEL = 250 ppm (rather than the published values of 250 ppm and 750 ppm, respectively).

III. Final Decision

The data submitted on 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 permanent tolerance will protect the public health. Therefore, the tolerance 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 of 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: August 12, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

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

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

2. By revising § 180.455, to read as follows:

§ 180.455 Procymidone; tolerances for residues.

A tolerance is established for the residues of the fungicide procymidone, *N*-(3,5-dichlorophenyl)-1,2-dimethylcyclopropane-1,2 dicarboximide, in or on the following raw agricultural commodity:

Commodity	Parts per million
Wine grapes	5.0

[FR Doc. 94-20327 Filed 8-17-94; 8:45 am]

BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-40

[FPMR Temp. Reg. G-54, Rev. 1]

RIN 3090-AF20

Use of Contractor for Express Small Package Transportation

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation reissues FPMR Temp. Reg. G-54 for the purpose of replacing and making appropriate changes to FPMR Temp. Reg. G-54 which expired on November 15, 1992. This regulation mandates the use of GSA's contractor by Federal civilian executive agencies when next day express small package transportation is required. Included is a description of services provided, an attachment listing rates and accessorial charges, and information about contract provisions. This revision is issued to ensure that user agencies are aware that the option was exercised for this contract and are informed of the applicable rates for contract services.

DATES: Effective date: August 18, 1994.

Expiration date: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Brenda Pollock, Transportation Management Division (FBX), Washington, DC 20406, 703-305-5671.

SUPPLEMENTARY INFORMATION: FPMR Temporary Regulation G-54 prescribed policies and procedures applicable to Federal applicable to Federal civilian agencies with requirements for express small package and extremely urgent letter delivery. The General Services Administration (GSA) is reissuing this temporary regulation, with updates as appropriate, for use by user agencies for the option year covering November 16, 1993, through November 15, 1994.

The General Services Administration (GSA) has determined that this rule is not a significant rule for the purposes of Executive Order 12866.

Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101-40

Freight, Government property management, Moving of household goods, Office relocations, Transportation.

PART 101-40—[AMENDED]

1. The authority citation for Part 101-40 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of subchapter G to read as follows:

Appendix to Subchapter G—Temporary Regulations

* * * * *

GENERAL SERVICES ADMINISTRATION

Washington, DC 20405

FEDERAL PROPERTY MANAGEMENT REGULATIONS, TEMPORARY REGULATION G-54, REVISION 1

TO: Heads of Federal agencies

SUBJECT: Use of contractor for express small package transportation

1. *Purpose.* This regulation prescribes policies and procedures applicable to Federal civilian agencies when next day express small package transportation service is required. In addition, this regulation identifies the GSA contractor for these services and the contract rates.

2. *Effective date.* This regulation is effective August 18, 1994.

3. *Expiration date.* This regulation expires November 15, 1994, unless sooner canceled, revised, or extended.

4. *Background.*

a. Under subsection 201(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(a)), the General Services Administration (GSA) is responsible for prescribing policies and procedures that are advantageous to the Government in terms of economy, efficiency, or service, regarding program activities in the area of transportation and traffic management. GSA has entered into a contract with Federal Express Corporation (FedEx) for the transportation of express small packages from, to, and between specified locations in the United States (including Alaska and Hawaii) and Puerto Rico, where the contractor or its agent presently provides or will provide next day service. In consideration of the contract rates listed in attachment A, and to the extent provided in the contract, the Government has agreed to place all its transportation requirements for express small package service with FedEx. Agencies covered by the scope of the contract as described in subpar. 5a, below, are eligible to use this contract at the rates specified in attachment A.

b. GSA's express small package contract with FedEx provides that, where possible, express small package shipments within the contiguous United States, Alaska, Hawaii, and Puerto Rico, must be delivered by noon the next business day. The contract also requires FedEx to satisfy the Private Express Statutes and is consistent with these statutes. These statutes require shipments consisting of "letters" to be delivered by noon the next business day; delivery after noon to these points where noon delivery is possible would not satisfy the contract and would violate the Private Express Statutes. Letters sent in FedEx letter packaging must require "urgent" delivery. (This is further specified in par. 7, below.)

5. *Scope.*

a. This regulation is mandatory for all civilian executive agencies in the Federal Government under the provision of Subsection 201(a) of the Federal Property and Administrative Services Act of 1949, as amended, and implementing regulations in 41 CFR 101–40.109–3(b), and optional for (1) the legislative and judicial branches, (2) the Department of Defense, as well as other executive agencies exempted from 41 CFR part 101–40, and (3) Government cost-reimbursable contractors. When optional users elect to procure services under this contract, the contractor must provide services under the same conditions and at the same rates that apply to mandatory users.

b. Next day express small package transportation is premium transportation. Therefore, agencies and other qualified users shall make prudent use of services available under the contract. When next day service is not required to accomplish an agency's mission, other less costly methods of transportation shall be used.

6. *Definitions.*

a. "Additional service" means other agency-required services beyond the basic service but still within the scope of the contract. Such additional services are: Saturday pickup service, Saturday delivery service, holiday pickup, holiday delivery service, dangerous goods service, collect on delivery service, excess declared value, proof of delivery, and hold for agency pickup. The contractor will only provide holiday pickup service and holiday delivery service within the 48 contiguous United States and the District of Columbia. Activities requesting holiday service must make prior arrangements with the Federal Express Government Sales Office, Greenbelt, MD, at 301–507–6846, before this service will be provided.

b. "Agency" means any ordering activity (including cost-reimbursable contractors) authorized to obtain contractor services at the contract rate.

c. "Attempted delivery" means an effort made to deliver a shipment.

d. "Basic service" means pickup between the hours of 8:00 a.m. and 6:00 p.m. local time and delivery between the hours of 8:00 a.m. and 12:00 noon local time the next business day (Monday through Friday excluding holidays) to all "AA" and "AM" points listed in Federal Express' U.S. Government Contract Service Guide and delivery of extremely urgent letters in accordance with the Private Express Statutes and the United States Postal Service's implementing regulations. Delivery to all "PM" and "RM" points will be accomplished by 5:00 p.m. local time the next business day.

e. "Commercial form" means a commercial uniform straight bill of lading, a commercial express receipt, or any other commercial instrument constituting a contract of carriage subject to the terms and conditions set forth in Standard Form 1103, U.S. Government Bill of Lading. (See 41 CFR 101–41.302–3.)

f. "Commercial forms and procedures" means a shipment is made using commercial forms and commercial billing procedures instead of a Government bill of lading (SF 1103) and its related billing procedures. (See 41 CFR 101–41.304–2.)

g. "Contract rate" means a shipment charge listed in attachment A unless the charge is subsequently changed by modification issued by the contracting officer.

h. "Contractor" means FedEx as awardee listed in attachment A.

i. "Express small package shipment" means a single package or multiple packages containing general commodities except:

(1) Cash, currency, and collectible stamps and coins;

(2) Live animals, including birds, reptiles, and fish;

(3) Corpses, or parts thereof, cremated or disinterred remains;

(4) Shipments which require the contractor to obtain a Federal, State, or local license for their transportation;

(5) Shipments which may cause damage or delay to equipment, personnel, or other shipments;

(6) Lottery tickets or gambling devices;

(7) FM–04 Class 8 corrosives;

(8) Shipments of which carriage is prohibited by law;

(9) Fireworks (explosive class C, common fireworks) unless prior written approval is obtained from the contractor;

(10) Used hypodermic needles and/or syringes or medical wastes;

(11) Any other article which the contractor prohibits its commercial customers from shipping (See Federal Express U.S. Government Contract Service Guide and Federal Express Service Guide); and

(12) Letters, unless adhering to the criteria established by the U.S. Postal Service as specified in subpar 7a, below.

j. "Geographical areas" means locations lying wholly or partially within cities, towns, and communities identified by the U.S. Postal Service national five-digit ZIP code in the contractor's service guide or analogous listing.

k. "Holiday" means a Federal holiday.

l. "Increased valuation and declared liability" means value in excess of the contract declared value provisions.

m. "Money-Back Guarantee" means if FedEx does not deliver a shipment according to contract delivery requirements, it will credit your account for the applicable transportation charges.

n. "Multiple package" means an express small package shipment where:

(1) No single package in the shipment exceeds 70 pounds;

(2) No single package in the shipment is greater than 108 inches in length and girth combined;

(3) The aggregate weight of the shipment does not exceed 150 pounds;

(4) All packages are listed on the same airbill;

(5) All packages are tendered to the contractor at the same time by the same consignor and are destined for the same consignee; and

(6) The total transportation charges do not exceed $250.00 per shipment.

o. "Single package" means an express small package shipment where:

(1) The package does not exceed 70 pounds; and

(2) Is not greater than 108 inches in length and girth combined.

p. "Weight default" means the weight upon which a shipment is charged when the shipper does not place a weight on the airbill.

7. *Applicability.*

a. The scope of the express small package contract does not include "letters"; i.e., routine first class mail, as defined in U.S. Postal Service Regulations, 39 CFR 310.1 (Private Express Statutes) unless the letters are "extremely urgent." A "letter" is generally defined as "a message directed to a specific person or address and recorded in or on a tangible object." (See 39 CFR 310.1 for specific exclusions from the definition.)

(1) If the value of usefulness of a letter would be lost or greatly diminished if not delivered under the following conditions, then the letter is considered "extremely urgent" and may be shipped by the contractor under the express small package contract:

(a) Where the letter is dispatched within 50 miles of the intended destination, delivery must be completed within 6 hours or by the close of the addressee's normal business hours on the date of dispatch, whichever is later, except that letters dispatched after

noon and before midnight must be delivered by 10 a.m. of the addressee's next business day;

(b) For all other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day; and

(c) Agencies shall ensure that all outside covers or containers of letters are prominently marked with the words "Extremely Urgent" or "Private Carriage Authorized by Postal Regulations (39 CFR 320.6)." In addition, each outside cover shall show the name and address of the contractor, the sender, and the addressee. The sending office is responsible for determining that each letter meets the extreme urgency provisions of 39 CFR 320.6. If such letters are sent to an agency mail room for pickup by the contractor rather than being picked up at the sending office, the sending office shall ensure that such letters are marked clearly with the legend "Extremely Urgent" or "Private Carriage Authorized by Postal Regulations (39 CFR 320.6)."

(2) It is conclusively presumed that a letter is "extremely urgent" if the amount paid for carriage under the contract is at least $3 or twice the applicable U.S. postage for First-Class Mail, whichever is greater. If a single shipment consists of a number of letters that are picked up together at a single origin for shipment to a single destination, postage may be computed as though the shipment constitutes a single letter of the weight of the shipment for purposes of determining whether the amount paid meets the threshold. For other types of charges, a bona fide estimate of the average number of letters or shipments may be divided into the charge.

(3) In addition to the exception for shipping extremely urgent letters, data processing materials may be shipped as an express small package if the data processing materials are conveyed: (a) to a data processing center, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work is commenced on such materials within 36 hours of their receipt at the center; or (b) back from the data processing center to the address of the office originating the incoming materials, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work was commenced on the incoming materials within 36 hours of their receipt at the center. (See 39 CFR 320.2.)

(4) For further guidance with respect to shipments of letters, including data processing materials, see U.S. Postal Service Regulations at 39 CFR parts 310 and 320, or call the U.S. Postal Service, Law Department, General Administrative Law Division at 202–268–2971.

b. The provisions of this regulation apply when agencies subject to this regulation are using commercial forms and procedures. Agencies subject to this regulation are permitted to use the U.S. Government bill of lading (GBL) only when they have received written permission from the contracting officer.

c. To the extent cost-reimbursable contractors are authorized by an agency to ship under this regulation and are reimbursed the transportation costs as direct allowable costs, the contract rates and services apply to cost-reimbursable contractors. To obtain contract rates and services, a cost-reimbursable contractor must provide FedEx a written authorization from the Government contracting officer designating the contract(s) under which the cost-reimbursable contractor is authorized to obtain rates and services.

d. The contract rate does not apply for local pickup and delivery between locations in the metropolitan area of any city, town, or community.

e. Attempted delivery efforts will be made by the contractor at no additional charge. The contractor will make an effort to deliver the shipment three (3) times and a notice of attempted delivery will be left at the recipient's address after each attempted delivery. Any shipment which cannot be delivered after the third delivery attempt will be returned to the contractor's nearest facility and deemed undeliverable. The contractor will then notify the shipper to arrange for the return of the shipment. The charges associated with the original shipment will remain due. The shipment will be returned at no charge via Economy Two-Day Service, unless otherwise specified by the shipper, and the contractor's moneyback guarantee does not apply.

8. *Contractor responsibilities.*

a. In consideration of payment for services provided at the contract rates, the contractor will furnish:

(1) Basic service (see subpar. 6d);

(2) Additional service, when requested by the ordering activity in writing on the airbill or when otherwise applicable (see subpar. 6a);

(3) Delivery service for "extremely urgent" letters (see par. 7);

(4) Pickup service on the same day the pickup is requested (see subpar. 14a); and

(5) Delivery service on the next business day, Monday through Friday (excluding holidays) following receipt from the shipper (see subpar. 6d). Next day delivery service will not apply when delivery is delayed due to acts of God, the public enemy, the authority of law, or the negligent act or default of the consignor (shipper) or consignee (receiver).

b. Packages not delivered on the next day as prescribed in subpar. 8a(5) shall be transported free of charge. (See subpar. 6m.)

9. *Payment responsibilities.*

a. Payment by Government agencies for contractor services is subject to the Prompt Payment Act of 1982, as amended. Agencies will normally pay the contractor within 30 calendar days from receipt of a proper invoice.

b. At the option of the agency, and with concurrence of the contractor, the use of automated electronic billing and payment systems, or other sophisticated methods to simplify the verification and control process, may be separately arranged and established by agreement between the Government agency and the contractor.

c. Agencies shall instruct their cost-reimbursable contractors shipping under this regulation to ensure that the commercial document bears a proper "bill to" address and appropriate account reference(s) to facilitate the prompt processing and payment of the contractor's invoice by the due date.

10. *Delinquent payments and service suspension.*

a. The contractor is authorized to suspend service to any account if:

(1) The delinquent amounts are undisputed and overdue more than 90 calendar days;

(2) The contractor notified the account holder in writing 60 calendar days after billing that the account is overdue and will be suspended if not settled within 30 calendar days; and

(3) the contractor simultaneously furnishes the contracting officer a copy of the written delinquency notice.

b. Within 5 calendar days of suspension of service, the contractor will send a list of agency accounts which have been suspended to the contracting officer. Only those ordering activities within an agency which are identified as separate accounts and are delinquent will be suspended. All ordering activities within an agency will not be suspended. The contractor will restore service to a suspended activity within 5 calendar days of the agency's payment of the outstanding bills over 90 days.

c. When a question arises concerning the proper amount of charges for services rendered (e.g., improper billing, failure to post payments, erroneous charges, etc.), agencies shall give notice of the defect to the contractor's billing office in writing within 7 days after receipt of the invoice, pursuant to 31 U.S.C. 3903 and OMB Circular A–125 (Revised), which implement the Prompt Payment Act of 1982, as amended. This information should be mailed to: Federal Express Corporation, Billing Service Center/Government, 3965 Airways, Module G, Nashville, TN 38116. The fax number is 800–548–3020. If you have questions, you may contact the Billing Service Center at 800–654–9424.

d. Any dispute as to the proper amount of charges for services rendered shall be referred to the contracting officer for resolution. No suspension shall be permitted where such a dispute exists if an agency has paid the undisputed billings. The contracting officer may be reached on 703–305–6747.

11. *Shipment weight and charge for multiple packages.* Rates applicable under this regulation will be assessed on the total weight of each shipment moving at one time from one consignor to one consignee. For example, if four packages weigh 1 pound each, the applicable charge for the shipment will be computed at the rate applicable to one 4-pound package (except when in a FedEx letter).

12. *Weight default.* If the weight is not indicated on the airbill, the shipment will automatically be charged at the 5 pound rate. If the package weighs more than 5 pounds, the charge will be based upon the actual weight.

13. *Increased valuation and declared liability.* Under GSA's contract with FedEx, the declared value of a shipment is $250 per package or $9.07 per pound per package, whichever is greater. An agency may declare a value in excess of this amount for $.30 for each $100 over the declared value not to exceed $25,000. However, the Government

has a policy of self-insuring its risks of loss. Accordingly, an agency should not declare an excess value unless the agency has statutory authority to purchase insurance or the agency meets one of the exceptions to the general practice of self-insurance (See Comptroller General Decision B–244473.2, May 13, 1993). Additionally, it should be noted that shipments of Government owned valuables are governed by the Government Losses in Shipment Act, 40 U.S.C. 721–729.

14. *Agency procedures for obtaining service.*

a. Pickup service as noted in subpar. 6d may be ordered on an as-needed basis. In most instances, the contractor can provide pickup service within 1 hour of the original pickup request. However, agencies should provide the contractor with as much advance pickup notice as possible to ensure a timely pickup. For repetitive shipments, agencies may arrange with the contractor to install "lock boxes" and/or furnish regular pickup service at specified times on specified days to meet the shipper's requirements. Agencies should arrange such security clearances and passes as may be necessary to enable the contractor to perform pickup services in a timely fashion in accordance with agency procedures.

b. When and where practicable, agencies shall minimize transportation and administrative costs by consolidating into one shipment packages moving at one time from one cosignor to one consignee.

c. Agencies shall determine the weight of each shipment and have the weight indicated on the appropriate commercial form. The total weight of a shipment shall be rounded to the next whole pound. Shipments weighing less than 8 ounces shipped in FedEx letter packaging shall be shown as a FedEx letter and shipments weighing over 8 ounces but less than 1 pound shall be shown as weighing 1 pound.

d. When the Government requires additional services (such as Saturday pickup service, Saturday delivery service, holiday pickup service, holiday delivery service, dangerous goods service, collect on delivery service, and increased valuation and declared liability), an agency shall request these services in writing on the airbill.

e. Where the Government requires noncontract services (such as escorted courier services, heavyweight service, or international service), an agency is not required to purchase these services from FedEx.

f. Agencies shall provide the contractor with a billing address at the time an agency account is established. To ensure that billings are directed to the proper paying office and subsequent payments are credited, agencies may establish a centralized payment system or clearly identify individual shipping activities/accounts to which billings are to be directed.

g. Agencies using a delivery order should provide the following information:

(1) Name of contractor—Federal Express Corporation;

(2) Account number(s) (per instructions of the specified ordering activity within the agency if the contractor assigns such identification numbers and the agency requests them per ordering activity). Some agencies may require more than one account number per ordering activity if they wish to differentiate billing of different type shipments;

(3) GSA contract number GS–00F–13300;

(4) Delivery order number;

(5) "Bill to" address;

(6) Term of the delivery order; and

(7) Total dollar value authorized under the delivery order. Agencies are encouraged to anticipate and incorporate on the face of their delivery orders any additional services they might need.

Note. This information should be mailed to: Federal Express Government Sales, 7615 Ora Glen Drive, Greenbelt, MD 20770.

h. The contractor's Customer Service Center may be contacted at 800–238–5355 to establish accounts or resolved service issues. The caller must identify the Government agency that the account is being established for, as well as state any subheadings to identify the division, branch, etc.

15. *Contractor performance.* The performance of contractor responsibilities as specified in par. 8 is essential to meet the objectives for which the express small package contract and these regulations were developed. Agency activities using this contract should notify the agency contracting officer's representative (COR), in writing, when the contractor fails to meet its contractual responsibilities. If the agency COR is unable to resolve the problem with the contractor, the problem should be referred to the Contracting Officer's Technical Representative (COTR), GSA Transportation Management Division (FBX), Washington, DC 20406.

16. *Comments.* Comments and recommendations concerning use of this program or the implementing regulations may be submitted to the General Services Administration, Transportation Management Division (FBX), Washington, DC 20406.

Roger W. Johnson,

Administrator of General Services.

Attachment A to Temporary Regulation G–54

FEDERAL EXPRESS CONTRACT SERVICE RATES

(Continental U.S., Alaska, Hawaii, and Puerto Rico)

Weight	Price
FedEx Letter (up to 8 oz.)	$3.75
1 lb	3.99
2	3.99
3	3.99
4	4.80
5	5.61
6	6.42
7	7.23
8	8.04
9	8.85
10	9.66
11	10.47
12	11.28
13	12.09
14	12.90
15	13.71
16	14.35
17	14.99
18	15.63
19	16.27
20	16.91
21	17.55
22	18.19
23	18.83
24	19.47
25	20.11
26	20.75
27	21.39
28	22.03
29	22.67
30	23.31
31	23.95
32	24.59
33	25.23
34	25.87
35	26.51
36	27.15
37	27.79
38	28.43
39	29.07
40	29.71
41	30.35
42	30.99
43	31.63
44	32.27
45	32.91
46	33.55
47	34.19
48	34.83
49	35.47
50	36.11
51	36.75
52	37.39
53	38.03
54	38.67
55	39.31
56	39.95
57	40.59
58	41.23
59	41.87
60	42.51
61	43.15
62	43.79
63	44.43
64	45.07
65	45.71
66	46.35
67	46.99
68	47.63
69	48.27
70	48.91
71	49.55
72	50.19
73	50.83
74	51.47
75	52.11
76	52.75
77	53.39
78	54.03
79	54.67
80	55.31
81	55.95
82	56.59
83	57.23
84	57.87
85	58.51
86	59.15
87	59.79
88	60.43
89	61.07
90	61.71
91	62.35

Weight	Price
92	62.99
93	63.63
94	64.27
95	64.91
96	65.55
97	66.19
98	66.83
99	67.47
100	68.11
101	68.75
102	69.39
103	70.03
104	70.67
105	71.31
106	71.95
107	72.59
108	73.23
109	73.87
110	74.51
111	75.15
112	75.79
113	76.43
114	77.07
115	77.71
116	78.35
117	78.99
118	79.63
119	80.27
120	80.91
121	81.55
122	82.19
123	82.83
124	83.47
125	84.11
126	84.75
127	85.39
128	86.03
129	86.67
130	87.31
131	87.95
132	88.59
133	89.23
134	89.87
135	90.51
136	91.15
137	91.79
138	92.43
139	93.07
140	93.71
141	94.35
142	94.99
143	95.63
144	96.27
145	96.91
146	97.55
147	98.19
148	98.83
149	99.47
150	100.11

FEDERAL EXPRESS ADDITIONAL CONTRACT SERVICE RATES

Proof of delivery	No charge.
Hold for agency pick-up.	No charge.
Saturday pickup service.	$3.50 per shipment.
Saturday delivery service.	$3.50 per shipment.
Holiday pickup service [1].	$3.50 per shipment.

FEDERAL EXPRESS ADDITIONAL CONTRACT SERVICE RATES—Continued

Holiday delivery service [1].	$3.50 per shipment.
Dangerous goods service.	$5.00 per shipment.
Collect on delivery service.	$5.00 per shipment.
Address correction	$3.00 per shipment.
Rebill	$3.00 per shipment.
No/invalid account number on airbill.	$5.00 per shipment.
Excess declared value.	$0.30 per $100.00 or part thereof of declared value over the greater of $250.00 or $9.07/lb. per package. Maximum declared value per package $25,000.

[1] Activities requesting holiday service must make prior arrangements with the Federal Express Government Sales Office, Greenbelt, MD, by calling 301–507–6846, before this service will be provided.

[FR Doc. 94–19954 Filed 8–17–94; 8:45 am]

BILLING CODE 6820–24–M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Final rule with request for comments.

SUMMARY: The National Science Foundation is amending its regulations at 45 CFR Part 670 to designate additional Sites of Special Scientific Interest, and to clarify the meaning of the proviso in § 670.4(c). These regulations, issued purusant to Section 6(b)(3) of the Antarctic Conservation of 1978 (16 U.S.C. § 2405(b)(3)), are being revised to reflect recommendations adopted by the Antarctic Treaty parties at the 16th Antarctic Treaty Consultative Meeting.

EFFECTIVE DATE: August 18, 1994.

ADDRESSES: Comments should be sent to John B. Talmadge, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: John B. Talmadge at the address above or by telephone at (703) 306–1031.

SUPPLEMENTARY INFORMATION: Since these regulations were originally issued in 1979, several Antarctic Treaty consultative Meetings have been held in accordance with Article IX of the Antarctic Treaty. The regulations have been amended from time to time based on recommendations adopted through the 15th Antarctic Treaty Consultative Meeting, and the amendments that are the subject of this rule implement recommendations XVI–2 and XVI–3 of the 16th Antarctic Treaty Consultative Meeting (16th ATCM). Because the amendments merely implement recommendations adopted at the 16th ATCM, public comments were not obtained before making the amendment effective.

The recommendations which are the subject of this amendment are summarized as follows:

Recommendation XVI–2 provides that the following areas be designated Sites of Special Scientific Interest, and be subject to the management plans annexed thereto:

Site No. 33: Ardley Island (62°13′S 58°54′W) is situated about 500 meters east off the coast of the Fildes Peninsula, Maxwell Bay, King George Island, South Shetland Islands. The Site comprises the entire island and its associated littoral zone, including the isthmus between the island and Fildes Peninsular to the west. The island is about 2.0 kilometers long and 1.5 kilometers at its widest, and rises to about 50 meters in altitude. It comprises mainly Tertiary andesitic-basaltic lavas and tuffs, and there are some raised beach terraces. It is snow- and ice-free in summer. There is a small (about 100 meter long) freshwater pond on the southwest of the island. There is a refuge hut (FRG) near Braillard Point, and two more refuge huts (Argentina, Chile) near the middle of the northern coast of the island, the latter comprising several huts. The Site is of exceptional biological interest, with a diverse avifauna and extensive plant communities.

Site No. 34: Lions Rump is situated on the south coast of King George Bay, King George Island, South Shetland Islands, and is bounded by the following coordinates: 62°07′48″S, 58°09′17″W: 62°07′49″S, 58°07′14″W: 62°08′19″S, 58°07′19″W: 62°08′16″S, 58°09′15″W.

The Site is named after Lions Rump, a prominent rocky hill between the southern extremity of King George Bay and Lion Cove. It includes the littoral and sublittoral extending from the eastern end of 'Lajkonik Rock' to the northernmost end of Twin Pinnacles island, and from that point to the easternmost end of the columnar plug 'Lions Head' to the east of White Eagle Glacier. On land, the Site includes the coastline of raised beaches, freshwater pools and the streams on the south side of King George Bay and around Lion Cove, moraines and slopes leading up to the lower ice tongue of White Eagle Glacier and westward to a small moraine protruding through the ice cap

southeast of Sukiennice Hills. Lions Rump comprises Tertiary lavas and tuffs with thin brown coal intercalations and silicified wood fragments. The moraine west of Lion Cove consists of several Holocene stages of glacier advance and retreat. A small refuge is situated near the shore close to the main stream within the Site, about 300 meters west of Lions Rump. The Site is representative of the terrestrial, limnological, and littoral ecosystems of King George Island, possessing diverse biota and rock formations.

Site No. 35: Western Bransfield Strait is located off the southern shore of the Low Island, western South Shetland Islands, between latitudes 63°20′S and 63°35′S and between longitudes of 61°45′W and 62°30′W (with reference to U.S. Defense Mapping Agency Hydrographic/Topographic Center Chart Number 29121). A small portion of the Low Island landmass/snowmass projects into the northern boundary of this domain; here the northern limit of the Site will be associated intertidal zone. East, west, and south of the island the bottom slopes gently from the intertidal zone to depths of approximately 200 meters and then drops off rapidly near the boundary limits of the Site.

The bottom consists of a sand/mud/cobbled-rock matrix and supports a rich benthos in several distinct communities. In addition, the Low Island shelf appears to be a major spawning ground for several fish species. The shallow shelf south of Low Island is one of ony two known sites in the vicinity of Palmer Station that are suitable for bottom trawling for fish and other benthic organisms. The Site also offers unique opportunities to study the composition, structure, and dynamics of several marine communities.

Site No. 36: The Site is located in East Dallman Bay off the western shore of Brabant Island, Palmer Archipelago, between latitudes of 64°00′S and 64°20′S and from longitude 62°50′W east to the intertidal zone of the island's western shore (with reference to U.S. Defense Mapping Agency Hydrographic/Topographic Center Chart Number 29121). West of Brabant Island, the bottom forms a gently sloping shelf from the intertidal zone to depths of approximately 200 meters and then drops off rapidly near the western boundary of the Site.

The bottom consists of a sand/mud/cobbled-rock matrix, and the benthic community includes numerous fish species and marine plants. The shallow shelf west of East Dallmann Bay is one of ony two known sites in the vicinity of Palmer Station that are suitable for bottom trawling for fish and other benthic organisms.

Determinations

I have determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. I have also determined that this rule involves a foreign affairs function of the United States and is, therefore, exempt from the notice requirements of section 553 of the Administrative Procedure Act and from the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. § 601–612. Finally, I have reviewed this rule in light of section 2 of Executive Order 12778 and certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 670

Antarctica, Conservation.

Pursuant to the authority granted by 16 U.S.C. 2405(b)(3), NSF hereby amends 45 CFR Part 670 as set forth below.

PART 670—[AMENDED]

1. The authority citation for Part 670 is amended to read as follows:

Authority: 16 U.S.C. 2405, as amended.

§ 670.4 [Amended]

2. Section 670.4(c) is revised to read as follows:

* * * * *

(c) Entry into designated area. It is unlawful for any United States citizen to enter any specially protected area or to enter sites of special scientific interest, except sites of special scientific interest for which the management plans described in § 670.34 state that no permit is required.

* * * * *

§ 670.3 [Amended]

3. Section 670.34 is amended by adding new paragraphs (b)(33) through (36) as follows:

* * * * *

(33) Ardely Island, Maxwell Bay, King George Island, South Shetland Islands: Site number 33 as described in Recommendation XVI–2.

(34) Lions Rump, King George Island, South Shetland Islands: Site number 34 as described in Recommendation XVI–2.

(35) West Bransfield Strait, off Low Island, South Shetland Islands: Site number 35 as described in Recommendation XVI–3.

(36) East Dallmann Bay, off Brabant Island: Site number 36 as described in Recommendation XVI–3.

Dated: August 12, 1994.

Lawrence Rudolph,

Acting General Counsel, National Science Foundation.

[FR Doc. 94–20247 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970–AB05

Title IV–B and Title IV–E of the Social Security Act: Data Collection for Foster Care and Adoption

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Technical correction to final rule.

SUMMARY: The Administration on Children, Youth and Families is making technical corrections to Appendices A, B, C and D to 45 CFR Part 1355 of a final rule on data collection for foster care and adoption under titles IV–B and IV–E of the Social Security Act. These corrections will assist States in complying with the requirements for submitting data.

DATES: This correction is effective August 18, 1994.

FOR FURTHER INFORMATION CONTACT:

Daniel H. Lewis, Deputy Associate Commissioner, Children's Bureau, Administration on Children, Youth and Families, (202) 205–8618.

SUPPLEMENTARY INFORMATION:

Background

The Administration on Children, Youth and Families published a final rule on December 22, 1993 (58 FR 67912), which implemented the requirements of section 479 of the Social Security Act. This section requires the Secretary to publish regulations that implement a system for the collection of adoption and foster care data in the United States. All States that administer State plans under titles IV–B and IV–E and IV–E of the Social Security Act are subject to this rule.

Discussion of Correction to Appendix A to 45 CFR Part 1355

The Notice of Rulemaking (NPRM), published September 27, 1990 (55 FR 39540), for the adoption and foster care reporting system (AFCARS) in Appendix A, Definitions of Foster Care Data Elements, proposed to require that element number I.,D., The Child's Record Number

Must be unique to each child in the State * * *, must remain with the child throughout every reporting quarter (sic) and must be used whenever the child re-enters the foster care system * * *. The reporting number cannot be linked to the child's case I.D. number except at the State or local level.

The final rule, published December 22, 1993 (58 FR 67912), for the same data element, in response to comments from nine States eliminated this requirement and instead defined element D, Record Number as

The sequential number which the State uses to transmit data to the Department of Health and Human Services (DHHS). The record number cannot be linked to the child's case I.D. number except at the State or local level.

Because it is important for DHHS to be able to do quality assurance checks on the submitted data, and to be able to use the universe of cases submitted in AFCARS to develop and draw samples for case record reviews at the State level, a State must retain the listing which matches the sequential record number used for case data submittal to the State case I.D. number for at least three years.

When this requirement was explained to the Technical Assistance Advisory Group (a group of representatives from 10 States which provides advice to DHHS and its technical assistance contractor in implementing the AFCARS requirement), they raised major objections and requested instead that States be allowed to use the State's case I.D. number or that States be allowed to maintain a unique identifier which will remain the same for each case through the child's stay in foster care, as was first proposed in the NPRM.

This technical correction will allow States the option of using the sequential number or to have a unique number which follows the child as long a he/she is in foster care.

Because confidentiality has been a source of concern both to States and to advocates, no consideration has been given to allowing States to use State case I.D. numbers in the submittal of information. To assure that a unique reporting number will not present a problem in confidentiality for those States willing to adopt this methodology, DHHS will provide to carry every State which requests it sample algorithms which will enable them to encode existing client I.D. numbers into a DHHS unique reporting number.

Correction to Appendix B to 45 CFR Part 1355

In Appendix B to 45 CFR Part 1355, on Adoption data elements, the instructions for the element on State/Federal Adoption Support in Section VIII., A., is being corrected by deleting the reference to two Federal programs (titles XIX and XX) that were erroneously included in paragraph A. This will eliminate confusion concerning what actually must be reported as a subsidy.

Correction to Appendix C to 45 CFR Part 1355

We are correcting a typographical error and changing the number of characters referred to in Appendix C, Electronic Data Transmission Format, the third column of page 67931. The reason for the change in characters is explained below under the correction explanation for Appendix D.

Correction to Appendix D to 45 CFR Part 1355

In Appendix D, we are correcting the number of numeric characters for the Appendix A data element, "Record number", changing 6 characters to 12. This will accommodate the additional numbers a State may have to use if it chooses the option of providing a unique number for each child, using the encoding method, when it submits the required data.

Waiver of Notice and Comment Procedures

The Administrative Procedure Act (5 U.S.C. 553(b)) requires that a notice of proposed rulemaking be published unless the Department finds, for good cause, that such notice and opportunity for public comment is impracticable, unnecessary, or contrary to the public interest. In this instance, the corrections to Appendices A, B, C and D are technical in nature. They in no way change the policy set forth in the final rule. Accordingly, the Department has determined that it would be unnecessary to use notice and comment procedures in issuing this correction to the Appendices.

Impact Analyses

As the only purpose of this rule is to correct the Appendices in order to assist States in complying with the final rule, no impact analyses is required.

(Catalog of Federal Domestic Assistance Program Numbers 93.658 Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants)

Dated: August 9, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

For the reasons set forth in the preamble, Appendices A, B, C, and D to 45 CFR Part 1355 in the final rule published on December 22, 1993 at 58 FR 67912 are corrected as follows:

1. Appendix A to Part 1355, page 67927, column one, Section I.,D. is corrected to read as follows:

I. * * *

D. Record Number**—The sequential number which the State uses to transmit data to the Department of Health and Human Services (DHHS) or a unique number which follows the child as long as he or she is in foster care. The record number cannot be linked to the child's case I.D. number except at the State or local level.

* * * * *

2. Appendix B to Part 1355, page 67931, column one, section VIII., A., is corrected to read as follows:

VIII. State/Federal Adoption Support

* * * * *

A. Is The Child Receiving a Monthly Subsidy?

Enter "yes" if this child was adopted with an adoption assistance agreement under which regular subsidies (Federal or State) are paid.

* * * * *

3. In Appendix C to Part 1355, page 67931, column three, Section 4, paragraph (3) is corrected to read as follows:

* * * * *

(3) All records must be a fixed length. The Foster Care Detailed Data Elements Record is 145 characters long and the Adoption Detailed Data Elements Record is 72 characters long. The Foster Care Summary Data Elements Record and the Adoption Summary Data Elements Record are each 172 characters long.

* * * * *

4. In Appendix D to Part 1355, Section A.1., in the table on page 67932, the second line of the last column "No. of numeric characters", the number "6" is corrected to read "12"; and in the same column, last line, number "139" is corrected to read "145".

[FR Doc. 94–20008 Filed 8–17–94; 8:45 am]

BILLING CODE 4148–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GEN Docket No. 90-314; ET Docket No. 93-266; FCC 94-209]

New Personal Communications Services; Pioneer's Preference Review

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Memorandum Opinion and Order on Remand (MO&O) the Commission amends its rules regarding pioneer's preferences to provide that any person receiving pioneer's preferences in proceedings where tentative (but not final) decisions had been reached as of August 10, 1993, will be required to pay for their licenses. The amount of payment shall be determined in each proceeding on a case-by-case basis.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Sally J. Novak, Common Carrier Bureau, (202) 418-1310 or David H. Solomon, Office of General Counsel, (202) 418-1720.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Remand, adopted and released August 9, 1994. The full text of the Commission decision is available to inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 2100 M Street NW., Washington, DC 20037, (202) 857-3800.

Summary of Memorandum Opinion and Order on Remand

Introduction and summary

1. In this order, we amend our pioneer's preference rules to require that recipients of pioneer's preferences in proceedings where tentative decisions on preference requests had been made at the time Congress enacted auction legislation must pay for their licenses. This decision applies to three proceedings—2 GHz personal communications services (Broadband PCS), local multipoint distribution service (LMDS) and low earth orbital satellite services in the 1.6/2.4 GHz band (so-called Big LEOs).[1] Because we have reached a decision awarding final preferences in only one of these proceedings—broadband PCS—that is the only proceeding for which we will determine now the appropriate amount of payment to be made. Broadband PCS pioneer's preference winners will have a choice of paying either (i) ninety percent (90%) of the winning bid for the 30 MHz license in the same market; or (ii) ninety percent (90%) of the adjusted value of the license calculated based upon the average per population price for the 30 MHz licenses in the top 10 markets as established at auction.

Background

2. The pioneer's preference rules provide a means by which an applicant that demonstrates that it has developed a new communications service or technology may obtain a license to provide the new service or technology without being subject to mutually exclusive applications.[2] Under the pioneer's preference rules, an applicant may be granted a preference for a license if it demonstrates that it has developed the capabilities or possibilities of a new technology or service, or has brought the technology or service to a more advanced or effective state. The applicant for a preference must also demonstrate that the new service or technology is technically feasible by submitting either the results of an experiment or a technical showing. The preference will be granted only if the final service rules adopted by the Commission are a reasonable outgrowth of the applicant's proposal and the new technology can be used to provide the service. An applicant who meets these standards and is granted a pioneer's preference is not subject to competing applications, and if otherwise qualified will receive a license.

3. In October 1992, the Commission tentatively granted pioneer's preferences to American Personal Communications (APC) for its development and demonstration of technologies that facilitate spectrum sharing by PCS and microwave users at 2 GHz, to Cox Enterprises, Inc. (Cox) for its development and demonstration of PCS/cable plant interface technology and equipment that result in a spectrum-efficient application of PCS services, and to Omnipoint Communications, Inc. (Omnipoint) for its development of 2 GHz equipment that utilizes advanced techniques that will facilitate the continued development and implementation of PCS services and technologies.[3] In December 1993, the Commission granted final pioneer's preferences to APC, Cox, and Omnipoint.[4] The Commission determined that, if otherwise qualified, APC would be licensed to use Channel Block A in the Major Trading Area (MTA) that includes Washington, DC and Baltimore, Maryland (Washington-Baltimore MTA); Cox would be licensed to use Channel Block A in the MTA that includes San Diego, California (Los Angeles-San Diego MTA); and Omnipoint would be licensed to use Channel Block A in the MTA that includes northern New Jersey (New York MTA (including northern New Jersey)). In granting these pioneer's preferences, the Commission directed the licensing bureau to condition any 2 GHz PCS license obtained through the pioneer's preference process upon the licensee's building a system that substantially uses the design and technologies upon which the preference award was based; and upon the licensee's holding the license for a minimum of three years or until the construction requirements applicable to the five-year build-out period have been satisfied, whichever occurs first.[5] In December 1992, the Commission also awarded a tentative preference to Suite 12 Group in the LMDS service.[6] In August 1992, the Commission

[1] While we name the three current recipients of broadband PCS preferences for ease of reference, we emphasize that by doing so in no way do we intend to indicate prejudgment of the petitions for reconsideration of our broadband PCS pioneer's preference decision. The payment rule we adopt here will apply to the three proceedings in which a tentative (but not final) decision regarding preferences had been made as of August 10, 1993 in the three proceedings.

[2] The pioneer's preference rules are codified at 47 CFR 1.402, 1.403, 5.207 (1993).

[3] Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Tentative Decision and Memorandum Opinion and Order, 7 FCC Rcd 7794, 7797-7804 (1992); 57 FR 57,458 (Dec. 4, 1992).

[4] Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Third Report and Order, 9 FCC Rcd 1337, paras. 10-36 (APC), paras. 37-50 (Cox); and paras. 51-74 (Omnipoint) (1994); 59 FR 9,419 (Feb. 28, 1994) ("*Broadband Report and Order*"), *recon. pending; petitions for review filed, Pacific Bell* v. *FCC*, D.C. Circuit Nos. 94-1148 *et al., remanded on the Commission's own motion*, July 26, 1994.

[5] *Id.* at para. 9. This is consistent with the conditions that the Commission directed the licensing bureau to place upon the license granted to the narrowband PCS (900 Mhz) pioneer's preference recipient. *See* Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, GEN Docket No. 90-314 and ET Docket No. 92-100, Memorandum Opinion and Order, 9 FCC Rcd 1309, 1316, paras. 47-48 (1994); 59 FR 32,830 (Jun. 24, 1994) (*Narrowband Reconsideration*), *recon. pending* (unrelated to pioneer's preference).

[6] Establishment of Local Multipoint Distribution Service, CC Docket No. 92-297, Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration, 8 FCC Rcd 557 (1993); 58 FR 6,400 (Jan. 28, 1993).

tentatively denied all requests for preferences in the Big LEO service.[7]

4. After these tentative decisions, Congress gave the Commission authority to award licenses by auction.[8] The Commission then issued a Notice of Proposed Rule Making in ET Docket No. 93–266 to evaluate whether it should change the pioneer's preference rules in light of this landmark change in its statutory authority. The Commission was concerned that the competitive bidding authority may have undermined the basis for the pioneer's preference rules:

Establishment of competitive bidding authority creates a new dynamic for the assignment of licenses. Specifically, a bidder, who may also happen to be an innovator, through its bidding efforts would primarily control whether it obtains the desired license. It may obtain the license directly by outbidding other mutually exclusive applicants, whether by using its own financial resources or by soliciting the aid of financial institutions and venture capitalists. One may conclude, therefore, that under this new scheme the value of innovation may be considered in the marketplace and measured by the ability to raise the funds necessary to obtain the desired license(s). Thus, we are concerned that competitive bidding authority may have undermined the basis for our pioneer's preference rules.[9]

The Commission asked for comment on how any changes in the pioneer's preference rules as a result of auction authority should apply to the three proceedings in which tentative preference decisions had been issued.

5. Several commenters argued that, at the very least, preference recipients in these proceedings should be required to pay for their licenses. Specifically, for example, Pacific Bell and Nevada Bell argued that an "outright grant of a license would confer a significant cost advantage in a highly competitive market over firms which will be required to expend financial resources to successfully bid in auctions to acquire spectrum." Nextel argued that, to prevent anticompetitive inequities in the cost of obtaining Commission licenses, the preference winners should have to pay for their licenses. PageMart, Inc. argued that the pioneer's preferences were designed to provide "regulatory certainty for an innovator; they were not intended to result in a financial windfall." PageMart further argued that non-pioneer licensees would be handicapped (without any public benefit) if they had to take on a substantial financial burden that was not imposed on preference grantees. Southwestern Bell argued that "allowing the pioneers to be licensed without making a similar investment [as those who bid] not only would subvert the intentions of Congress in setting up the auction process, it would also grossly distort the competitive dynamics of the new market the Commission is creating." NYNEX argued that requiring all licenses (including pioneer's licenses) to be competitively awarded would promote economic efficiency by allowing the competitive market to determine the value of the pioneer's innovation. Other commenters including APC, Cox, and Omnipoint argued that any such charge would be inequitable. In the Pioneer's Preference Review Report and Order, while not reaching the overall question of what changes, if any, should be made in its preference rules, the Commission decided that it would be "inequitable" to apply any such rule changes to the three proceedings at issue here.[10] Its explanation, in full, for this decision was as follows:

We conclude that it would be inequitable to apply any changes in our rules to pending proceedings in which Tentative Decisions have been issued. Notwithstanding that other licensees in the three proceedings at issue may have to pay for their licenses, preference applicants in these proceedings have submitted their requests and publicly disclosed substantial detail of their system designs in reliance on the continued applicability of the pioneer's preference rules. We have evaluated their requests based on existing rules and issued Tentative Decisions, and parties have expended not inconsiderable resources to further argue the merits or demerits of the requests and our tentative conclusions addressing the requests. Had the rules been different, these applicants might have structured their requests differently; or conducted research, development, and experimentation differently; or elected not to disclose detailed information about their systems. We conclude that notwithstanding our legal authority to treat 2 GHz broadband PCS pending applicants differently than the 900 MHz narrowband PCS pioneer (Mtel) and also to apply changed rules prospectively to pending applicants in the 28 GHz LMDS and 1.6/2.4 GHz MSS proceedings, to do so would be inequitable in these three proceedings.[11]

As a result of that decision, APC, Cox, and Omnipoint (as well as any preference winners in the LMDS and Big LEOs/MSS proceedings) would not be required to pay for their licenses.

6. Subsequent to the decisions awarding final pioneer's preferences to APC, Cox, and Omnipoint and requiring no payment for the pioneer's licenses, a number of applicants whose broadband PCS pioneer's preference requests had been denied petitioned for judicial review raising a number of challenges to the awards. A primary argument of the petitioners to the court was that the Commission had not adequately explained its decision to retain the pioneer's preference program and to award the broadband PCS preference licenses for free. The petitioners asked the court to vacate the Broadband Report and Order and the Pioneer's Preference Review Report and Order. On July 8, 1994, the Commission's General Counsel, on instruction by the Commission, filed a motion in the District of Columbia Circuit asking the court to remand the broadband PCS cases to the Commission for further consideration.[12] The Commission stated that it intended "to reconsider the substance of the decision not to charge these pioneer's preference winners for licenses in circumstances where other licensees in the same service would pay substantial amounts in order to prevail in competitive bidding procedures," and that it would issue a decision within two weeks of any remand.[13]

7. By order dated July 26, 1994, the court granted the Commission's motion and remanded the cases for further consideration. Due to our commitment to the court to act expeditiously on such further consideration, we are not addressing here petitions for reconsideration of the Broadband Report and Order or the Pioneer's Preference Review Report and Order.[14]

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[7] Amendment of § 2.106 of the Commission's rules to Allocate the 1610–1626.5 MHz and 2483.5–2500 MHz Bands for Use by the Mobile-Satellite Service, Including Non-Geostationary Satellites, ET Docket No. 92–28, Notice of Proposed Rule Making and Tentative Decision, 7 FCC Rcd 6414 (1992); 57 FR (Sep. 21, 1992).

[8] *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, Title IV, section 6002, 107 Stat. 387 (enacted Aug. 10, 1993).

[9] Review of the Pioneer's Preference Rules, ET Docket No. 93–266, Notice of Proposed Rulemaking, 8 FCC Rcd 7692, 7693, para. 7 (1993); 58 FR 57,578 (Oct. 26, 1993) ("*Pioneer's Preference Review NPRM*").

[10] Review of the Pioneer's Preference Rules, ET Docket No. 93–266, First Report and Order, 9 FCC Rcd 605, 610–11 (1994); 59 FR 8,413 (Feb. 22, 1994) ("*Pioneer's Preference Review Report and Order*").

[11] *Pioneer's Preference Review Report and Order*, 9 FCC Rcd 605, 610–11 at para. 9 (footnotes omitted).

[12] Commission Instructs General Counsel to Seek Remand of Broadband Personal Communications Service Pioneer's Preference Cases, FCC 94–182, Public Notice (released Jul. 8, 1994) ("*July 8 Public Notice*").

[13] *Id.*

[14] We deny the Emergency Request for Oral Argument filed by APC. We note that oral argument would not be useful in this instance since the parties have had ample opportunity to brief the issues considered here, and APC itself filed supplemental comments on remand after filing its emergency request. We would not be able to schedule or and hold oral argument in any event within the deadline for action specified in our request for remand.

Discussion

Payment Requirement

8. Arguments that APC, Cox, and Omnipoint (as well as any preference recipients in LMDS and Big LEOs) should pay for their licenses were considered in the Pioneer's Preference Review Report and Order.[15] In that order we decided, as a matter of equity, not to charge APC, Cox, and Omnipoint for the licenses that they may receive pursuant to their pioneer's preference awards. The Commission noted that APC, Cox, and Omnipoint had publicly disclosed substantial details of their system designs in reliance on the continued applicability of the rules and had expended resources to argue the "merits or demerits of the requests and our tentative conclusions addressing the requests."[16] In this order, we revisit the question of payment for the licenses.

9. At the outset, we note that, since the adoption of the Pioneer's Preference Review Report and Order and the Broadband Report and Order in December 1993, we have adopted four reports and orders in the Competitive Bidding proceeding setting forth general auction rules and specific auction rules for narrowband PCS, interactive video and data services (IVDS), and broadband PCS. This has led to a greater understanding on our part of how the competitive bidding process will work in the context of the award of spectrum for various services and, in particular, broadband PCS. It has also resulted in concern over the award of free licenses to some parties when other licensees competing in the same markets must bid and pay substantial amounts of money for their licenses. In particular, we are concerned that the award of free licenses to APC, Cox, and Omnipoint would result in unjust enrichment of the parties and give them a financial advantage over licensees who may pay significant sums for their licenses. We also are concerned about the effect that granting free licenses to these applicants might have on the auction process.

10. In adopting the pioneer's preference procedures, the Commission sought to foster the development of new services and to improve existing services by reducing the delays and risks for innovators associated with the Commission's allocation and licensing processes as they existed then. In particular, the Commission was concerned that an innovator facing a lottery had no assurance of receiving a license and therefore no confidence in its ability to obtain a license as a reward for its efforts. We decided to offer a significant reward to encourage innovators to present proposals for new technologies and services to the Commission in a timely manner. In crafting this "reward," our intention was to assure innovators that they would be able to obtain licenses so as to implement their innovations. We did not contemplate rewarding an innovator by giving it a license for free while its competitors had to pay, because at that time no one paid for initial licenses. Rather, we decided to permit an otherwise qualified pioneer's preference recipient to apply for a license without facing competing applications:

> Our objective in establishing a pioneer's preference is to reduce the risk and uncertainty innovating parties face in our existing rule making and licensing procedures, and therefore to encourage the development of new services and new technologies. The essence of this risk and uncertainty is that they may not be awarded a license and, therefore, may not be able to take their developmental work into full business operation. The most workable action we can take to reduce this risk is effectively to guarantee an otherwise qualified innovating party that it will be able to operate in the new service by precluding competing applications.[17]

11. The Commission concluded that it has the authority to grant a dispositive preference as a reward for innovation.[18] The text of the Commission's decisions make clear that the overriding objective of the pioneer's preference rules was to ensure the award of a license to an otherwise-qualified pioneer's preference recipient. Nowhere did the Commission suggest that it wished to give the preference recipient a financial or competitive advantage over other licensees. Indeed, in rejecting proposals to give preference recipients a formal headstart over other licensees, the Commission explicitly rejected that goal.[19] We have recognized from the outset that pioneer's preference recipients may receive a *de facto* headstart because of the nature of our licensing process, but we specifically declined to provide a headstart beyond any such *de facto* headstart. In light of this background, the arguments of the petitioners to the court, and our further understanding of the auction process, we now conclude that our pioneer's preference rules should be amended to require preference recipients in those proceedings where tentative decision had been reached at the time of the auction statute's enactment to pay for licenses.

12. We do not decide in this order whether the pioneer's preference policy remains useful, and choose not to do so in this order, which involves pioneer's preference awards in proceedings where tentative decisions were made prior to the legislation granting authority to conduct auctions. We do reconsider how the pioneer's preference policy should be implemented in the auction environment with respect to proceedings where tentative preference decisions were made before section 309(j) was enacted. This decision thus addresses only the transitional question of appropriate changes in our pioneer's preference rules for those three proceedings where tentative decisions already had been adopted when auctions were authorized.

13. At the time the pioneer's preference rules were adopted, all licenses were awarded at the same price—for free. We see no sound public interest reason to award some licenses for free when other licensees who will compete in the same markets will have to pay for them. Pioneers were never promised a free license, or even a discount or a bonus, but instead were assured that they would be able to obtain a license if they developed valuable technological innovations. Moreover, we fail to advance Congress's objective, set out in section 309(j)(3)(C) of the Act, of "avoidance of unjust enrichment" if we award pioneer's preference licenses to these applicants

[15] While our discussion here focuses on broadband PCS because that is the proceeding on which the parties focused and the only one of the three at issue that has progressed to final award of pioneer's preferences, our discussion applies to the LMDS and Big LEO proceedings as well, unless otherwise indicated.

[16] *Pioneer's Preference Review Report and Order*, 9 FCC Rcd at 610, para. 9.

[17] 6 FCC Rcd at 3492, para. 32 (emphasis supplied).

[18] 6 FCC Rcd at 3492, para. 33; 56 FR 24,011 (May 28, 1991). Upon reconsideration, the Commission affirmed that the preference will be dispositive. 7 FCC Rcd 1808, 1809 at para. 8; 57 FR 7,897 (Mar. 5, 1992). On further reconsideration, the Commission discussed at length its legal authority to award a dispositive preference. *See* 8 FCC Rcd 1659 (1993); 58 FR 14,328 (Mar. 5, 1992).

[19] *Pioneer's Preference Report and Order*, 6 FCC Rcd at 3492, para. 34:

> We further have decided not to provide a headstart for the pioneering entity beyond the *de facto* headstart that may occur due to the time it may take other entities to apply for and receive a license. The commenting parties have convinced us that no additional headstart is necessary. As Southwestern Bell points out, the main effect of a headstart would be to give the pioneer a temporary service monopoly. As Southwestern Bell, Geller and Lampert, and others note, the key public interest benefit of a preference is the assurance to the pioneering entity that, if otherwise qualified, it will receive a license. For the Commission to go beyond this and guarantee the pioneer a temporary service monopoly would not appear to be justified at this time.
>
> [footnote omitted.]

for free.[20] We recognize that Congress has instructed us not to seek to maximize auction revenues at the cost of other important objectives. Nonetheless, we do not interpret that admonition to require us to award pioneer's preference licenses for free if that would serve no valid public interest purpose and in fact would disserve other important objectives. Accordingly, we conclude that the proper application of the pioneer's preference policy in the auction environment where tentative decisions were made prior to the auction statute is to guarantee that the pioneers receive licenses, but on roughly the same terms as other licensees. That is no less than the pioneers were promised when the pioneer's preference policy was adopted.

14. Our decision here is buttressed by our concerns about introducing financial inequalities into the broadband PCS market. We recognize, as APC's economic experts argue, that profit-maximizing firms in a competitive market will not base their pricing and output decisions on "sunk costs," but on marginal or incremental costs. We nevertheless believe it self-evident that awarding licensees for free to some parties while requiring others to pay substantial sums is likely to provide the pioneers with a financial advantage over their competitors. We do not seek to equalize the financial status of competitors or to handicap those that obtain advantages by virtue of their other activities or holdings. Here we see no legitimate basis for creating financial advantages for some parties over their competitors. We would not charge pioneer's preference winners for their licenses simply to enhance the government's revenues or to ensure that pioneer's preference recipients do not have lower debt payments than their competitors, if there were a good public interest reason to award licenses to pioneers without requiring payment. But based on the record here, and in light of our experience with auctions, we conclude that our public interest mandate requires that pioneers not obtain licenses for free of charge while their competitors must purchase licenses at auction. Providing licenses to preference winners for free would give a financial advantage to some competitors with no public interest benefit. We believe such action would disserve important public policy objectives.

15. As the *Joint Response* points out, moreover, the auction process itself was designed in large part to promote competition by assigning spectrum to users that are most likely to offer new, better, and lower cost services. Congress enacted our statutory auction authority in large measure based upon the theory that awarding licenses to those who value them most will encourage growth and competition in the development of new services. Granting some licenses free necessarily would undermine this purpose to the extent that the recipients of free licenses might not have valued them as much as the other bidders. Our decision to require a payment tied to the actual auction results permits the competitive bidding process to identify—as it was intended to do—those applicants who value the licenses most and thus can be expected to compete vigorously in the development of new services. If the pioneers are unwilling to pay even the discounted charges we order, the licenses will be awarded to those who value them most highly.

16. On further reflection, we are convinced that the equities, considered more broadly, favor a policy requiring payment. In making equitable determinations, we must balance the interests of all affected parties and of the public.[21] The public would not be favored by free grants, which might frustrate, at least in part, the Commission's efforts to recover for the public a part of the value of the spectrum the pioneers will use.[22] Our decision here avoids the "unjust enrichment" that free licenses would provide in the new auction environment that did not exist when these parties applied for preferences.[23] Charging them for their licenses thus is "equitable" to the pioneers as well. We conclude on further review of this issue that requiring payment is an equitable decision as well as a sound legal and policy decision.

17. We recognize that preference recipients have argued that the public interest would be served by granting them free licenses as a reward for investments and disclosure of information they have made in reliance on their expectation of a preference. There is, however, no evidence in the record to suggest that such investment and information disclosure would not have been made if the preference recipients had known they would have to pay for a guaranteed license. We believe it is reasonable to conclude that, to the extent this investment and disclosure related to Commission rules at all, it related to the expectation of a guaranteed license, not a guaranteed license without payment where other competitors must pay for their licenses.

18. Our decision to require payment also is driven by concern for a rational and fair auction process. The Commission has issued a number of orders relating to auctions since we decided initially that the pioneers in these three proceedings would not have to pay for their licenses, and our understanding of the auction process has grown as we have resolved various issues relating to the auctions. For example, in the Competitive Bidding Second Report and Order, we concluded that, where the licenses to be auctioned are interdependent and their value is expected to be high, simultaneous multiple round auctions would best achieve our goals for competitive bidding and would award interdependent licenses to the bidders who value them the most. In addition, we concluded that highly interdependent licenses should be grouped together and put up for bid at the same time in multiple round auctions. We later expressed our belief that the values of most broadband PCS licenses will be significantly interdependent. In addition, while we believe that all broadband PCS licenses are interdependent, we decided not to auction them all simultaneously due to the cost and complexity of auctioning a very large number of interdependent licenses simultaneously. Instead, we decided to "divide the licenses into three groups by combining those licenses that are most closely related so that there will be limited interdependence across groups." We determined to auction the 99 available 30 MHz MTA licenses in Blocks A and B in the first auction. We now have a clearer understanding of the interdependence of the broadband PCS MTA licenses and the significant impact that the free award of some of those licenses might have on the rationality and fairness of the auction process. In light of this interdependence, the degree to which a free license could result in uneconomic allocation of the spectrum is increased. Indeed, the entire bidding process might be distorted by awarding a pioneer's preference recipient a license without payment requirements.

19. In sum, based on our re-evaluation of the record, and our own understanding of the relevant issues, we

[20] *See Joint Response* at 12–15. We recognize this purpose relates specifically only to auction winners. Nevertheless, given the close relationship of our decision here to the auction process, we believe it is appropriate to take this purpose into account here.

[21] *E.g., McElroy Elec. Corp.* v. *FCC*, 990 F.2d 1351, 1365 (D.C. Cir. 1993) (Commission must balance "all relevant interests").

[22] *See* 47 U.S.C. 309(j)(3)(C).

[23] *Id.*

conclude that pioneer's preference recipients in proceedings where tentative decisions had been reached at the time of the auction statute's enactment should be required to pay for their licenses.[24] The amount of payment will be determined in the context of each proceeding. We amend our pioneer's preference rules accordingly.

Amount of Payment in Broadband PCS

20. In our recent narrowband PCS decision awarding a license to a pioneer, we required the recipient, Mtel, to pay either ninety percent (90%) of the lowest winning bid for a comparable license or $3 million less than the lowest winning bid, whichever is less. We decided not to require Mtel to pay the full value of the license, as determined at the auction, because we had imposed more stringent build-out requirements on Mtel than on other narrowband PCS licensees and because we had disrupted Mtel's business plans by deciding to charge for the license after earlier deciding that Mtel would not have to pay. The first of those circumstances is not applicable here because we have imposed no additional build-out requirement on pioneers receiving broadband PCS licenses. On the other hand, we did conclude previously that APC, Cox, and Omnipoint would receive their licenses without charge. And we have decided to condition the broadband PCS grants on the licensees holding their licenses for a minimum of three years or until the five-year construction requirements have been satisfied.

21. In spite of the differences, we have decided to adhere to a similar formula in this case that we applied to Mtel, which also involved a party that had been tentatively awarded pioneer's preference before we were granted authority to auction licenses. We believe the formula set forth below should adequately compensate APC, Cox, and Omnipoint for any transaction costs incurred in reliance on our prior determination that they would receive their licenses for free, particularly since that determination remained subject to challenge in court. At the same time, we are not concerned that a discount of that amount will provide these pioneers with an excessive financial advantage over their competitors, since the discount will amount to a small fraction of the cost of the license, which in turn is only one part of the cost of building a system. Nor do we believe that this discount will affect the auction process adversely.

22. The Joint Response argues that the Commission can choose one of two ways to implement the payment requirement: (i) Require the pioneer's preference recipients to participate in the auction, but give them a discount; or (ii) withhold the licenses from the auction but condition their award on payment of a sum discounted from auction prices as was done with Mtel. The parties filing the Joint Response favor the former method. For this transition period, we will withhold the licenses from the auction, but require a discounted payment. This result is closer to the original intent of the pioneer's preference programs' guarantee of a license. A bidding credit, in contrast, would put the pioneer at risk that it might not receive a license. We reserve the right, for pioneer's awards made entirely in the post-auction environment, to revisit this issue in the ongoing Pioneer's Preference Review proceeding.

23. We note that a variety of mechanisms for determining the pioneer's payment have been proposed to the Commission. APC argues that, if there is to be a payment, a 25 percent discount below the national average price of licenses for broadband PCS MTA licenses is appropriate because the auction price of the second license in the pioneer's MTA is likely to be higher in a market where it is the only 30 MHz license available. Basing payment on a "national average" would result in significantly undervaluing the licenses at issue here. As the Joint Response points out, the three broadband PCS licenses involved here are all for major markets. We note that the preference holders in broadband PCS would receive licenses for three of the most populous MTAs. The New York MTA is ranked No. 1; the Los Angeles-San Diego MTA is ranked No. 2; and the Washington-Baltimore MTA is ranked No. 10 in the Rand McNally 1992 Commercial Atlas & Marketing Guide. The auction prices paid for licenses in much smaller markets should not be averaged in with the prices paid in those large markets to determine what the pioneers should pay. At the same time, we recognize that using the other comparable MTA licenses (*i.e.*, the other 30 MHz license in each region) in the market may not be the most appropriate measure. Unlike the situation with narrowband PCS, where several other comparable licenses in the nationwide market existed as a basis for calculating the payment amount for the preference winner, the use of what is now only one other comparable license in the market might lead to a somewhat distorted result. To address this problem, broadband PCS pioneer's preference winners will have a choice of payment methods. They may pay either ninety percent (90%) of the winning bid for the other 30 MHz license in the MTA or ninety percent (90%) of the adjusted value of the license which is calculated based on the average per population price for the 30 MHz licenses in the top 10 MTAs as established at the auction.[25] This latter amount would be calculated by adding together the winning bids for the other 30 MHz MTA licenses for the top 10 markets offered at auction[26] and dividing by the total population covered by those licenses.[27] This would establish an average per population (per pop) price for the top 10 MTAs. The preference recipient would then multiply the average per pop price by the population of its MTA to establish the pre-discount value of its license. The preference recipient would be required to pay ninety percent (90%) of that amount. Taking into account all of the top 10 markets in the latter payment method will help avoid any such distortion without the problem of including substantially smaller markets which would itself distort the result. We will not include the $3 million dollar option that we had in the narrowband context. We believe that the options here will cover the costs discussed in para. 21, *supra*.

24. One party has proposed, as an option to a price based on auction results, that pioneers pay a royalty of 3%–5% on gross revenues over 10 years as the appropriate payment mechanism. First, we find that this payment method is too speculative because the amount of the payment can not be determined until years after the fact. Second, this method may result in a payment amount that is not commensurate with the present market value of the license itself because it is based on a different measure. It also fundamentally departs

[24] The Commission has undertaken a negotiated rulemaking procedure in an attempt to adopt rules for Big LEOs that will avoid mutual exclusivity. Our decision regarding payment for any Big LEO preference awards would only be relevant if utually exclusive applications can not be avoided and an auction becomes necessary.

[25] Should the spectrum or market size of the pioneer's preference recipients' tentative awards be changed due to the pending reconsideration of these awards, the payment would be based on the then comparable license.

[26] A total of twenty 30 Mhz MTA licenses in the top 10 markets are available in Blocks A and B for broadband PCS—two per each market. *See* 47 CFR 24.202 (Service Areas) and 47 CFR 24.229 (Frequencies).

[27] Population should be calculated based on the 1990 U.S. census figures as published in the Rand McNally 1992 Commercial Atlas & Marketing Guide. Total population means the population covered by each of the other MTA licenses, *e.g.*, the population of the Chicago MTA (Market No. 3) would be included twice because two licenses for that MTA will be auctioned.

from the auction concept because it is based upon after-the-fact results rather than forecasts of revenues which other potential licensees must develop and rely on in determining the amount they are willing to bid for their license. We conclude that the payment options imposed here strike the correct balance between the avoidance of unjust enrichment on the part of some broadband PCS licensees and the transition to auctions to award broadband PCS licenses.

25. Any broadband PCS licenses awarded to pioneer's preference recipients will be conditioned upon their making the required payments. Their payments must be received no later than thirty (30) days after the orders granting their licenses and their pioneer's preferences have become final, as well as the decision here to require payment, that is, 30 days after the orders are no longer subject to administrative reconsideration or judicial review.

Authority To Require Payment

26. Our decision requires us to determine whether we have authority to amend our pioneer's preference rules to require pioneer's preference recipients to pay for their licenses. The question of our authority to require payment from pioneers was raised in the rulemaking notice that began our Review of Pioneer's Preference Rules;[28] but we did not resolve the question in that proceeding because we decided at that time not to require payment by narrowband or broadband PCS preference recipients.[29] Now that we have decided to require payment by the preference winners in these proceedings, we must consider our authority to do so. Our analysis in this case is similar to that in our order granting Mtel's narrowband PCS license subject to a payment condition.[30]

27. Section 309(j) of the Communications Act,[31] the source of our authority to select licensees by auction, applies only when the Commission has accepted "mutually exclusive applications" for licenses or construction permits. APC, Cox, and Omnipoint, by operation of our pioneer's preference rules, are the only entities eligible to apply for the licenses at issue, and there can be no mutually exclusive applications for those licenses.[32] Thus, we could not require APC, Cox, and Omnipoint to bid in an auction under section 309(j) unless we amended our pioneer's preference rules to change the nature of the pioneer's preference award,[33] which we do not do here.

28. Some parties at various stages of these proceedings have contended that section 309(j) is the only source of authority for the Commission to assess a charge (other than a generally applicable fee) for a license, and that we have no choice but to grant APC, Cox, and Omnipoint's licenses without requiring payment.[34] We disagree, and for the reasons that follow, we find such authority under section 4(i),[35] in conjunction with sections 1, 303(r), 307, 309, and 214,[36] of the Communications Act.

29. Section 4(i), which has been called the "necessary and proper clause" of the Communications Act,[37] authorizes the Commission to

> perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.

We could not rely upon section 4(i) to contravene an express prohibition or requirement of the Act, as the language of section 4(i) itself makes clear. Thus, if any provision of the Act prohibited the Commission from imposing a charge on a pioneer's preference recipient, section 4(i) would not be an independent basis for such authority. But no provision of the Act addresses this issue, either expressly or implicitly. Therefore, requiring preference recipients to pay for their licenses is "not inconsistent with the Act."[38]

30. The remaining inquiry under section 4(i) is whether the action the Commission proposes to take "may be necessary in the execution of its functions." In application, section 4(i) has been held to justify FCC orders that were not within explicit grants of authority, where the orders reasonably could be found to be "necessary and proper" for the execution of the agency's enumerated powers. In *Nader* v. *FCC*,[39] for example, the court held that an FCC order prescribing a rate of return for AT&T "was in the public interest, necessary for the Commission to carry out its functions in an expeditious manner, and within its section 4(i) authority."[40] This was so even though the Communications Act gave the Commission express authority, in section 205(a),[41] to prescribe "any charge, classification, regulation, or practice of any carrier * * *," but did not mention any authority to prescribe a rate of return.

Similarly, in *Lincoln Telephone & Telegraph Co.* v. *FCC*,[42] the court affirmed an order of the Commission requiring the telephone company, which was a "connecting carrier" within the meaning of the Act, to file tariffs with the FCC offering certain services. The order was upheld even though the only provision in the Act requiring carriers to file tariffs, section 203(a),[43] specifically exempted

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[28] *Pioneer's Preference Review NPRM*, 8 FCC Rcd 7692, 7693, para. 10.

[29] *Id.* at 7694–5, para. 18. *Pioneer's Preference Review Report and Order, 9 FCC Rcd at 610, para.* 9. We did, however, conclude that any such rule change would not constitute retroactive rulemaking. *Id.*, 9 FCC Rcd at 610–11, n.24.

[30] *See Mtel Order, supra*, note?.

[31] 47 U.S.C. 309(j).

[32] We reiterate that while we name the three current recipients of broadband PCS preferences for ease of reference, we emphasize that by doing so we do not prejudge the petitions for reconsideration of our broadband PCS pioneer's preference decision. The payment rule we adopt here will apply to all proceedings in which we made a tentative (but not final) decision regarding preferences as of August 10, 1993 in the three proceedings.

[33] *See Pioneer's Preference Review NPRM.*

[34] *See, e.g., Narrowband Reconsideration*, 9 FCC Rcd 1315–16, para. 44.

[35] 47 U.S.C. 154(i).

[36] 47 U.S.C. 151, 303(r), 307, 309, 214(c).

[37] *See New England Telephone & Telegraph Co.* v. *FCC*, 826 F.2d 1101, 1108 (D.C. Cir. 1987), *cert. denied*, 490 U.S. 1039 (1989)(quoting *North American Telecomm. Ass'n* v. *FCC*, 772 F.2d 1282, 1292 (7th Cir. 1985)). The reference is to Article I, Section 8, Clause 18 of the Constitution, which authorizes Congress to make all laws that shall be "necessary and proper" for carrying out the enumerated powers "and all other powers" vested in the federal government.

[38] *See North American Telecomm. Ass'n* v. *FCC*, 772 F.2d at 1292–93.

Assessing an auction-based charge is not contrary to the Supreme Court's decision in *National Cable Television Ass'n* v. *FCC*, 415 U.S. 336 (1974) (*NCTA*). In that case, as subsequently described, the Supreme Court struck down Commission fees that the Court perceived as an effort "to recover from regulated parties costs for benefits inuring to the public generally." *Skinner* v. *Mid-American Pipeline Co.*, 490 U.S. 212, 223–24 (1989) (*Skinner*). The Court in *NCTA* said that the only proper measure of the fee was "value to the recipient." 415 U.S. at 342–43, 344. In this instance, we do not seek to recover from APC, Cox, and Omnipoint (and, by extension, from other licensees who pay auction-based charges) "costs for benefits inuring to the public generally." *Skinner*, 490 U.S. at 224. Indeed, the "measure" of the charge for APC, Cox, and Omnipoint is precisely the one identified in *NCTA* as the only proper measure—the value of the license to the recipient. That value is determined by the auction price—the value that bidders are willing to pay—discounted for APC, Cox, and Omnipoint's special circumstances. *See* para. 20, *supra*. This assessment thus does not raise concerns that the Commission may have used an incorrect standard in setting the charge. 415 U.S. at 343. Moreover, because the action the Commission takes here does not put it "in search of revenue in the manner of an Appropriation Committee of the House," *NCTA*, 415 U.S. at 341, no issue of impermissible delegation of taxing authority arises. *Id.* The charge here is determined directly by the auction process, and not by any concern for raising revenues "to recover administrative costs not insuring directly to the benefit of the parties * * *." *Skinner*, 490 U.S. at 224.

[39] 520 F.2d 182 D.C. Cir. 1975).

[40] *Id.* at 204.

[41] 47 U.S.C. 205.

[42] 659 F.2d 1092 (D.C. Cir. 1981) (*Lincoln Telephone*).

[43] 47 U.S.C. 203(a).

connecting carriers from that requirement. The court held:

> Section 203(a)'s terms do not * * * in any way suggest that the section provides the exclusive authority under which the Commission can require a tariff to be filed. Thus, while section 203(a) did not grant the Commission the requisite authority for its action, section 154(i) did.[44]

31. In *North American Telecomm. Ass'n* v. *FCC*,[45] the Seventh Circuit affirmed an order requiring the Bell holding companies to file capitalization plans for subsidiary companies organized to sell telephone equipment, even though the Act conferred no authority on the FCC over holding companies and the legislative history of the Act suggested that Congress had considered granting such authority but ultimately had denied it.[46] The court held that the Commission's authority to require the capitalization plans arose under "a separate grant of power"—section 4(i).[47] The only real question, the court said, was

> whether the Commission could reasonably conclude that requiring the regional (holding) companies to submit plans of capitalization * * * was necessary and proper to the effectuation of (the Commission's order requiring the separation of equipment sales from the companies' telephone operations).[48]

The court answered that question in the affirmative in holding that section 4(i) authorized this action

32. In *New England Telephone & Telegraph Co.* v. *FCC*,[49] the D.C. Circuit affirmed the Commission's order requiring AT&T (along with its former operating companies) to refund rates it had collected in excess of its authorized rate of return, rejecting the telephone companies' argument that the Commission's only statutory authority to require refunds, under section 204(a)(1),[50] did not apply to their situation. Agreeing with the telephone companies that section 204 "does not apply to the circumstances of this case."[51] the court held that the Commission had "properly exercised its authority under section 4(i) to remedy the violation" of its rate of return order.[52] The court found that the Commission's choice of the refund remedy, "(i)n a strictly technical sense," was "absolutely necessary" to the effectuation of its rate of return prescription.[53] But it made clear that the Commission was not required to show that it had selected "the only conceivable remedy in order to invoke its 4(i) powers."[54] It was enough that the action chosen by the agency "was appropriate and reasonable."[55]

33. The rule that emerges from the cases described above is that section 4(i), although "not infinitely elastic,"[56] is a "wide ranging source of authority."[57]

> Section 4(i) empowers the Commission to deal with the unforeseen—even if that means straying a little way beyond the apparent boundaries of the Act—to the extent necessary to regulate effectively those matters already within the boundaries.[58]

If an action taken by the agency does not contravene another provision of the Act, it may be justified under section 4(i) if the Commission "could reasonably conclude that (the action) was necessary and proper to the effectuation" of its functions.[59]

34. Applying this rule here, we find authority under section 4(i) to amend our pioneer's preference rules to condition any licenses granted to APC, Cox, and Omnipoint, on the basis of their pioneer's preferences, on the payment of an appropriate charge. First, requiring payment by APC, Cox, and Omnipoint is "necessary" if we are properly to carry out our public interest mandate in licensing broadband PCS providers.[60] An important aspect of the public interest is promoting competition to the extent feasible and taking appropriate regulatory steps to ensure that the competition is fair.[61] Our development of PCS and of the pioneer's preference policies appropriately has emphasized competition at ever step. Granting APC, Cox, and Omnipoint a license free of charge, we have found in this order, would likely give APC, Cox, and Omnipoint a financial advantage over other licensees competing in the same markets, who would have to pay auction prices—a result that would not serve the public interest.

35. Second, requiring payment by APC, Cox, and Omnipoint is "necessary and proper" in the execution of our function under section 309(j) to implement a rational, fair system of competitive bidding. We have found elsewhere that the values of broadband PCS licenses will be significantly interdependent. The prices a bidder might be willing to pay—or even the willingness to bid at all—might be affected in various ways by the fact that some of the licenses are available free to applicants who will be competing with the auction winners. Awards to APC, Cox, and Omnipoint free of charge thus might distort significantly the auction of other broadband PCS licenses and, thereby, defeat or at least undermine some or all of the purposes of having the auction. In this regard, we note that the auction statute itself does not limit our authority to require pioneer's preference recipients to pay for their licenses; it is neutral on this point.[62] And third, as noted above, requiring payment will serve section 309(j)'s purpose of avoiding unjust enrichment.

36. We recognize that our decision here is a reversal of the course we took initially with respect to payments made by the broadband PCS pioneers. In this regard, it is similar to our recent decision to require payment by Mtel for its narrowband PCS license after first deciding not to require payment. We asked the court for a remand of the pioneer's preference review order and the broadband PCS pioneer's preference order to give further consideration to this important issue.[63] We believe that this change is well supported by the record and best serves the public interest. When we first considered the payment question these pioneers had only their tentative preferences and, even now, their preferences are the subject of petitions for reconsideration and petitions for review. Thus, not only do we believe that our change of course is legal and best serves the public interest, we also believe it does not

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[44] *Lincoln Telephone*, 659 F.2d at 1108–09.

[45] 772 F.2d 1282 (7th Cir. 1985) (*North American*).

[46] *Id.* at 1291–92.

[47] *Id.* at 1292.

[48] *Id.* at 1293. It is noteworthy that the order requiring structural separation of equipment sales from telephone operations is itself an action not expressly authorized by the Act. Structural separations requirements have been affirmed as proper exercises of the Commission's "ancillary jurisdiction." *See Computer and Communications Industry Ass'n* v. *FCC*, 693 F.2d 198, 211 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

[49] 826 F.2d 1101 (D.C. Cir. 1978) (*New England*).

[50] 47 U.S.C. 204(a)(1).

[51] *New England*, 826 F.2d at 1107.

[52] *Id.* at 1109.

[53] *Id.* at 1107–08.

[54] *Id.* at 1108.

[55] *Id.*

[56] *North American*, 772 F.2d at 1292.

[57] *New England*, 826 F.2d at 1109.

[58] *North American*, 772 F.2d at 1292. *See also U.S.* v. *Southwestern Cable Co.*, 392 U.S. 157, 181 (1968); *Rural Telephone Coalition* v. *FCC*, 838 F.2d 1307, 1315 (D.C. Cir. 1988); *FTC Communications, Inc.* v. *FCC*, 750 F.2d 226, 232 (2d Cir. 1984).

[59] *North American*, 772 F.2d at 1293.

[60] *See* 47 U.S.C. 307(a), 309(a), 214 (a) and (c). *See also* 47 U.S.C. 151.

[61] *See National Ass'n of Regulatory Util. Comm'rs* v. *FCC*, 525 F.2d 630, 636 and n. 25 (D.C. Cir.), *cert denied*, 425 U.S. 992 (1976). See also *McLean Trucking Co.* v. *U.S.*, 321 U.S. 67, 86–88 (1944).

[62] *See* 47 U.S.C. 309(j)(6)(b); H.R. Rep. No. 111, 103d Cong., 1st Sess. 257 (1993).

[63] The question of payment was still technically before the Commission as a result of a timely filed petition for reconsideration of the *Pioneer's Preference Review Report and Order*. 47 U.S.C. 405 *See Wrather-Alvarez Broadcasting* v. *FCC*, 248 F.2d 646 (D.C. Cir. 1957) (where petition for agency reconsideration if filed, agency has jurisdiction even though other parties have sought judicial review).

undermine any legitimate reliance interests of APC, Cox, and Omnipoint.

Ex Parte Rules

37. We note that in their briefs to the court, petitioners and *amicus curiae* raised allegations of violations of the Commission's *ex parte* rules. These issues were addressed in a letter by the Managing Director;[64] and our General Counsel reviewed the contacts in depth in preparing a response to a congressional inquiry.[65] We have thus had an opportunity to consider, with substantial staff analysis, the allegations. While the matter has not been formally brought to the Commission, *e.g.*, through an application for review of the Managing Director's letter, we take this opportunity to affirm the Managing Director's letter.

Final Regulatory Flexibility Statement

38. Pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in ET Docket No. 93–266. Written comments with a separate and distinct heading designating them as a response to the IRFA were requested. The Commission's final analysis is as follows:

A. *Need for and purpose of this action.* This proceeding was initiated to obtain comment regarding possible modifications to, or repeal of, the pioneer's preference rules. The rule adopted here will serve the public interest by modifying the pioneer's preference rules in light of the statutory authority to assign licenses by competitive bidding.

B. *Issues raised in response to the IRFA.* The IRFA noted that the proposed changes could affect small businesses if they have pioneer's requests pending, if they contemplate filing pioneer's preference requests, or if they intend to file applications for services in which others might receive a pioneer's preference. No commenters responded specifically to the issues raised in IRFA. We note that, with regard to PCS, small businesses receive certain competitive bidding preferences as set forth in the Third Report and Order, 9 FCC Rcd 2941 (1994) and the Fifth Report and Order, FCC 94–178 (released Jul. 15, 1994) in PP Docket No. 93–253.

C. *Significant alternatives considered.* All significant alternatives have been addressed in the Memorandum Opinion and Order on Remand.

[64] Letter from Andrew S. Fishel to Michael K. Kellogg, Esquire (May 27, 1994).

[65] Letter from William E. Kennard to Hon. John D. Dingell (June 3, 1994).

Ordering Clauses

39. Accordingly, *it is ordered,* pursuant to sections 1, 4(i), 303(r), 307, 309, and 214 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), 307, 309, and 214, that § 1.402 of the Commission's rules, 47 CFR 1.402, is amended as set forth below to be effective thirty (30) days after publication in the **Federal Register.**

40. Accordingly, *it is further ordered* that the relevant licensing bureau shall impose the following additional condition on any licenses received by pioneer's preference recipients for broadband PCS (GEN Docket No. 90–314) based upon their pioneer's preference awards:

Each licensee shall pay to the United States Treasury an amount equal to either ninety percent (90%) of the winning bid for the 30 MHz broadband MTA license in the same market or ninety percent (90%) of the adjusted value of the license calculated based on the average per population price for the 30 MHz licenses in the top 10 MTAs as established at auction, thirty (30) days after an order granting any such license based upon a pioneer's preference, the order granting the preferences, and this order become final orders, that is, thirty (30) days after the order is no longer subject to administrative reconsideration or judicial review, appeal, or stay.

41. *It is further ordered* that the Emergency Request for Oral Argument filed by American Personal Communications on July 21, 1994 is denied.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rule

Part 1 of chapter 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.

2. Section 1.402 is amended by adding new paragraph (g) to read as follows:

§ 1.402 Pioneer's preference.

* * * * *

(g) Any person receiving pioneer's preferences in proceedings where tentative (but not final) decisions had been reached as of August 10, 1993, will be required to pay for their licenses. The amount of payment shall be determined in each proceeding on a case-by-case basis.

[FR Doc. 94–20228 Filed 8–17–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 15

[GEN Docket No. 90–314; DA No. 94–873]

Regulations for Unlicensed Personal Communication Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; request for additional comments.

SUMMARY: The Second Report and Order and the Memorandum Opinion and Order in this docket adopted regulations for an unlicensed Personal Communication Service (PCS). In doing so, the Commission designated UTAM, Inc. as the coordinator for the transition of the spectrum from fixed microwave service to unlicensed PCS. This decision, however, was conditioned on UTAM's submission and our acceptance of: A funding plan that is equitable to all prospective manufacturers of unlicensed devices; and, a plan for band clearing that will permit the implementation of nomadic devices and, in particular, nomadic PCS devices, as promptly as possible. The Commission indicated that it would obtain public comment on UTAM's plans before acting on them. Accordingly, this Public Notice seeks additional comments related to UTAM's filing.

DATES: Comments must be filed on or before September 12, 1994. Reply comments must be filed on or before September 27, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David Means, Office of Engineering and Technology, (301) 725–1585, ext. 206.

SUPPLEMENTARY INFORMATION:

Further Comment Sought on Plan From UTAM, Inc., Regarding Financing and Managing 2 GHZ Microwave Relocation

August 11, 1994.

In the Second Report and Order establishing the regulations for an unlicensed Personal Communication Service (PCS) in Part 15 of its regulations, the Commission designated

UTAM, Inc., as the coordinator for the transition of the spectrum from fixed microwave service to unlicensed PCS.[1] UTAM would be responsible for administering the transition, including negotiating costs of relocation, ensuring that comparable facilities are provided, and resolving disputes of interference to fixed microwave operation from unlicensed PCS stations. Further, we required that any unlicensed PCS device or system be coordinated through UTAM before being initially deployed or subsequently relocated. All applicants for FCC equipment authorization of unlicensed PCS devices were required to be participants in UTAM.

The above decisions were conditioned on UTAM's submission and our acceptance of: (1) A funding plan that is equitable to all prospective manufacturers of unlicensed devices; and, (2) a plan for band clearing that will permit the implementation of nomadic devices and, in particular, nomadic data PCS devices, as promptly as possible. We added that, at a minimum, such a plan should include estimated time tables and priorities for clearing significant portions of the PCS unlicensed band, should address specifically the issue of nomadic data PCS devices, and should address how the plan ensures that such devices can be implemented as expeditiously as possible. We also stated that we intended to obtain public comment on these plans before acting on them.

On August 1, 1994, UTAM, Inc., filed its plans for financing and managing the relocation of fixed microwave stations. Pursuant to Sections 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 303(r), we are hereby soliciting additional comment in GEN Docket No. 90–314 on the UTAM proposal and whether it adequately addresses the Commission's concerns. Comments on these issues must be filed on or before September 12, 1994. Reply comments must be filed on or before September 27, 1994. To file formally in this proceeding, you must file an original and four copies of all comments and reply comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

The UTAM filing, along with all comments and reply comments in this proceeding, including those filed in response to this Public Notice, are available for public inspection as part of the record in GEN Docket No. 90–314 during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington, DC. All or part of the text of these filings may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street NW., Room 246, Washington, DC 20554, telephone (202) 857–3800.

For additional information regarding this Public Notice, contact David Means, Office of Engineering and Technology, FCC, telephone (301) 725–1585, extension 206.

Federal Communications Commission.

Bruce A. Franca,

Deputy Chief Engineer.

[FR Doc. 94–20085 Filed 8–17–94; 8:45 am]

BILLING CODE 6712–01–M

[1] See, Second Report and Order, GEN Docket No. 90–314, 58 FR 59174, November 8, 1993, at para. 83–91. See, also, Memorandum Opinion and Order, GEN Docket No. 90–314, 59 Fed. Reg. 32830, June 24, 1994, at para. 209–223. See, also, 47 CFR 15.307. The frequency band established for unlicensed PCS is 1910–1930 MHz. See 47 CFR 15.301.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 940822–4222 I.D. 072594B]

Endangered and Threatened Species; Status of Snake River Spring/Summer Chinook Salmon and Snake River Fall Chinook Salmon

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

ACTION: Emergency interim rule.

SUMMARY: NMFS is taking emergency action to reclassify Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) as endangered, a change from the current threatened status, under the Endangered Species Act of 1973 (ESA). NMFS has determined that the status of Snake River spring/summer chinook salmon and the status of Snake River fall chinook salmon warrant reclassification to endangered, based on a projected decline in adult Snake River chinook salmon abundance.

EFFECTIVE DATE: This rule is effective from August 18, 1994 to May 26, 1995.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Environmental and Technical Services Division, NMFS, Portland, OR (503/230–5430) or Laurie Sullivan, Protected Species Management Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1990, NMFS received petitions from Oregon Trout, and co-petitioners Oregon Natural Resources Council, Northwest Environmental Defense Center, American Rivers, and Idaho and Oregon chapters of American Fisheries Society to determine whether Snake River spring chinook salmon, Snake River summer chinook salmon, and Snake River fall chinook salmon should be listed as threatened or endangered under the ESA. NMFS published a notice on September 11, 1990, (55 FR 37342) announcing that the petitions presented substantial scientific information indicating that the listings may be warranted and requesting information from the public. During the subsequent status reviews, NMFS reviewed all available scientific information pertaining to the status of Snake River spring chinook salmon, Snake River summer chinook salmon, and Snake River fall chinook salmon. The NMFS Northwest Region Biological Review Team (BRT) prepared status review reports for Snake River spring and summer chinook salmon (Matthews and Waples 1991) and Snake River fall chinook salmon (Waples et al. 1991) providing detailed information, discussion, and references relevant to the level of risk faced by the species, including historical and current abundance, population trends, distribution of fish in space and time, and other information indicative of the health of the population.

NMFS proposed listing Snake River spring/summer chinook salmon (56 FR 29542) and Snake River fall chinook salmon (56 FR 29547) as threatened on June 27, 1991. The final rule listing Snake River spring/summer chinook salmon and Snake River fall chinook salmon as threatened was published on April 22, 1992 (57 FR 14653). The decision to list was based in part on a determination that the population constituted an evolutionarily significant unit (ESU) pursuant to NMFS's policy published on November 20, 1991 (56 FR 58612). Critical habitat was designated for Snake River spring/summer chinook salmon and Snake River fall chinook salmon on December 28, 1993 (58 FR 68543).

Under the ESA and its implementing regulations (50 CFR part 424), an "endangered species" is any species that is in danger of extinction

throughout all or a significant portion of its range. A "threatened species" is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Current Status

Spring/Summer Chinook Salmon

Since listing of Snake River spring/summer chinook salmon in 1992, redd counts in index areas for 1992 and 1993 have continued to maintain the low levels observed during the 1980s. Data from 1994 indicate that the situation is much worse than in recent years, thus posing an imminent threat of extinction throughout all or a significant portion of its range. The pre-season estimate for returning upriver spring/summer chinook adults was 49,000, the third lowest on record since 1938. However, the final total 1994 adult spring chinook salmon count at Bonneville Dam was 20,132 (Fish Passage Center 1994), about 43 percent of the previous record low return. The expected 1994 escapement of the combined run of Snake River spring and summer chinook salmon to Lower Granite Dam will likely result in the production of 250 to 500 redds in the index areas, which is only 14 to 28 percent of the recent ten-year average (NMFS and USFWS 1994).

The return of spring chinook salmon in 1995 is likely to be even lower than in 1994. The total 1994 spring chinook salmon jack count at Bonneville Dam was 397 fish (Fish Passage Center 1994), less than 30 percent of the record low in 1993 and 10 percent of the recent 10 year average (NMFS and USFWS 1994).

While it is impossible to make specific projections for returns of spring chinook salmon over the next three to five years, it is possible to comment in general terms on the prospects for decreasing run sizes. Because of the weak 1990 brood and the apparent failure of the 1991 brood, the prospects for improved returns depend on the relatively abundant 1992 and 1993 broods. Outmigration conditions in 1994 for the 1992 brood were poor. Therefore, there is reason to believe that returns will not substantially increase until the 1993 brood contributes to the returns in 1997 and 1998. After 1998, returns will again be influenced by the low adult returns expected in 1994 and 1995. NMFS is concerned that the expected dramatic decline in spring chinook salmon abundance may indicate that summer chinook salmon abundance will also be lower than in recent years.

In small populations, random processes can lead to two major types of risk: Demographic and genetic. Demographic risk is the risk of extinction due to environmental fluctuations, random events affecting individuals in the population, and possible reductions in reproduction or survival at low population sizes. Genetic risk is the risk of loss of genetic variability and/or population fitness through inbreeding and genetic drift. Both types of risk increase rapidly as population size decreases.

Severe, short-term genetic problems from inbreeding are unlikely unless population size remains very low for a number of years. However, the erosion of genetic variability due to low population size is cumulative, so long-term effects on the population (even if it subsequently recovers numerically) are also a concern.

The Snake River spring/summer chinook salmon ESU consists of many local spawning populations spread over large geographic areas. Therefore, the total number of fish returning to local spawning populations would be much less than the total run size. Assuming that 1,300 to 1,500 spring/summer chinook salmon adults survive to spawn, the average number of spawners per subpopulation would only be 30 to 40 fish (NMFS and USFWS 1994). Based on recent trends in redd counts in major tributaries of the Snake River, NMFS believes that many local populations could be at critically low levels, with individual streams in the Grande Ronde River, Middle Fork Salmon River, and Upper Salmon River basins at particularly high risk. Both demographic and genetic risks would be of concern for local populations, and in some cases, habitat might be so sparsely populated that adults would not find mates.

Fall Chinook Salmon

Since listing of Snake River fall chinook salmon in 1992, adult returns to Lower Granite dam for 1992 and 1993 have continued to maintain the low levels observed during the 1980s. Updated information in 1994 indicate that the situation is much worse thus posing an imminent threat of extinction throughout all or a significant portion of its range. The projected return of listed fall chinook salmon to the Columbia River in 1994 is 803, the second lowest on record. A tentative run forecast for 1995 suggests that the return will be about 60 percent of that expected in 1994 (NMFS and USFWS 1994). While it is impossible to make specific projections for returns of fall chinook salmon over the next three to five years, it is possible to generally comment on the prospects for decreasing run sizes. The 1991 brood is apparently weak, based on the record low return of jacks in 1993. Therefore, the 5 year-old component of the 1996 return is likely to be low. There was sufficient escapement in 1992 and 1993 to allow for increased returns after 1995, but success of these runs will depend largely on improved passage and ocean survival conditions.

Although risks associated with small population sizes are also a general concern for Snake River fall chinook salmon, currently there is no evidence of multiple subpopulations of naturally-spawning Snake River fall chinook salmon. The primary risk to Snake River fall chinook salmon remains the continued low numbers of spawning adults. Genetic and demographic risk increases dramatically with increasing number of consecutive years of depressed population levels.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA specifies five criteria to be evaluated during a status review of a species or population proposed for listing or reclassification. In addition to the evaluation for this emergency action, these criteria were reviewed in the proposed and final rules to list Snake River spring/summer chinook salmon and Snake River fall chinook salmon.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Hydropower development has resulted in blockage and inundation of habitat, turbine-related mortality of juvenile fish, increased travel time of juvenile migration through the Snake and Columbia Rivers, and increased travel time of migrating adults. Water withdrawal and storage, irrigation diversions, siltation and pollution from sewage, farming, grazing, logging, and mining have also degraded Snake River salmon habitat. Changes in operation of lower Snake and Columbia River dams and changes in land and water management activities since the listing of Snake River chinook salmon should result in long term improvements in survival of adult and juvenile chinook salmon. However, observed and expected low returns from 1994 and for the next few years suggest that these improvements have not yet been sufficient to remove the immediate risks to the listed species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, combined ocean and river harvest rates of Snake River spring/summer chinook salmon exceeded 80 and sometimes 90 percent (Ricker 1959). Current ocean and river Snake River spring/summer chinook salmon harvest levels have been reduced in the commercial, recreational, and tribal fisheries due to low escapements and efforts to protect these runs. Between 1991 and 1993, the approximate Snake River spring/summer chinook salmon harvest rate ranged from 5.5 to 7.7 percent.

For upriver bright (Columbia and Snake Rivers) fall chinook salmon, the 1990 total harvest rate (commercial, recreational, and tribal fisheries) was approximately 70 percent. Measures have been taken between 1991 and 1993 to reduce harvest impacts on Snake River fall chinook salmon to approximately 50 percent. However, as evidenced by continued and projected low returns, these efforts have not reversed the decline of the species and further measures are urgently needed to reduce the risk of extinction.

While there are a number of scientific research programs involving handling, tagging, and moving of fish in the Columbia and Snake rivers, NMFS believes that the contribution of these programs to the decline of listed Snake River chinook salmon is negligible. Furthermore, these programs contribute to the efforts to enhance long-term survival of these species.

C. Disease or Predation

Chinook salmon are exposed to numerous bacterial, protozoan, viral, and parasitic organisms; however, these organisms' impacts on Snake River chinook salmon are largely unknown.

Predator populations, particularly northern squawfish (*Ptychocheilus oregonensis*), have increased due to hydroelectric development that created impoundments providing ideal predator foraging areas. Turbulent conditions in turbines, dam bypasses, and spillways have increased predator success by stunning or disorienting passing juvenile salmon migrants. Increased efforts to reduce populations of northern squawfish should result in survival improvements of listed salmon, but the benefits are not yet fully known.

Marine mammal numbers, especially harbor seals and California sea lions, are increasing on the West Coast and increases in predation by pinnipeds have been noted in all Northwest salmonid fisheries. However, the extent to which marine mammal predation is a factor causing the decline of Snake River chinook salmon is unknown.

D. Inadequacy of Existing Regulatory Mechanisms

A wide variety of Federal and state laws and programs have affected the abundance and survival of anadromous fish populations in the Columbia River Basin. Relevant regulatory mechanisms in place when the species were proposed for listing were discussed in supplemental factors for decline reports (NMFS 1991a; NMFS 1991b). Although some improvements in regulatory mechanisms have been made since listing, increases in estimated Snake River chinook salmon abundance during the 1991 through 1993 period are not expected to be sustained in the near future. This indicates that regulatory mechanisms currently in place are insufficient or not effectively applied, and immediate action must be taken to reverse the continuing decline of listed Snake River salmon.

E. Other Natural and Manmade Factors

Drought conditions may have contributed to reduced Snake River chinook salmon production. Annual mean streamflows for the 1977 water year were the lowest recorded since the late nineteenth century for many streams (Columbia River Water Management Group 1978). Generally, drought conditions have continued since this time, particularly in the Snake River.

Unusually warm ocean surface temperatures and associated changes in coastal currents and upwelling, known as El Niño conditions, result in ecosystem alterations such as reductions in primary and secondary productivity and changes in prey and predator species distributions. El Niño conditions may affect individual Snake River chinook salmon stocks differently. During El Niño conditions, chinook salmon stocks that rear in ocean areas south of Vancouver Island generally survive at a lower rate than chinook salmon stocks that inhabit northerly ocean areas (Johnson 1988). Most hatchery Snake River spring chinook salmon CWTs are recovered in British Columbia fisheries, and are believed to be less affected by El Niño conditions than hatchery summer chinook salmon. Approximately half of the Snake River hatchery (McCall Hatchery) summer chinook salmon CWT ocean recoveries come from Washington, Oregon, and California fisheries (Berkson 1991). Approximately 20 to 30 percent of the Snake River hatchery (Lyons Ferry and Hagerman hatcheries) fall chinook salmon CWT ocean recoveries occur in Washington, Oregon, and California fisheries.

Artificial propagation has, in some cases, impacted listed Snake River spring/summer chinook salmon. Potential problems associated with hatchery programs include genetic impacts on indigenous wild populations from stock transfers, reduced natural production due to collection of wild adults for hatchery brood stocks, competition with wild salmon, predation of wild salmon by hatchery salmon, and disease transmission.

Artificial propagation activities in the Snake River have also been a factor in the decline of Snake River fall chinook salmon. The taking of Snake River fall chinook salmon for hatchery brood stock has reduced natural escapement, and the straying of hatchery fall chinook salmon from other areas into the Snake River threatens the genetic integrity of wild Snake River fall chinook salmon. Most of the stray adult fall chinook salmon returning to Lyons Ferry Hatchery originate from Umatilla River releases. Although the Oregon Department of Fish and Wildlife now releases hatchery fall chinook salmon further upstream in the Umatilla River to improve imprinting, implementation of adequate flow augmentation actions in the lower Umatilla River have not yet been accomplished and low flow conditions in the Umatilla River during adult return periods still contribute to straying concerns.

Reasons for Emergency Determination

Although conservation measures have been implemented since 1992 specifically to improve habitat and migration passage conditions, decrease harvest levels, and improve hatchery programs, NMFS believes that the new data indicating critically low returns expected for 1994 constitute an emergency requiring immediate action to reclassify both Snake River spring/summer chinook and Snake River fall chinook salmon as endangered. Section 4(b)(7) of the ESA provides that an emergency rule may be promulgated by the Secretary "in regard to any emergency posing a significant risk to the well-being of any species * * *" The severity of the decrease in run size based on the most recent estimates of returns indicates that there is a significant risk to the well-being of both Snake River fall chinook and Snake River spring/summer chinook that warrants this emergency rule. Although the reclassification will not result in additional prohibitions under section 9 of the ESA, the emergency reclassification serves notice that NMFS

will immediately implement further protections to reverse the continued decline.

Because time is a critical factor in the effort to prevent the Snake River spring/summer and fall chinook salmon from becoming extinct, and given the demographic and genetic risks these small populations of Snake River chinook salmon are now facing, it is crucial that these species be provided a high level of protection immediately.

Evaluation criteria currently used by Federal action agencies to assess impacts on threatened salmon may not adequately protect endangered salmon, and could preclude future options for recovering species now considered to be precariously close to extinction. A more accurate characterization of the status of the Snake River chinook salmon should encourage action agencies to immediately employ more conservative criteria when they propose, evaluate and implement their actions. Similarly, because changing the status of a species may require reinitiation of consultation under section 7 of the ESA on previously issued biological opinions, the emergency reclassification of Snake River chinook salmon will require NMFS to reevaluate completed consultations to determine if reinitiation is necessary. However, it should be noted that reinitiation may be made independent of the legal status of the species and may be based on new information regarding run size that may reveal that the effects of Federal actions may affect listed species in a manner or to an extent not previously considered. (See 50 CFR 402.16).

This emergency reclassification should compel Federal action agencies to adopt a more conservative approach in analyzing the risk to Snake River chinook salmon associated with ongoing and future actions, including hydropower operations, land management actions, harvest activities, and hatchery practices. For example, alternative scenarios for hydropower operation are currently being evaluated by a multi-agency workgroup. Should the current hydropower actions be determined to jeopardize the continued existence of listed species when evaluated with new analytical methods, these alternative operation scenarios may represent reasonable and prudent alternatives to the current action by providing a higher level of protection for endangered species. For land management actions, restricting development in roadless areas, evaluating land management activities on a landscape scale through watershed analysis, and affording a higher level of protection to riparian areas would prevent foreclosure of future options for protecting Snake River chinook salmon habitat. Following reclassification, hatchery releases of listed and unlisted fish would be subjected to additional scrutiny and be expected to further reduce ecological interactions that adversely affect listed Snake River chinook salmon. Chinook fisheries are likely to be subject to restrictions beyond that of recent years. These types of protective measures should be adopted immediately to ensure that all future actions will improve survival conditions for Snake River chinook salmon.

Based on reviews of the current and expected short-term future status of Snake River spring/summer and fall chinook salmon, NMFS believes that this emergency action to reclassify Snake River spring/summer chinook salmon and Snake River fall chinook salmon from threatened to endangered is warranted. This emergency reclassification is needed immediately to preserve future management options and modify the current levels of acceptable risk to the continued existence of Snake River spring/summer chinook salmon and Snake River fall chinook salmon.

During the 240 days this emergency rule is in effect, NMFS will initiate and complete a rulemaking (with a public comment period) to extend the reclassification of Snake River spring/summer and fall chinook salmon to endangered under the ESA until such time as reclassification or delisting is warranted.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that the present situation poses a significant risk to the well-being of Snake River chinook salmon; therefore, emergency regulations can be issued under 16 U.S.C. 1533(b)(7). Pursuant to this section, the requirements of section 553 of the Administrative Procedure Act do not apply to this rulemaking. Furthermore, the AA finds that independent of 16 U.S.C. 1533(b)(7) the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under section 553 (b) and (d) of the Administrative Procedure Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

This rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the States of Washington and Oregon. This determination has been submitted under section 307 of the Coastal Zone Management Act for review by the responsible State agency.

This proposed rule has been determined to be exempt from review under E.O. 12866.

NOAA Administrative Order 216–6 states that listing actions under the ESA are categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: August 15, 1994.

Gary C. Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 222 and 227 are amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation of part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

§ 222.23 [Amended]

2. In § 222.23, paragraph (a), the second sentence, is amended by adding the phrase "Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); Snake River fall chinook salmon (*Oncorhynchus tshawytscha*);" immediately after the phrase "Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*);".

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation of part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

§ 227.4 [Amended]

4. In § 227.4, paragraphs (f) and (g) are removed.

Subpart C—Threatened Marine and Anadromous Fish [Reserved]

§ 227.21 [Removed]

5. Subpart C "Threatened marine and anadromous fish" is reserved and § 227.21 is removed.

[FR Doc. 94–20322 Filed 8–15–94; 2:31 pm]

BILLING CODE 3510–22–W

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50 CFR Part 638

[Docket No. 940821–4221; I.D. 072694B]

RIN 0648–AG65

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic

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

ACTION: Emergency interim rule; extension of effectiveness with modifications.

SUMMARY: An emergency interim rule is in effect through August 14, 1994, to control the taking of live rock in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) off Florida and Alabama. At the request of the Gulf of Mexico Fishery Management Council (Gulf Council), NMFS extends the emergency interim rule, with modifications, for an additional 90 days. As modified, this emergency interim rule prohibits all taking of live rock in the EEZ off Alabama; prohibits the taking of live rock by chipping in the Gulf EEZ from the Pasco/Hernando County line in Florida to the Florida/Alabama boundary; prohibits the taking of live rock by chipping with power-assisted tools in the Gulf EEZ south of the Pasco/Hernando County line; and establishes a daily vessel limit in the Gulf EEZ off Florida. The intended effect of this rule is to protect live rock resources and fishery habitat in the Gulf.

EFFECTIVE DATE: August 15, 1994, through November 12, 1994.

ADDRESSES: Copies of documents supporting this action, including an environmental assessment, may be obtained from Georgia Cranmore, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: Coral and coral reefs in the EEZ off the southern Atlantic states and in the Gulf are managed under the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP). The FMP was prepared by the Gulf Council and the South Atlantic Fishery Management Council and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Under section 305(c)(2)(B) and (c)(3) of the Magnuson Act, NMFS published an emergency interim rule (59 FR 25344, May 16, 1994) effective for 90 days (May 16 through August 14, 1994) to prohibit the taking of live rock in the Gulf EEZ from the Pasco/Hernando County line in Florida to the Alabama/Mississippi boundary; and, in the Gulf EEZ off Florida south of the Pasco/Hernando County line, to prohibit the use of power-assisted tools to break up or dislodge pieces of live rock and to establish a daily vessel harvest and possession limit for live rock of 25 5-gallon (19-liter) buckets.

The Gulf Council requested an extension of the current emergency interim rule published May 16, 1994, with modifications that would: (1) Reopen the area from the Pasco/Hernando County line to the Alabama/Florida boundary to the harvest and possession of loose rubble rock only, with no chipping allowed; and (2) extend throughout the Gulf EEZ off Florida the current emergency rule's daily vessel harvest and possession limit for live rock of 25 5-gallon (19-liter) buckets. The current prohibitions on taking live rock in the EEZ off Alabama and on the use of power-assisted tools to break up or dislodge pieces of live rock south of the Pasco/Hernando County line would remain in effect.

The measures in this modified emergency rule conform with management options adopted by the Gulf Council for Amendment 2 to the FMP. If approved, Amendment 2 will implement the modified emergency measures on a permanent basis and include a phaseout schedule for all wild live rock harvests. The Gulf Council and the South Atlantic Fishery Management Council expect to submit Amendment 2 in August 1994 for Secretarial review, approval, and implementation.

Based on public testimony and a review of written comments, the Gulf Council determined that the usual harvest practices and number of participants north of the Pasco/Hernando County line in Florida do not threaten the integrity of the natural hard bottoms and banks in the EEZ in that area, at least in the short-term, provided that chipping is not allowed and a daily vessel limit is established. Harvesters provided charts of natural hard bottom areas, showed videos of reef complexes, and testified that there is sufficient loose rock in this area to support a commercial fishery. They stated that it is not their usual practice to chip rock off the ledges and that without access to live rock during the phaseout period through 1996, they would be financially unable to convert to aquaculture operations.

The EEZ off Alabama, the only other Gulf state to report landings of live rock, would remain closed to harvest because of the scarcity of live rock resources in that area. As currently proposed in Amendment 2, harvest and possession of live rock would be prohibited throughout the Gulf EEZ, except off Florida. Live rock harvests in the EEZ off Florida would be phased out and replaced by aquaculture.

NMFS concurs with the Gulf Council's request and extends the emergency interim rule, with the requested modifications, for an additional 90 days in accordance with section 305(c)(3)(B) of the Magnuson Act.

Details concerning the basis for the emergency interim rule and the classification of the rulemaking are contained in the preamble to the initial emergency interim rule and are not repeated here.

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 11, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is amended as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for part 638 continues to read as follows:

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

2. In § 638.5, paragraphs (o) through (q) and (u) are added to read as follows:

§ 638.5 Prohibitions.

* * * * *

(o) Harvest or possess live rock in the EEZ of the Gulf of Mexico from 87°31′06″W. long. west to 88°23′12″W. long., as specified in § 638.27(b).

(p) Harvest live rock by chipping in the EEZ of the Gulf of Mexico from 87°31′06″W. long. east and south to 28°26′N. lat., or possess in that area live rock taken by chipping; as specified in § 638.27(c)(1).

(q) Harvest live rock by chipping with a power-assisted tool in the EEZ of the Gulf of Mexico south of 28°26′N. lat., or possess in that area live rock taken by chipping with a power-assisted tool; as specified in § 638.27(c)(2).

* * * * *

(u) Exceed the daily vessel harvest and possession limit applicable to the harvest or possession of live rock in or from the EEZ of the Gulf of Mexico east and south of 87°31′06″W. long., as specified in § 638.27(d).

3. In subpart B, § 638.27 is added to read as follows:

§ 638.27 Live rock.

(a) *Definitions.* (1) *Chipping* means breaking up reefs, ledges, or rocks into fragments, usually by means of a chisel and hammer.

(2) *EEZ of the Gulf of Mexico* means that portion of the EEZ from the Texas/Mexico border to the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter.

(3) *Live rock* means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding mollusk shells).

(b) *Closed area.* No person may harvest or possess live rock in the EEZ of the Gulf of Mexico from 87°31′06″W. long. (extension of the Alabama/Florida boundary) west to 88°23′12″W. long. (a line due south from the seaward terminus of the Alabama/Mississippi state line).

(c) *Gear limitations.* (1) No person may harvest live rock by chipping in the EEZ of the Gulf of Mexico from 87°31′06″W. long. east and south to 28°26′N. lat. (extension of the Pasco/Hernando County, Florida, boundary) and no person may possess in that area live rock taken by chipping.

(2) No person may harvest live rock by chipping with a power-assisted tool in the EEZ of the Gulf of Mexico south of 28°26′N. lat. and no person may possess in that area live rock taken by chipping with a power-assisted tool

(d) *Harvest and possession limits* A daily vessel limit of 25 5-gallon (19-liter) buckets, or volume equivalent, applies to the harvest or possession of live rock in or from the EEZ of the Gulf of Mexico east and south of 87°31′06″W long.

[FR Doc. 94–20220 Filed 8–12–94; 4:32 pm]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 159
Thursday, August 18, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AEA–02]

Proposed Establishment of Class E5 Airspace; Hazelton, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace in the vicinity of Hazelton, PA, for aircraft operating under instrument flight rules (IFR) to and from the Hazelton Municipal Airport. The intended effect of this proposed action is to keep Class E airspace in the vicinity of Hazelton, PA operationally current.

DATES: Comments must be received on or before September 30, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Michael Sammartino, Acting Manager, System Management Branch, AEA–530, Docket No. 94–AEA–02, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may also be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Frank Jordan, Designated Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AEA–02." The postcard will be date/time stamped and returned to the commentor. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish additional class E5 airspace in the vicinity of Hazelton, PA. The intended effect of this proposal is to lower the floor of controlled airspace in this vicinity from 1,200 feet to 700 feet above ground level for IFR operations at the airport. The coordinates for this airspace docket are based on North American Datum 83. Class E5 airspace designations are published in paragraph 6005 of FAA Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E5 airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—AMENDED

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation

Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA PA E5 Hazelton, PA [New]

Hazelton Municipal Airport, PA
(Lat. 40°59'13" N., long. 75°59'41" W.)
HAWNS OM
(Lat. 40°58'49" N., long. 75°53'14" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Hazelton Municipal Airport and that airspace extending 5.3 miles north and 3.5 miles south along the Hazelton Municipal Airport localizer east course extending from the 6.4-mile radius area to 9.9 miles east of the HAWNS OM.

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Issued in Jamaica, New York, on July 29, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94–20302 Filed 8–17–94; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Palletization

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing revisions to the Domestic Mail Manual (DMM) standards concerning the preparation of mail on pallets. The proposed revisions are intended to establish consistent preparation standards for all classes of mail that result in the lowest combined costs of handling palletized mail for the Postal Service and its customers as well as to facilitate consistent service for palletized mailings. To ensure that the Postal Service realizes the efficiencies related to placement of mail on pallets, postal facilities will accept pallets prepared only according to DMM pallet standards.

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

ADDRESSES: Address all comments to the Manager, Business Mail Acceptance, U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–6808.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION: The proposed makeup standards are based on three distinct overriding factors: (1) Joint industry/postal pallet testing and modeling efforts; (2) current bulk mail center (BMC) processing needs; and (3) roll-out of the Integrated Mail Handling System (IMHS).

Industry/Postal Pallet Testing and Modeling

In August 1993, Postal Service and industry representatives met to identify the barriers to increased palletization and to formulate a process for assisting the Postal Service in its decisions on future palletization efforts. It was determined that a two-pronged approach should be undertaken (1) to explore the physical pallet-handling processes for determining optimal requirements that serve both mailer and Postal Service needs; and (2) to identify enhanced sortation requirements for ensuring consistent levels of service for palletized mailings.

To determine physical makeup requirements, a multifaceted pallet test was commissioned. The first phase was conducted at the Chicago BMC, beginning in February 1994; the second phase began in April, adding three BMCs to the test. With the assistance of several mailers who palletize, the Postal Service analyzed the effect of double- and triple-stacking, shrinkwrapping, top capping, minimum and maximum weights and heights, and short- and long-haul shipment effects. Although there is still additional testing to do on some issues, what has been learned is being incorporated into these new pallet standards. Proposed standards are summarized below.

To determine the optimal sortation requirements, information on postal workload factors was modeled by the Postal Service and members of the Mailers' Technical Advisory Committee (MTAC). Although the results of the modeling efforts have not aligned exactly, the consensus of the industry and the Postal Service is that there are positive opportunities to expedite processing available from selective increases in palletization that can be achieved by providing options for lower pallet minimum weights/volumes for certain categories of 5- and 3-digit pallets. The Postal Service also believes that the proposed requirement to prepare State distribution center (SDC) pallets for packages, trays, and sacks will enhance processing opportunities.

BMC Processing Needs

In order to address existing capacity constraints and keep the BMC network flowing smoothly, the Postal Service will need to move as much mail as possible into cross-dock operations to move it farther into the distribution network. The Postal Service's priority at this time is to provide relief to the BMCs for the processing of letter mail in trays and packages of flats. The Postal Service has relaxed standards on pallet size for these mail types because it is anticipated that palletization will provide the most relief to the BMCs, while not extending Postal Service pallet-handling resources beyond supportable limits.

As an added inducement to the finest depth of sort for pallets, as well as relief for BMC operations heavily affected by unbanded trays, the Postal Service proposes to require that all trays on destination and mixed-BMC pallets must be banded, no matter where the pallets are deposited, whereas trays on pallets made up to finer levels of sortation, such as 5-digit and sectional center facility (SCF) destinations, will no longer need to be banded.

Integrated Mail Handling System (IMHS)

The roll-out of the IMHS has begun, including funding for pallet-handling equipment and the mail transport equipment needed to support expanded palletization. Implementation of IMHS is expected in 1996. Based on current equipment and planned IMHS deployments through December 1994, the Postal Service is confident that it can support increased pallet demand and processing needs, primarily for trays and flats packages, that are likely to result if the proposed revised standards are implemented.

Summary of Proposed Changes

Height Restrictions and Stacking Pallets

Pallet maximum height restrictions are being relaxed to 77 inches for any single pallet, as well as for double- or triple-stacked pallets, where stacking is allowed. The testing described above indicated that pallet loads exceeding 77 inches are a problem because of dock door and ceiling heights within postal facilities, and door and internal heights of Postal Service trailers and other vehicles. This maximum is consistent with the general acceptance throughout the Postal Service of Postal-PAKs (cardboard sleeves used by the Postal Service to contain mail) on pallets with a combined height of 75 inches, plus a 2-inch allowance for packing material.

The 77-inch maximum will allow a greater amount of customer participation because mailers will be able to double-stack and in some cases triple-stack pallets while still allowing safe and efficient pallet loading and unloading by Postal forklift equipment.

The Postal Service is proposing to allow mailers to triple stack pallets holding bricklayed parcels and trays of letter-size mail, up to the maximum allowable height and weight. Based on test results to date, the Postal Service feels comfortable that it can safely and efficiently handle such pallets. Tests with mailers are continuing to evaluate the potential for safe and efficient handling of triple-stacked pallets of packages.

If stacking pallets, mailers will be required to place pallets for the same processing facility together to facilitate moving as much mail as possible directly into cross-dock operations at BMCs for further movement into the distribution network. For example, if a mailing includes multiple pallets for two or more SCF service areas, the mailer must stack and strap together pallets for the same SCF service area instead of stacking together pallets for two different SCF service areas. To obtain greatest use of transportation, mailers may stack and band together pallets for different plants that remain after pallets for the same processing plants have been banded together.

Pallet Boxes

The Postal Service proposes that mailers use only the following types of pallet boxes, compatible with the IMHS, placed on pallets to hold sacks of mail or parcels:

a. Full-size pallet boxes: 48 inches long, 40 inches wide, and more than 60 inches high with triple corrugated fiberboard C and/or B flute wall material, as certified by the manufacturer. When these boxes are placed on a pallet, their overall height must not exceed 77 inches.

b. Half-size pallet boxes that meet the same construction standards as full-size boxes and have the following dimensions: 48 inches long, 40 inches wide, and 34 inches high. When these boxes are placed on a pallet, the overall height must not exceed 40 inches.

Top Capping

Top-capping requirements have been strengthened to ensure load integrity because in the enhanced pallet environment both mailers and postal operations will be transporting and handling an increased volume of double- and triple-stacked pallets. In order to maintain the integrity of the load, protect the customers' products, and provide a flat surface for safe and efficient stacking, top caps (along with shrinkwrapping and banding) are required on all pallets that either customers or postal operations may have an opportunity to stack. Half-size cardboard pallet boxes, which tend to collapse if another pallet is placed on top, will not require top caps and will be permitted only on the top pallet if double-stacked. Full-size cardboard pallet boxes must never be stacked and will also not require top caps.

Top caps must be approximately 48 inches long, 40 inches wide, and meet any of the following construction standards:

a. Five-wood boards with uniform edges and nine-leg pallet contact for stacking;

b. Gaylord box end style, with minimum 3-inch side, with wall material a minimum of double wall corrugated fiberboard C and/or B flute;

c. Fiberboard honeycomb covered on both sides with heavy linerboard, minimum ½ inch thick; or

d. Corrugated fiberboard C flute sheet covering the entire top of the load, with standard pallet solid fiberboard corner edge protectors.

Pallet Strapping

Proper strapping is needed to secure the top cap and load to the pallet and to maintain the integrity of the load during shipping and handling. Although at least two straps are required, the preferred number of straps on a pallet is four, two placed in each direction. The preferred strapping material is 5/8 inch wide plastic strapping with a minimum breaking strength of 800 pounds. Steel strapping may be used if it has a minimum width of 1/2 inch and has a greater minimum breaking strength of 1,200 pounds required to ensure that it does not break and cause injuries to postal employees handling pallets.

Prohibition of Courtesy Pallets

"Courtesy" pallets (pallets that do not meet Domestic Mail Manual (DMM) standards) are not allowed. Mailers must be authorized to palletize under applicable standards, and all mail on pallets presented to the Postal Service must be prepared in accordance with the standards applicable to the class and type of mail placed on the pallets. The relaxation in pallet minimum weights should promote and facilitate customers' adherence to makeup requirements. These requirements allow the Postal Service to move palletized mail as far down through the postal mailstream as possible, reduce handlings, and improve service. Exceptions for acceptance of pallets that do not meet DMM standards would undermine these efforts and will not be permitted.

Tray Strapping

When strapping trays, mailers must use a single wrap of plastic strap placed around the length of the tray that will ensure that the tray maintains its integrity throughout processing and transportation. The strap must not crush the tray or sleeve. Mailers should follow these guidelines for strapping trays:

a. The strap should have a 10-pound minimum tension.

b. The preferred material for tray strapping (banding) is white or yellow textured, extruded, commercial heat sealable polypropylene strapping with a minimum 1-inch width and .025-inch thickness. If other plastic banding material is used, it should have a minimum tensile breaking strength of 80 pounds. The seal of the band should have a minimum breaking strength of 60 pounds. The elongation of the alternate material before yield should be less than 20 percent.

c. To minimize the cutting effect, the material should form a flat bend with a minimum ¼-inch width when installed on the tray.

d. The seal should be accomplished by melting the ends of the strap together using the heat or friction method or a knot or nonreusable clasp. When forcibly opened, the seal should be incapable of being resealed as initially installed and evidence of any attempt to reseal a broken seal should be readily detectable. Knotted seals should not be able to be retied.

e. The strap and seal should not be harmfully affected by moisture or ambient temperature ranging from 40 to 125 degrees Fahrenheit.

f. Mailers should use strapping material manufactured and used according to the best commercial practice for the type of banding.

As noted under the section titled BMC Processing Needs, the Postal Service is proposing that mailers must strap all trays placed on destination BMC and mixed-BMC pallets.

Pallet Sortation

As noted above, mailers will be required to prepare SDC pallets for packages, trays, and sacks placed on pallets. In addition, mailers who want an alternative to bedloading trays will be required to place them on pallets in accordance with DMM standards. These standards were initially published as guidelines in the Postal Bulletin (March 18, 1993; January 20, 1994). These changes will enhance processing opportunities.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C.

553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following units of the Domestic Mail Manual as noted below:

M030 CONTAINER PREPARATION

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M033 Sacks and Trays

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2.0 Basic Standards for Trays—Nonautomation Rates

* * * * *

2.4 Sleeving

Each tray must be sleeved, except that when all pieces in a mailing originate and destinate in the delivery area of the same SCF, the processing and distribution manager may (on request) issue a written authorization to the mailer to submit the mailing in trays without sleeves.

2.5 Strapping

Trays that are not placed on pallets (under M042 or M043) and that are transported from the mailer's plant to a BMC, ASF, or AMF on USPS or mailer transportation must also be secured by a plastic strap placed tightly around the length of the tray. The strap must not crush the tray or sleeve. When trays are placed on pallets under M042 or M043, trays placed on BMC and mixed-BMC pallets must be secured by a plastic strap, regardless of where the mail is deposited. Strapping is not required on trays placed on pallets prepared to finer levels of sortation.

3.0 Basic Standards for Trays—Automation Rates

* * * * *

3.6 Sleeving

Each tray must be sleeved, except that when all pieces in a mailing originate and destinate in the delivery area of the same SCF, the processing and distribution manager may (on request) issue a written authorization to the mailer to submit the mailing in trays without sleeves. The mailer must be able to produce this letter upon request of the post office verifying mailings.

3.7 Strapping

Trays that are not placed on pallets (under M042 or M043) and that are transported from the mailer's plant to a BMC, ASF, or AMF on USPS or mailer transportation must also be secured by a plastic strap placed tightly around the length of the tray. The strap must not crush the tray or sleeve. When trays are placed on pallets under M042 or M043, trays placed on BMC and mixed-BMC pallets must be secured by a plastic strap, regardless of where the mail is deposited. Strapping is not required on trays placed on pallets prepared to finer levels of sortation.

M040 Palletization

M041 Pallets

1.0 Physical Characteristics

1.1 Construction

[In the second sentence, change "65 cubic feet" to "80 cubic feet."]

* * * * *

1.5 Prohibition of Pallets Not Prepared According to Standard

All mail on pallets presented to the Postal Service must be prepared in accordance with the standards applicable to the class and type of mail placed on the pallets.

2.0 Top Caps

2.1 When Required

Top caps are required on all loaded pallets, regardless of weight, holding letter trays (MM and EMM) of mail, packages of mail, sacks of mail, and bricklayed parcels.

2.2 When Not Required

Top caps are not required on loaded pallets, regardless of weight, holding sacks or parcels contained in full-size or half-size fiberboard pallet boxes ("mailer paks") prepared under 4.0.

2.3 Design

Top caps must be approximately 48 inches long, 40 inches wide, and meet any of these construction standards:

a. Five-wood boards with uniform edges and nine-leg pallet contact for stacking.

b. Fiberboard box end style, with minimum 3-inch side, with wall material a minimum of double wall corrugated fiberboard C and/or B flute.

c. Fiberboard honeycomb covered on both sides with heavy linerboard, minimum 1/2 inch thick.

d. Corrugated fiberboard C flute sheet covering the entire top of the load with standard pallet solid fiberboard corner edge protectors.

2.4 Securing

A top cap must be secured to the pallet, horizontal to the plane of the pallet, with strapping or banding strong enough to keep the cap in place so that it protects the mail and maintains the integrity of the pallet load. At least two straps are required (one in each direction). Strapping material may be plastic (at least 5/8 inch wide with a minimum breaking strength of 800 pounds) or steel (at least ½ inch wide with a minimum breaking strength of 1,200 pounds).

3.0 Stacking Pallets

3.1 Double Stacking

Pallets may be double-stacked if the combined gross weight of the stacked pallets is not more than 2,200 pounds; the heavier pallet is on the bottom; the pallets are banded together with appropriate strapping material to maintain their integrity during transportation and handling; and the combined height of the stacked pallets does not exceed 77 inches. Pallets with half-size fiberboard pallet boxes holding sacks of mail or parcels must be the top pallet when pallets are double-stacked.

3.2 Triple Stacking

Pallets holding MM or EMM trays of letter-size mail or bricklayed parcels may be triple-stacked if the combined gross weight of the stacked pallets is not more than 2,200 pounds. No other type of pallet may be triple-stacked. The heaviest pallet must be on the bottom and the lightest on the top; the pallets must be banded together with appropriate strapping material to maintain their integrity during transportation and handling; and the combined height of the stacked pallets must not exceed 77 inches.

3.3 Pallets for Same Facility

Stack pallets for the same processing facility together. Mailers may stack together pallets for different facilities that remain after pallets for the same facilities are stacked and banded together.

[Renumber current 4.0 as 5.0; add new 4.0 as follows:]

4.0 Pallet Boxes

4.1 Definition

Mailers may use pallet boxes, constructed of triple wall corrugated fiberboard C and/or B flute material (described below), placed on pallets to hold sacks or parcels prepared under

(M042, M043, or M044). Sizes are as follows:

a. A full-size pallet box must be 48 inches long, 40 inches wide, and more than 60 inches high. When placed on a pallet, the overall height must not exceed 77 inches. Full-size pallet boxes may be prepared only to BMC destinations.

b. A half-size pallet box must be 48 inches long, 40 inches wide, and 34 inches high. When placed on a pallet, the overall height (including a top cap if used) must not exceed 40 inches.

4.2 Securing

A pallet box must be secured to the pallet base with strapping or banding strong enough to keep the box in place so that it protects the mail and maintains the integrity of the pallet load. At least two straps are required (one in each direction). Strapping material may be plastic (at least 5/8 inch wide with a minimum breaking strength of 800 pounds) or steel (at least 1/2 inch wide with a minimum breaking strength of 1,200 pounds).

[Revise renumbered 5.0 as follows:]

5.0 Preparation

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5.2 Minimum Load

In a single mailing, the minimum mail loads per pallet are as follows:

a. 250 pounds for packages of second- or third-class mail placed on 5-digit and 3-digit pallets (optional); 500 pounds for other sacks, packages, bundles, and parcels on pallets, except that up to 10% of the pallets (not including 5- and 3-digit pallets that contain less than 500 pounds) in any mailing or plant-verified drop shipment job may contain less than 500 pounds, but not less than 250 pounds, of mail. This 10% exception may be applied to all mailings that are part of the same mailing job.

b. Two layers of EMM trays.

c. Three layers of MM trays.

[Renumber 5.3 as 5.5; add new 5.3 and 5.4 as follows:]

5.3 Maximum Load Weight

The maximum load weight is 2,200 pounds (mail and pallet) for all pallets.

5.4 Maximum Load Height

The combined height of a pallet and its load must not exceed:

a. 77 inches for sacks, packages, bundles, parcels, and full-size fiberboard pallet boxes.

b. 40 inches for half-size fiberboard pallet boxes.

c. Five layers of EMM trays.

d. Six layers of MM trays.

M042 Second-Class Mail

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4.0 Preparing Pallets of Packages or Bundles

[Delete current 4.1 and renumber 4.2 through 4.5 as 4.1 through 4.4, respectively; revise renumbered 4.2 as follows:]

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4.2 Presort and Labeling

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e. SDC (required); use L201 for Line 1.

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5.0 Preparing Pallets of Copalletized Flat-Size Publications

[Delete current 5.3 and renumber 5.4 through 5.10 as 5.3 through 5.9, respectively; revise renumbered 5.3 as follows:]

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5.3 Presort and Labeling

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e. SDC (required); use L201 for Line 1.

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6.0 Preparing Pallets of Sacks

[Delete current 6.1 and renumber 6.2 through 6.4 as 6.1 through 6.3, respectively; revise renumbered 6.2 as follows:]

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6.2 Presort and Labeling

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e. SDC (required); use L201 for Line 1.

f. Transfer hub (optional).

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7.0 Preparing Pallets of Trays (Letter Mail)

7.1 Tray Preparation

Trays must be prepared in accordance with the standards applicable to the class of mail and rate claimed.

7.2 Pallet Presort and Labeling

Pallet presort sequence and labeling:

a. SCF (required); use L002 (facilities in Column A identified with three bullets or facilities in Column B, as applicable) for Line 1.

b. SDC (required); use L201 for Line 1.

c. BMC (required); use L705 for Line 1.

d. Mixed-BMC (required); label to origin BMC; use L705 for Line 1 and show any required processing code right-justified on Line 2.

7.3 Separation of Mailings

Trays from automation rate mailings must not be placed on pallets with trays from nonautomation rate mailings.

M043 Third-Class Mail

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4.0 Preparing Pallets of Packages or Bundles

[Delete current 4.1 and renumber 4.2 through 4.6 as 4.1 through 4.5, respectively; revise renumbered 4.2 as follows:]

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4.2 Presort and Labeling

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e. SDC (required); use L201 for Line 1 (deposit pallet at BMC serving 3-digit ZIP Code on Line 1 if DBMC rate is claimed).

f. BMC (required); use L705 (or L708 if DBMC rate is claimed) for Line 1.

g. Mixed-BMC (required); label to origin BMC, use L705 for Line 1 and show any required processing code right-justified on Line 2.

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4.5 Sacks

[Change the reference in the first sentence from "4.3" to "4.2."]

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6.0 Preparing Pallets of Copalletized Flat-Size Mailings

6.1 Standards

[Change the references from "4.2 through 4.6" to "4.1 through 4.5."]

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6.4 Size

[Delete current 6.4 and renumber 6.5 through 6.12 as 6.4 through 6.11, respectively.]

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6.10 Sacking

[Change the reference in the first sentence from "4.3" to "4.2."]

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7.0 Palletizing Machinable Third-Class Parcels

[Delete current 7.1 and renumber 7.2 through 7.5 as 7.1 through 7.4, respectively.]

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7.2 Line 2

[Change the reference at the end from "7.2" to "7.1."]

7.3 ⅗ Presort Rate

[Change all references from "7.2" to "7.1."]

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8.0 Palletizing Third- And Fourth-Class Machinable Parcels

8.1 Standards

[Change the reference from "4.2 through 4.6" to "4.1 through 4.5."]

8.2 Size

[Delete current 8.2 and renumber 8.3 through 8.8 as 8.2 through 8.7, respectively.]

8.3 Line 2

[Change the reference at the end from "8.3" to "8.2."]

8.4 ⅗ Presort Rate

[Change all references from "8.3" to "8.2."]

* * * * *

9.0 Preparing Pallets of Sacks

[Delete current 9.1 and renumber 9.2 through 9.4 as 9.1 through 9.3, respectively.]

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9.2 Line 2

[Change reference at end from "9.2" to "9.1."]

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10.0 Preparing Pallets of Trays (Letter Mail)

10.1 Tray Preparation

Trays must be prepared in accordance with the standards applicable to the class of mail and rate claimed.

10.2 Pallet Presort and Labeling

Pallet presort sequence and labeling:

a. SCF (required); use L002 (facilities in Column A identified with three bullets or facilities in Column B, as applicable) for Line 1.

b. SDC (required); use L201 for Line 1 (deposit pallet at BMC serving 3-digit ZIP Code on Line 1 if DBMC rate is claimed).

c. BMC (required); use L705 for Line 1

d. Mixed-BMC (required); label to origin BMC; use L705 for Line 1 and show any required processing code right-justified on Line 2.

10.3 Separation of Mailings

Trays from automation rate mailings must not be placed on pallets with trays from nonautomation rate mailings.

M044 Fourth-Class Mail

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3.0 Preparing Pallets of Packages

[Delete current 3.1 and renumber 3.2 through 3.5 as 3.1 through 3.4, respectively.]

* * * * *

4.0 Preparing Pallets of Machinable Parcels

[Delete current 4.1 and renumber 4.2 through 4.6 as 4.1 through 4.5, respectively.]

* * * * *

4.2 Line 2

[Change the reference at the end from "4.2" to "4.1."]

* * * * *

5.0 Preparing Pallets of Special Fourth-Class Presort

[Delete current 5.1 and renumber 5.2 and 5.3 as 5.1 and 5.2, respectively.]

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5.2 Line 2

[Change the reference at the end from "5.2" to "5.1."]

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M048 Automation-Compatible Flats

* * * * *

2.0 Package and Pallet Preparation

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2.2 Pallets

Pallets must be prepared under the general standards in M041.

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An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–20309 Filed 8–17–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN39–1–6337B; FRL–5012–2]

Clean Air Act Approval and Promulgation of Employee Commute Options Programs; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is proposing to approve the State Implementation Plan (SIP) revision request submitted by the State of Indiana on February 25, 1994, for the purpose of establishing an Employee Commute Options Program (ECO Program) in Lake and Porter Counties. The SIP request was submitted by Indiana to satisfy the statutory mandate that an ECO Program be established for employers in severe and extreme ozone nonattainment areas with 100 or more employees. Compliance plans developed by these employers must be designed to convincingly demonstrate an increase in the average passenger occupancy of vehicles used by their employees who commute to work during the peak period by no less than 25 percent above the average vehicle occupancy of the nonattainment area. In the final rules section of this **Federal Register**, the USEPA is approving the State's SIP revision request without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule based on this proposed rule. A second comment period on this action will not be held. Parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before September 19, 1994.

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

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

FOR FURTHER INFORMATION CONTACT: Jessica Radolf, Environmental Scientist, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3198.

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

Dated: June 30, 1994.

David A. Ullrich,

Acting Regional Administrator

[FR Doc. 94–19908 Filed 8–17–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[CO27-1-5754b; FRL-5012-7]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; New Source Review and Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the EPA is proposing partial approval of revisions to the State Implementation Plan (SIP) pertaining to the State's new source review (NSR) and prevention of significant deterioration (PSD) regulations, which was submitted by the Governor of Colorado on January 14, 1993. In the final rules Section of this **Federal Register**, the EPA is partially approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for the partial approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, then the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed action must be received in writing by September 19, 1994.

ADDRESSES: Written comments should be addressed to Vicki Stamper, 8ART-AP, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466; and Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466, (303) 293-1765.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final notice of the same title which is located in the Rules Section of this **Federal Register**.

Dated: July 6, 1994.

Kerrigan G. Clough,

Acting Regional Administrator.

[FR Doc. 94-20343 Filed 8-17-94; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 58

[FRL-4842-4]

Ambient Air Quality Surveillance Siting Criteria for Open Path Analyzers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to amend provisions of part 58 of chapter I of title 40 of the Code of Federal Regulations to define the appropriate ambient air monitoring criteria for open path (long-path) analyzers. The proposed revisions to the Ambient Air Quality Surveillance regulations would define the siting requirements for open path analyzers used as State and Local Air Monitoring Stations (SLAMS), which includes both National Air Monitoring Stations (NAMS) and Photochemical Assessment Monitoring Stations (PAMS), as well as the quality assurance procedures for this technology. These changes will allow the ambient air monitoring community to effectively use open path monitoring data for regulatory purposes.

DATES: Comments must be received on or before September 19, 1994. Requests for public hearing must be received by September 2, 1994. If a hearing is held, comments must be received on or before 30 days from the conclusion of the hearing.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air Docket (LE-131), Attention: Docket Number A-93-44, U.S. Environmental Protection Agency, room M-1500, 401 M Street, SW., Washington, DC 20460.

Public hearing: A public hearing will be held, if requested, in accordance with information provided in the **DATES** section of this proposal, to provide interested parties an opportunity for oral presentation of data, views, or arguments concerning the proposed revisions. If anyone contacts EPA requesting a public hearing, it will be held at the EPA's Environmental Research Center, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Lee Ann B. Byrd, Monitoring and Reports Branch (MD-14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5367. Specific dates and other pertinent details of this public hearing will be published in a separate Federal Register notice.

Docket: Docket Number A-93-44, containing supporting information used in developing these revised regulations, is available for public inspection and copying between 8:30 a.m. and 12 noon, and between 1:30 p.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section at the address noted above. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann B. Byrd at telephone (919) 541-5367 concerning this action. The address is Monitoring and Reports Branch (MD-14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

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A. Administrative Designation.
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I. Authority

Authority: sections 110, 301(a), 313, and 319 of the Clean Air Act as amended 42 U.S.C. 7410, 7601(a), 7613, 7619.

II. Background of Proposed Rule

The Clean Air Act, as amended in 1990, requires, in sections 181(b)(2), 185A, and 186(b)(2)(A), ambient air quality monitoring for purposes of defining areas of nonattainment with the National Ambient Air Quality Standards (NAAQS), evaluating progress toward achievement of the NAAQS pursuant to State implementation plans (SIP's), and reporting air quality data to the EPA to document the status and trends of the Nation's air quality. These are nontrivial

activities, and to achieve the aforementioned objectives, the EPA must ensure that the ambient air monitoring networks consist of high quality instruments that produce accurate concentration measurements. As new monitoring techniques are developed, the EPA evaluates the new methodology and, as appropriate, determines how to effectively incorporate it into the existing air quality monitoring program. To assess new ambient air monitoring instruments for those pollutants with established NAAQS, the EPA currently uses the Ambient Air Monitoring Reference and Equivalent Method regulatory procedures detailed in title 40, chapter 1, part 53. The EPA does not formally regulate the performance testing of ambient air monitoring instruments, which measure pollutants without established NAAQS. Methodology for collected ozone (O_3) precursor data (specified in the Photochemical Assessment Monitoring program as volatile organic compounds and oxides of nitrogen) is reviewed in the "Technical Assistance Document for Sampling and Analysis of Ozone Precursors," and any subsequent revisions, EPA/600–8–91/215, October 1991. Supplementing the part 53 performance requirements and the aforementioned "Technical Assistance Document," the part 58 Ambient Air Quality Surveillance regulation specifies how to most appropriately conduct routine ambient air monitoring through pollutant-specific monitor siting criteria, operation schedules, monitoring network design, and data reporting. Under the part 58 provisions, each SLAMS must employ reference or equivalent methods, as determined according to part 53, and meet all applicable siting requirements as contained in part 58, before its data can be used for regulatory purposes. Specifically, these regulatory actions include comparison with the NAAQS and other SIP-related activities. It is important to note that the NAMS and the PAMS are subsets of the SLAMS networks; therefore, provisions for the SLAMS also apply to both the NAMS and PAMS, as included in this proposal.

A new technique for monitoring pollutants in ambient air has been developed and introduced to the EPA. Instruments based on this new technique, called open path (or long-path) analyzers, use ultraviolet, visible, or infrared light to measure nitrogen dioxide (NO_2), O_3, carbon monoxide (CO), sulfur dioxide (SO_2), and other gaseous pollutant concentrations over a path of several meters up to several kilometers. The concentration measurements obtained by these open path analyzers are path-integrated, or path-averaged, values. Traditional fixed point analyzers measure pollutant concentrations at one specific point by extracting an air sample from the atmosphere through an inlet probe. A list of all EPA-approved reference and equivalent ambient air monitoring methods is available through the docket. Due to the fundamental difference in the measurement principles of open path and point analyzers, there may be trade-offs in using each type of instrument for certain applications. Because of the ability of open path analyzers to measure pollutant concentrations over a path, these new techniques are expected to provide better spatial coverage, and thereby a better assessment of a general population's exposure to air pollutants for certain applications. However, due to this same path-averaging characteristic, open path analyzers could underestimate high pollutant concentrations at specific points within the measurement path for other ambient air monitoring situations. The applicability of either technique to a particular monitoring scenario is dependent on a number of factors including plume dispersion characteristics, monitoring location, pollutant of interest, population density, site topography, and monitoring objective. The EPA has considered these factors in evaluating the advantages and disadvantages of using open path analyzers for the various ambient air monitoring applications detailed in 40 CFR part 58. Additionally, several studies of the comparability of data collected with point and open path analyzers have been conducted by the EPA and by other organizations. The most recent EPA study of these two methodologies was completed during the summer of 1993 in Baytown, Texas. Results from this study and others are available in the docket for public review. The EPA solicits comment on these studies and on the comparability of using path-averaged and point measurements in the Nation's ambient air monitoring programs.

The EPA is currently assessing the performance of an open path analyzer as a candidate method under part 53 to determine if it should be designated as an equivalent method for one or more of those pollutants. In parallel with this effort, the EPA has developed the appropriate part 58 siting and quality assurance criteria for open path analyzers, which are contained in this proposal.

The existing part 58 monitoring network design criteria define the monitoring objectives for a particular site in terms of measurement scale. More specifically, each ambient air monitoring station is located in such a way that it represents a particular air parcel or volume. The regulation uses six measurement scales to describe the size of these air parcels. These six scales are: microscale (dimensions of several meters to approximately 100 meters), middle scale (100 to 500 meters), neighborhood scale (500 meters to 4 kilometers), urban scale (4 to 50 kilometers), regional scale (tens to hundreds of kilometers), and national or global scales. (National and global scales are generally not applicable for a single air monitoring station. National and global averages are more appropriately determined by networks of various monitoring stations.) Within each of these measurement scales, it is assumed that the pollutant concentrations are relatively homogeneous; therefore, a monitor placed at any point in the area, within the tolerances of this siting regulation, measures a concentration representative of that area.

Depending on the objective for a particular SLAMS, each pollutant can be monitored on a particular measurement scale as defined in Table 5 of appendix D in part 58. The applicability of the first five scales to monitoring the four pollutants referenced in this proposal, CO, NO_2, O_3, and SO_2, follows:

SUMMARY OF SPATIAL SCALES FOR SELECTED SLAMS

Measurement Scale	CO	NO_2	O_3	SO_2	Ozone precursors [1]
Microscale	Yes	No	No	No	No.
Middle scale	Yes	Yes	Yes	Yes	No.
Neighborhood scale	Yes	Yes	Yes	Yes	Yes.
Urban scale	No	Yes	Yes	Yes	Yes.
Regional	No	No	Yes	Yes	No.

[1] Ozone precursors, as defined in the PAMS program, include volatile organic compounds, oxides of nitrogen, and selected carbonyls.

Existing regulations in part 58 state that the pollutant concentration within a particular measurement scale is nearly homogeneous, and that a point measurement collected in this same scale generally represents any other point within that scale. This basic provision defines how ambient air monitoring data can be used to represent the air quality in a

neighborhood, city, or other geographic region. Based on these current provisions, it is reasonable to accept that a path-averaged measurement taken within the dimensions and other siting specifications of that measurement scale would provide a value descriptive of that same geographic region. In order to maintain data comparability between open path and point analyzers, the revisions contained in this proposal are based on the siting criteria currently being used with conventional fixed point ambient air monitoring networks. The most obvious difference between the proposed and existing siting criteria is that the new requirements are defined in terms of a "probe" (applicable to point analyzers), a "monitoring path" (applicable to open path analyzers), or both. Some minor flexibility in siting criteria was added for open path analyzers to compensate for the additional difficulties in locating suitable sites for the various equipment used with an open path analyzer, such as retroreflectors, receivers, and transmitters. Nonetheless, these criteria should still provide a concentration representative of the area to be monitored.

It is important to note that criteria for open path measurement of CO in a street canyon scenario, typically defined in terms of microscale dimensions (up to 100 meters), is not included in this proposal. The siting criteria currently used for microscale CO monitoring is unique and narrow in scope in comparison to other monitoring scenarios. Adapting the existing siting criteria to accommodate path measurement techniques, as this proposal does for other types of monitoring scales, would unduly restrict the usage of open path analyzers for this particular application. In order to fully address more appropriate siting criteria for microscale CO monitoring using open path analyzers, the EPA must more fully evaluate the effects of measuring path-averaged CO concentrations across roadways, intersections, and at locations other than those currently defined in the part 58 regulation. The EPA specifically solicits comments from the public regarding the use of open path analyzers for measuring CO in microscale applications.

III. Discussion of Proposed Revisions to Regulations

A. Section 58.1 Definitions

Today's proposal would amend the definitions section of part 58 by adding several new definitions that are necessary to clearly define the proposed new requirements for open path analyzers. Definitions for "point analyzer" and "open path analyzer" would be added to define these two types of automated instruments and to clarify the distinction between them, since the various new and existing requirements may apply to one or the other or both types of analyzers. A new definition for "probe" is proposed to specify the inlet where an air sample is extracted from the atmosphere for delivery to a sampler or point analyzer. This definition would clarify that location requirements applicable to point analyzers apply to the analyzer's probe and not to the analyzer (or sampler) itself, which could be located some distance from the probe. Similarly, a new definition is proposed for "monitoring path" to describe the path in the atmosphere over which an open path analyzer measures and averages a pollutant concentration. Closely associated with the term "monitoring path" are new definitions for "monitoring path length," to describe the scalar length of the monitoring path, and "optical measurement path length," to describe the actual length of the optical beam of an open path instrument. The length of the optical beam may be two or more times the length of the monitoring path when one or more mirrors are used to cause the optical beam to pass through the monitoring path more than once.

To help describe the new requirements for data quality assessment procedures, the term "effective concentration" is proposed. It would refer to the ambient concentration of a pollutant over the monitoring path that would be equivalent to a much higher concentration of the pollutant contained in a short calibration cell inserted into the optical beam of an open path analyzer during a precision test or accuracy audit. Specifically, effective concentration is proposed to be defined as the actual concentration of the pollutant in the test cell multiplied by the ratio of the optical measurement path length of the test cell to the optical measurement path length of the atmospheric monitoring path. Also, when a calibration cell is inserted into the actual atmospheric measurement beam of an open path analyzer for a precision or accuracy test, the resulting measurement reading would be the sum of the pollutant concentration in the calibration cell and the pollutant concentration in the atmosphere. The atmospheric pollutant concentration must be measured separately and subtracted from the test measurement to produce a "corrected concentration," which would be the true test result. Thus, the term "corrected concentration" is proposed to define the result of such a precision or accuracy assessment test after correction of the test measurement by subtracting the atmospheric pollutant concentration.

Finally, a formal definition of "monitor" is proposed to clarify its use in the regulations as a generic term to refer to any type of ambient air analyzer or sampler that is acceptable for use in a SLAMS monitoring network under Appendix C of this part. A monitor could thus be a point analyzer, an open path analyzer, or a sampler.

B. Appendix A—Quality Assurance Requirements for State and Local Air Monitoring Stations (SLAMS)

Appendix A sets forth both general quality assurance requirements applicable to SLAMS air monitoring as well as specific procedures for assessing the quality of the monitoring data obtained in SLAMS monitoring networks. While the general quality assurance requirements (in section 2) would be directly applicable to open path analyzers without change, the more specific data quality assessment procedures (in section 3) must be modified somewhat to apply to open path analyzers. Accordingly, changes to these procedures are proposed to incorporate appropriate data quality assessment tests applicable to open path monitoring instruments. To the extent possible, the new requirements are similar or parallel to the existing requirements for point analyzers.

For both the precision test (§ 3.1) and the accuracy audit (§ 3.2), the proposed new requirements specify that an optical calibration or test cell containing a pollutant concentration standard must be inserted into the optical measurement beam of the open path analyzer. Both theory and testing indicate that the use of such a calibration or test cell is equivalent in accuracy to measurement of the equivalent pollutant concentration in air over the entire monitoring path of an open path analyzer. Each concentration standard must be selected such that it produces an "effective concentration" equivalent to a specified ambient concentration over the monitoring path. As noted previously, effective concentration is defined as the actual concentration of the pollutant in the test cell multiplied by the ratio of the optical measurement path length of the test cell to the optical measurement path length of the atmospheric monitoring path. The effective concentrations specified for the precision and accuracy tests for open

path analyzers would be the same as the test concentrations currently specified in these procedures for point analyzers.

Ideally, precision and accuracy assessments should test a monitoring instrument in its normal monitoring configuration. Therefore, the proposed test procedures require that the test or calibration cell containing the test pollutant concentration standard be inserted into the actual atmospheric measurement beam of the open path analyzer. The resulting test measurement of the pollutant concentration would thus be the sum of the test concentration in the cell and the pollutant concentration in the atmosphere, because the measurement beam would pass through both the test cell and the atmospheric monitoring path. Accordingly, a correction for the atmospheric concentration is required to obtain the true test result. In the proposed procedures, the atmospheric pollutant concentration would be measured immediately before and again immediately after the precision or accuracy test, and the average of these two measurements would be subtracted from the test concentration measurement to produce a "corrected concentration," which would be reported as the test result.

The corrected concentration reported for a precision or accuracy test may not be accurate if the atmospheric pollutant concentration changes during the test. When the ambient concentration is variable, the average of the pre- and post-test measurements may not be an accurate representation of the ambient pollutant concentration during the test. The proposed test procedures recommend that these tests should be carried out, if possible, during periods when the atmospheric pollutant concentration is low and steady. The lower the atmospheric pollutant concentration, the steadier the concentration is likely to be and the better the pre- and post-test measurements will represent the actual atmospheric concentration during the test measurement. Further, the procedures propose that if the pre- and post-test measurements of the atmospheric concentration differ by more that 20 percent of the effective concentration of the test standard, the test result would be discarded and the test repeated.

It is recognized that the proposed tests for precision and accuracy for open path analyzers, as well as the existing tests for point analyzers, are described in very general terms, and that additional, more detailed information and guidance is usually necessary for an analyzer operator to carry out these tests properly. Accordingly, section 3 of appendix A is proposed to be amended by adding an explicit indication that supplemental information and guidance to assist the analyst in conducting these tests may be available in the publication, "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II" (EPA-600/4-77-027a, identified as Reference 3 at the end of Appendix A), or in the operation or instruction manual associated with the particular monitor being used.

The proposed techniques for precision and accuracy assessment of open path analyzers are based largely on consultations with the manufacturer, along with EPA tests, of the differential optical absorption spectrometer that is currently under consideration by EPA for possible designation as equivalent methods under 40 CFR part 53. However, it is desirable that the techniques be generic in nature, if possible, so that they would be applicable to other types of open path monitoring instruments as well. In addition, for some types of open path instruments or for some installations or configurations, there may be technical reasons why the proposed techniques for precision and accuracy assessment may not be feasible, appropriate, or advisable. The procedures, as currently proposed, allow for the use of an alternate local light source or an alternate optical path that does not include the normal atmospheric monitoring path, if such alternate configuration is permitted by the operation or instruction manual associated with the analyzer. Since the analyzer operation or instruction manual would be subject to approval as part of the requirements for EPA designation of an open path analyzer as an equivalent method, EPA would thereby have control over the alternate configurations that would be allowable for the precision and accuracy assessment tests.

In view of these issues regarding the precision and accuracy assessment techniques, EPA specifically solicits comments on: (1) The suitability of the proposed techniques; (2) the advisability of a technique that requires correction of the test result for the atmospheric pollutant concentration versus a technique that does not require that correction but does not test the normal atmospheric measurement components and configuration; (3) the proposed technique for correcting test measurements for the atmospheric pollutant concentration, if required, and the 20 percent limit on the difference between the pre- and post-test measurements of the atmospheric concentration; and (4) whether the proposed techniques are sufficiently generic in nature to apply to various other types of open path analyzers that might be applicable to SLAMS monitoring, or how the techniques could be made more generic.

C. Appendix B—Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring

Appendix B sets forth both general quality assurance requirements for PSD monitoring as well as specific procedures for assessing the quality of the monitoring data obtained in PSD monitoring networks. The amendments and procedures proposed for Appendix B to extend the existing requirements to open path analyzers are essentially identical to the changes proposed for Appendix A.

D. Appendix E—Probe and Path Siting Criteria for Ambient Air Quality Monitoring

This proposal would amend Appendix E by adding new siting criteria applicable to open path analyzers for monitoring of SO_2, O_3, NO_2, CO, and O_3 precursors (defined in the PAMS program as volatile organic compounds, oxides of nitrogen, and selected carbonyls). Because of the substantial similarity in the siting criteria for SO_2, O_3, and NO_2 (both the existing criteria for point monitors and proposed new criteria for open path analyzers), the siting requirements for these three pollutants are proposed to be combined, consolidated, and set forth in section 2 of appendix E. The existing criteria for SO_2, O_3, and NO_2 in sections 3, 5, and 6 would be deleted, and those sections would be reserved. As noted below, the criteria for CO monitoring are somewhat different, so they would be retained in a separate section 4. Siting criteria for measuring O_3 and its precursors as part of a PAMS network are included in section 10. In all cases, the new open path provisions would be incorporated into the existing provisions, as appropriate.

The proposed new open path siting requirements largely parallel the existing requirements for point analyzers, with the revised provisions applicable to either a "probe" (for point analyzers), a "monitoring path" (for open path analyzers), or both, as appropriate. Accordingly, criteria for the monitoring path of an open path analyzer are proposed for horizontal and vertical placement, spacing from minor sources, spacing from obstructions, spacing from trees, and spacing from

roadways. The open path requirements would apply to most of the monitoring path—generally 80 or 90 percent—but not to the entire monitoring path, to allow some needed flexibility in siting open path analyzers. For example, using the proposed 80 percent requirement, a monitoring path may be sited across uneven terrain, where up to 20 percent of the monitoring path may not fall within the proposed 3 to 15 meter specification for height above ground.

In addition to the criteria common to both point and open path analyzers mentioned above, two new provisions, applicable only to open path analyzers, would limit the maximum length of the monitoring path and the cumulative interferences on the path. The maximum monitoring path length limit would help to ensure that open path monitoring data represent the air volume that they are intended to measure according to the monitoring objectives of the spatial scale identified for the site. Similarly, the limit for the cumulative interferences on the monitoring path would control the total amount of interferences from minor sources, roadways, obstructions, and other factors that might unduly influence the monitoring data collected by an open path analyzer. This limit is necessary because a long monitoring path presents a much greater opportunity to be affected by multiple interferences. It is also recognized that State or local air monitoring agencies may encounter difficulties in locating atmospheric monitoring equipment due to vandalism, scarcity of available sites, and other considerations; therefore, certain provisions are included in both the existing and the proposed new provisions of the regulation to accommodate these difficulties.

In the consolidation of current sections 3, 5, and 6 to section 2, Tables 2 and 3, which list the minimum separation distance between O_3 and NO_2 stations and nearby roadways, would be combined and redesignated as Table 1. As a result, Table 1 (in section 3), Table 4 (in section 7), Table 5 (in section 10), and Table 6 (in section 12) would be renumbered as tables 2, 3, 4, and 5, respectively. Finally, the summary of all the general siting requirements in renumbered Table 5 would be modified to include the new criteria for monitoring paths.

IV. Comments and the Public Docket

The EPA welcomes comments on all aspects of this proposed rulemaking, specifically: (a) The appropriateness of using open path (long-path) analyzers to measure CO, O_3, SO_2, NO_2, and/or O_3 precursors (defined in the PAMS program as volatile organic compounds, oxides of nitrogen, and selected carbonyls); (b) the ability of a monitoring agency to use an open path analyzer in a manner consistent with these siting criteria; (c) using open path analyzers to measure CO in microscale scenarios; (d) the precision and accuracy assessment techniques as described in the proposed Appendix A and Appendix B regulations; (e) using open path analyzers to measure SO_2 in source-oriented ambient air monitoring networks, particularly in micro- and middle-scale applications; and (f) all available and relevant study information on the comparability of open path and point ambient air monitoring. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–93–44.

Those who wish to submit proprietary information for consideration should clearly separate such information from other comments by:

- Labeling proprietary information "Confidential Business Information," and;
- Sending proprietary information directly to the contact person listed (see FOR FURTHER INFORMATION CONTACT) and not to the public docket.

This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants the EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by the EPA, the submission may be made available to the public without notifying the commenters.

V. Administrative Requirements

A. Administrative Designation

Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (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 a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or 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.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Reporting and Recordkeeping Requirements

All of the information collection requirements contained in part 58 have been approved by the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and have been assigned OMB Control Number 2060–0084. This proposed amendment to Part 58 does not add any new information collection requirements.

C. Regulatory Flexibility Act

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 small entities. This rulemaking package does not impose any additional requirements on small entities, rather, it is this proposal's intent to provide all entities with the option to choose the most suitable ambient air method for their particular application. This proposal provides the appropriate siting and quality assurance criteria for a new ambient air monitoring technology (open path analyzers) as they are used in various applications. All of the criteria listed in this rulemaking package parallel existing requirements and vary only as necessary due to technological differences between measurement techniques. It is possible that a beneficial impact may be encountered by some small entities that use this new technology in certain scenarios.

List of Subjects in 40 CFR Part 58

Air pollution control, Ambient air monitoring, Ambient air monitoring networks and siting criteria, Intergovernmental relations, National ambient air monitoring program,

Quality assurance requirements, Reporting and recordkeeping requirements, State and local agency ambient air monitoring programs.

Dated: August 4, 1994.

Carol M. Browner,

Administrator.

For reasons set forth in the preamble, title 40, chapter I, part 58 of the Code of Federal Regulations is proposed to be amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613, and 7619.

2. In § 58.1, the following definitions are added:

§ 58.1 Definitions.

* * * * *

(z) *Point analyzer* is an automated analytical method that measures pollutant concentration in an ambient air sample extracted from the atmosphere at a specific inlet probe point and that has been designated as a reference or equivalent method in accordance with part 53 of this chapter.

(aa) *Probe* is the actual inlet where an air sample is extracted from the atmosphere for delivery to a sampler or point analyzer for pollutant analysis.

(bb) *Open path analyzer* is an automated analytical method that measures the average atmospheric pollutant concentration in situ along one or more monitoring paths having a monitoring path length of 5 meters or more and that has been designated as a reference or equivalent method under the provisions of part 53 of this chapter.

(cc) *Monitoring path* for an open path analyzer is the actual path in space over which the pollutant concentration is measured and averaged.

(dd) *Monitoring path length* of an open path analyzer is the length of the monitoring path in the atmosphere over which the average pollutant concentration measurement is determined. See also, "optical measurement path length."

(ee) *Optical measurement path length* is the actual length of the optical beam over which measurement of the pollutant is determined. Generally, the optical measurement path length is:

(1) Equal to the monitoring path length for a (bistatic) system having transmitter and receiver at opposite ends of the monitoring path;

(2) Equal to twice the monitoring path length for a (monostatic) system having a transmitter and receiver at one end of the monitoring path and a mirror or retroreflector at the other end; or

(3) Equal to some multiple of the monitoring path length for more complex systems having multiple passes of the measurement beam through the monitoring path.

(ff) *Effective concentration* pertains to testing an open path analyzer with a high-concentration calibration or audit standard gas contained in a short test cell inserted into the optical measurement beam of the instrument. Effective concentration is the equivalent ambient-level concentration that would produce the same spectral absorbance over the actual atmospheric monitoring path length as produced by the high-concentration gas in the short test cell. Quantitatively, effective concentration is equal to the actual concentration of the gas standard in the test cell multiplied by the ratio of the path length of the test cell to the actual atmospheric monitoring path length.

(gg) *Corrected concentration* pertains to the result of an accuracy or precision assessment test of an open path analyzer in which a high-concentration test or audit standard gas contained in a short test cell is inserted into the optical measurement beam of the instrument. When the pollutant concentration measured by the analyzer in such a test includes both the pollutant concentration in the test cell and the concentration in the atmosphere, the atmospheric pollutant concentration must be subtracted from the test measurement to obtain the corrected concentration test result. The corrected concentration is equal to the measured concentration minus the average of the atmospheric pollutant concentrations measured (without the test cell) immediately before and immediately after the test.

(hh) *Monitor* is a generic term for an instrument, sampler, analyzer, or other device that measures or assists in the measurement of atmospheric air pollutants and is acceptable for use in ambient air surveillance under the provisions of appendix C to this part, including both point and open path analyzers that have been designated as reference or equivalent methods under part 53 of this chapter and air samplers that are specified as part of a manual method that has been designated as a reference or equivalent method under part 53 of this chapter.

Appendix A [Amended]

3. Appendix A is amended as follows:

a. The fourth paragraph of section 3 introductory text is revised.

b. Section 3.1 is revised.

c. The text preceding the table in the second paragraph, and the seventh, and eighth paragraphs of § 3.2 are revised; and a new paragraph is added between the seventh and eighth paragraphs.

d. Table A–1 is revised.

Appendix A—Quality Assurance Requirements for State and Local Air Monitoring Stations (SLAMS)

* * * * *

3. Data Quality Assessment Requirements

* * * * *

Assessment results shall be reported as specified in section 4. Concentration and flow standards must be as specified in §§ 2.3 or 3.4. In addition, working standards and equipment used for accuracy audits must not be the same standards and equipment used for routine calibration. Additional information and guidance in the technical aspects of conducting these tests may be found in Reference 3 or in the operation or instruction manual associated with the analyzer or sampler. Concentration measurements reported from analyzers or analytical systems (indicated concentrations) should be based on stable readings and must be derived by means of the same calibration curve and data processing system used to obtain the routine air monitoring data (see Reference 1 and Reference 3, section 2.0.9.1.3(d)). Table A–1 provides a summary of the minimum data quality assessment requirements, which are described in more detail in the following sections.

3.1 Precision of Automated Methods

A one-point precision check must be carried out at least once every 2 weeks on each automated analyzer used to measure SO_2, NO_2, O_3, and CO. The precision check is made by challenging the analyzer with a precision check gas of known concentration (effective concentration for open path analyzers) between 0.08 and 0.10 ppm for SO_2, NO_2, and O_3 analyzers, and between 8 and 10 ppm for CO analyzers. To check the precision of SLAMS analyzers operating on ranges higher than 0 to 1.0 ppm SO_2, NO_2, and O_3, or 0 to 100 ppm for CO, use precision check gases of appropriately higher concentration as approved by the appropriate Regional Administrator or the Regional Administrator's designee. However, the results of precision checks at concentration levels other than those specified above need not be reported to the EPA. The standards from which precision check test concentrations are obtained must meet the specifications of § 2.3.

Except for certain CO analyzers described below, point analyzers must operate in their normal sampling mode during the precision check, and the test atmosphere must pass through all filters, scrubbers, conditioners, and other components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. If permitted by the associated operation or instruction manual, a CO point analyzer may be temporarily modified during the precision

check to reduce vent or purge flows, or the test atmosphere may enter the analyzer at a point other than the normal sample inlet, provided that the analyzer's response is not likely to be altered by these deviations from the normal operational mode.

If a precision check is made in conjunction with a zero or span adjustment, it must be made prior to such zero or span adjustments. Randomization of the precision check with respect to time of day, day of week, and routine service and adjustments is encouraged where possible.

Open path analyzers are tested by inserting a test cell containing a precision check gas concentration into the optical measurement beam of the instrument. If possible, the normally used transmitter, receiver, and, as appropriate, reflecting devices should be used during the test, and the normal monitoring configuration of the instrument should be altered as little as possible to accommodate the test cell for the test. However, if permitted by the associated operation or instruction manual, an alternate local light source or an alternate optical path that does not include the normal atmospheric monitoring path may be used. The actual concentration of the precision check gas in the test cell must be selected to produce an "effective concentration" in the range specified above. Generally, the precision test concentration measurement will be the sum of the atmospheric pollutant concentration and the precision test concentration. If so, the result must be corrected to remove the atmospheric concentration contribution. The "corrected concentration" is obtained by subtracting the average of the atmospheric concentrations measured by the instrument immediately before and immediately after the precision check test from the precision test concentration measurement. If the difference between these before and after measurements is greater than 20 percent of the effective concentration of the test gas, discard the test result and repeat the test. If possible, open path analyzers should be tested during periods when the atmospheric pollutant concentrations are relatively low and steady.

Report the actual concentration (effective concentration for open path analyzers) of the precision check gas and the corresponding concentration measurement (corrected concentration, if applicable, for open path analyzers) indicated by the analyzer. The percent differences between these concentrations are used to assess the precision of the monitoring data as described in § 5.1.

3.2 Accuracy of Automated Methods

* * * * *

The audit is made by challenging the analyzer with at least one audit gas of known concentration (effective concentration for open path analyzers) from each of the following ranges that fall within the measurement range of the analyzer being audited:

* * * * *

For point analyzers, the audit shall be carried out by allowing the analyzer to analyze the audit test atmosphere in its normal sampling mode such that the test atmosphere passes through all filters, scrubbers, conditioners, and other sample inlet components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. The exception given in § 3.1 for certain CO analyzers does not apply for audits.

Open path analyzers are audited by inserting a test cell containing the various audit gas concentrations into the optical measurement beam of the instrument. If possible, the normally used transmitter, receiver, and, as appropriate, reflecting devices should be used during the audit, and the normal monitoring configuration of the instrument should be modified as little as possible to accommodate the test cell for the audit. However, if permitted by the associated operation or instruction manual, an alternate local light source or an alternate optical path that does not include the normal atmospheric monitoring path may be used. The actual concentrations of the audit gas in the test cell must be selected to produce "effective concentrations" in the ranges specified in this § 3.2. Generally, each audit concentration measurement result will be the sum of the atmospheric pollutant concentration and the audit test concentration. If so, the result must be corrected to remove the atmospheric concentration contribution. The "corrected concentration" is obtained by subtracting the average of the atmospheric concentration measured by the instrument immediately before and immediately after the audit test (or preferably before and after each audit concentration level) from the audit concentration measurement. If the difference between the before and after measurements is greater than 20 percent of the effective concentration of the test gas standard, discard the test result for that concentration level and repeat the test for that level. If possible, open path analyzers should be audited during periods when the atmospheric pollutant concentrations are relatively low and steady.

Report both the audit test concentrations (effective concentrations for open path analyzers) and the corresponding concentration measurements (corrected concentrations, if applicable, for open path analyzers) indicated or produced by the analyzer being tested. The percent differences between these concentrations are used to assess the accuracy of the monitoring data as described in § 5.2.

* * * * *

TABLE A–1.—MINIMUM DATA ASSESSMENT REQUIREMENTS

Method	Assessment method	Coverage	Minimum frequency	Parameters reported
Precision:				
Automated Methods for SO_2, NO_2, O_3, and CO.	Response check at concentration between .08 & .10 ppm (8 & 10 ppm for CO)[2].	Each analyzer	Once per 2 weeks	Actual concentration[2] and measured concentration.[3]
Manual methods including lead.	Collocated samplers	1 site for 1-5 sites; 2 sites for 6-20 sites; 3 sites > 20 sites; (sites with highest conc.).	Once per week	Two concentration measurements.
Accuracy:				
Automated Methods for SO_2, NO_2, O_3, and CO.	Response check at: .03–.08 ppm,[1 2] .15–.20 ppm;[1 2] .35–.45 ppm;[1 2] .80–.90 ppm;[1 2] (if applicable).	1. Each analyzer. 2. 25% of analyzers (at least 1).	1. Once per year. 2. Each calendar quarter.	Actual concentration[2] and measured (indicated) concentration[3] for each level.
Manual methods for SO_2 and NO_2.	Check of analytical procedures with audit standard solutions.	Analytical system	Each day samples are analyzed, at least twice per quarter.	Actual concentration and measured (indicated) concentration for each audit solution.
TSP, PM–10	Check of sampler flow rate	1. Each sampler. 2. 25% of samplers (at least 1).	1. Once per year. 2. Each calendar quarter.	Actual flow rate and flow rate indicated by the sampler.

TABLE A-1.—MINIMUM DATA ASSESSMENT REQUIREMENTS—Continued

Method	Assessment method	Coverage	Minimum frequency	Parameters reported
Lead	1. Check sample flow rate as for TSP. 2. Check analytical system with Pb audit strips.	1. Each sampler. 2. Analytical system.	1. Include with TSP. 2. Each quarter.	1. Same as for TSP. 2. Actual concentration & measured (indicated) concentration of audit samples (µg Pb/strip).

[1] Concentration times 100 for CO.
[2] Effective concentration for open path analyzers.
[3] Corrected concentration, if applicable, for open path analyzers.

* * * * *

Appendix B [Amended]

4. Appendix B is amended as follows:

a. The first paragraph of section is revised.

b. Section 3.1 is revised.

c. The text preceding the table in the first paragraph, and the third, and fourth paragraphs of section 3.2 are revised; and a new paragraph is added between the third and fourth paragraphs.

d. Table B-1 is revised.

Appendix B—Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring

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3. Data Quality Assessment Requirements

All ambient monitoring methods or analyzers used in PSD monitoring shall be tested periodically, as described in this section 3, to quantitatively assess the quality of the data being routinely collected. The results of these tests shall be reported as specified in section 6. Concentration standards used for the tests must be as specified in section § 2.3. Additional information and guidance in the technical aspects of conducting these tests may be found in Reference 3 or in the operation or instruction manual associated with the analyzer or sampler. Concentration measurements reported from analyzers or analytical systems must be derived by means of the same calibration curve and data processing system used to obtain the routine air monitoring data. Table B-1 provides a summary of the minimum data quality assessment requirements, which are described in more detail in the following sections.

3.1 Precision of Automated Methods

A one-point precision check must be carried out at least once every 2 weeks on each automated analyzer used to measure SO_2, NO_2, O_3, and CO. The precision check is made by challenging the analyzer with a precision check gas of known concentration (effective concentration for open path analyzers) between 0.08 and 0.10 ppm for SO_2, NO_2, and O_3 analyzers, and between 8 and 10 ppm for CO analyzers. The standards from which precision check test concentrations are obtained must meet the specifications of section 2.3. Except for certain CO analyzers described below, point analyzers must operate in their normal sampling mode during the precision check, and the test atmosphere must pass through all filters, scrubbers, conditioners and other components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. If permitted by the associated operation or instruction manual, a CO point analyzer may be temporarily modified during the precision check to reduce vent or purge flows, or the test atmosphere may enter the analyzer at a point other than the normal sample inlet, provided that the analyzer's response is not likely to be altered by these deviations from the normal operational mode.

Open path analyzers are tested by inserting a test cell containing a precision check gas concentration into the optical measurement beam of the instrument. If possible, the normally used transmitter, receiver, and, as appropriate, reflecting devices should be used during the test, and the normal monitoring configuration of the instrument should be altered as little as possible to accommodate the test cell for the test. However, if permitted by the associated operation or instruction manual, an alternate local light source or an alternate optical path that does not include the normal atmospheric monitoring path may be used. The actual concentration of the precision check gas in the test cell must be selected to produce an "effective concentration" in the range specified above. Generally, the precision test concentration measurement will be the sum of the atmospheric pollutant concentration and the precision test concentration. If so, the result must be corrected to remove the atmospheric concentration contribution. The "corrected concentration" is obtained by subtracting the average of the atmospheric concentrations measured by the instrument immediately before and immediately after the precision check test from the precision test concentration measurement. If the difference between these before and after measurements is greater than 20 percent of the effective concentration of the test gas, discard the test result and repeat the test. If possible, open path analyzers should be tested during periods when the atmospheric pollutant concentrations are relatively low and steady.

If a precision check is made in conjunction with a zero or span adjustment, it must be made prior to such zero or span adjustment. The difference between the actual concentration (effective concentration for open path analyzers) of the precision check gas and the corresponding concentration measurement (corrected concentration, if applicable, for open path analyzers) indicated by the analyzer is used to assess the precision of the monitoring data as described in 4.1. Report data only from automated analyzers that are approved for use in the PSD network.

3.2 Accuracy of Automated Methods

Each sampling quarter audit each analyzer that monitors for SO_2, NO_2, O_3, or CO at least once. The audit is made by challenging the analyzer with at least one audit gas of known concentration (effective concentration for open path analyzers) from each of the following ranges that fall within the measurement range of the analyzer being audited: * * *

For point analyzers, the audit shall be carried out by allowing the analyzer to analyze the audit test atmosphere in the same manner as described for precision checks in § 3.1. The exception given in § 3.1 for certain CO analyzers does not apply for audits.

Open path analyzers are audited by inserting a test cell containing an audit gas concentration into the optical measurement beam of the instrument. If possible, the normally used transmitter, receiver, and, as appropriate, reflecting devices should be used during the audit, and the normal monitoring configuration of the instrument should be modified as little as possible to accommodate the test cell for the audit. However, if permitted by the associated operation or instruction manual, an alternate local light source or an alternate optical path that does not include the normal atmospheric monitoring path may be used. The actual concentrations of the audit gas in the test cell must be selected to produce "effective concentrations" in the range specified in this section 3.2. Generally, each audit concentration measurement result will be the sum of the atmospheric pollutant concentration and the audit test concentration. If so, the result must be corrected to remove the atmospheric concentration contribution. The "corrected concentration" is obtained by subtracting the average of the atmospheric concentrations measured by the instrument immediately before and immediately after the audit test (or preferably before and after each audit concentration level) from the audit concentration measurement. If the difference between these before and after measurements is greater than 20 percent of the effective concentration of the test gas standards, discard the test result for that concentration level and repeat the test for that level. If possible, open path analyzers should be audited during periods when the

atmospheric pollutant concentrations are relatively low and steady.

The differences between the actual concentrations (effective concentrations for open path analyzers) of the audit test gas and the corresponding concentration measurements (corrected concentrations, if applicable, for open path analyzers) indicated by the analyzer are used to assess the accuracy of the monitoring data as described in § 4.2. Report data only from automated analyzers that are approved for use in the PSD network.

* * * * *

TABLE B–1.—MINIMUM PSD DATA ASSESSMENT REQUIREMENTS

Method	Assessment method	Coverage	Frequency	Parameters reported
Precision:				
Automated Methods for SO_2, NO_2, O_3, and CO.	Response check at concentration between .08 and .10 ppm (8 and 10 ppm for CO)[2].	Each analyzer	Once per 2 weeks	Actual concentration[2] and measured concentration.[3]
TSP, PM_{10}, Lead	Collocated samplers	Highest concentration site in monitoring network.	Once per week or every 3rd day for continuous sampling.	Two concentration measurements.
Accuracy:				
Automated Methods for SO_2, NO_2, O_3, and CO.	Response check at: .03–.08 ppm;[1 2] .15–.20 ppm;[1 2] .35–.45 ppm;[1 2] .80–.90 ppm;[1 2] (if applicable).	Each analyzer	Once per sampling quarter	Actual concentration[2] and measured (indicated) concentration[3] for each level.
TSP, PM_{10}	Sampler flow check	Each sampler	Once per sampling quarter	Actual flow rate and flow rate indicated by the sampler.
Lead	1. Sample flow rate check. 2. Check analytical system with Pb audit strips.	1. Each sampler. 2. Analytical system.	1. Once/quarter. 2. Each quarter Pb samples are analyzed.	1. Same as for TSP. 2. Actual concentration and measured concentration of audit samples (µg Pb/strip).

[1] Concentration shown times 100 for CO.
[2] Effective concentration for open path analyzers.
[3] Corrected concentration, if applicable, for open path analyzers.

* * * * *

Appendix E [Amended]

5. Appendix E is amended as follows:

a. The title of appendix E is revised.

b. Section 1 is revised.

c. Section 2 is added and sections 3, 5, and 6 are removed and reserved.

d. Section 4 is revised.

e. In section 7 table 3 is removed and table 4 is redesignated as table 3.

f. The first paragraph of section 9 is revised.

g. Section 10 is revised.

h. Section 12 is revised.

Appendix E—Probe and Monitoring Path Siting Criteria for Ambient Air Quality Monitoring

1. Introduction

This appendix contains specific location criteria applicable to ambient air quality monitoring probes and monitoring paths after the general station siting has been selected based on the monitoring objectives and spatial scale of representation discussed in Appendix D of this part. Adherence to these siting criteria is necessary to ensure the uniform collection of compatible and comparable air quality data.

The probe and monitoring path siting criteria discussed below must be followed to the maximum extent possible. It is recognized that there may be situations where some deviation from the siting criteria may be necessary. In any such case, the reasons must be thoroughly documented in a written request for a waiver that describes how and why the proposed siting deviates from the criteria. This documentation should help to avoid later questions about the validity of the resulting monitoring data. Conditions under which EPA would consider an application for waiver from these siting criteria are discussed in section 11 of this appendix.

The spatial scales of representation used in this appendix, i.e., micro, middle, neighborhood, urban, and regional, are defined and discussed in Appendix D of this part. The pollutant-specific probe and monitoring path siting criteria generally apply to all spatial scales except where noted otherwise. Specific siting criteria that are phrased with a "must" are defined as requirements and exceptions must be approved through the waiver provisions. However, siting criteria that are phrased with a "should" are defined as goals to meet for consistency but are not requirements.

* * * * *

2. Sulfur Dioxide (SO_2), Ozone (O_3), and Nitrogen Dioxide (NO_2)

Additional information on SO_2, NO_2, and O_3 monitor siting criteria may be found in references 11 and 13.

2.1 Horizontal and Vertical Placement. The probe or at least 80 percent of the monitoring path must be located between 3 and 15 meters above ground level. The probe or at least 90 percent of the monitoring path must be at least 1 meter vertically or horizontally away from any supporting structure, walls, parapets, penthouses, etc., and away from dusty or dirty areas. If the probe or a significant portion of the monitoring path is located near the side of a building, then it should be located on the windward side of the building relative to the prevailing wind direction during the season of highest concentration potential for the pollutant being measured.

2.2 Spacing from Minor Sources (applicable to SO_2 and O_3 monitoring only). Local minor sources of SO_2 can cause inappropriately high concentrations of SO_2 in the vicinity of probes and monitoring paths for SO_2. Similarly, local sources of nitric oxide (NO) and ozone-reactive hydrocarbons can have a scavenging effect causing unrepresentatively low concentrations of O_3 in the vicinity of probes and monitoring paths for O_3. To minimize these potential interferences, the probe or at least 90 percent of the monitoring path must be away from furnace or incineration flues or other minor sources of SO_2 or NO, particularly for open path analyzers because of their potential for greater exposure over the area covered by the monitoring path. The separation distance should take into account the height of the flues, type of waste or fuel burned, and the sulfur content of the fuel. It is acceptable, however, to monitor for SO_2 near a point source of SO_2 when the objective is to assess the effect of this source on the represented population.

2.3 Spacing from Obstructions. Buildings and other obstacles may possibly scavenge SO_2, O_3, or NO_2. To avoid this interference, the probe or at least 90 percent of the monitoring path must have unrestricted airflow and be located away from obstacles so that the distance from the probe or

monitoring path is at least twice the height that the obstacle protrudes above the probe or monitoring path. Generally, a probe or monitoring path located near or along a vertical wall is undesirable because air moving along the wall may be subject to possible removal mechanisms. A probe must have unrestricted airflow in an arc of at least 270 degrees around the inlet probe, or 180 degrees if the probe is on the side of a building. This arc must include the predominant wind direction for the season of greatest pollutant concentration potential. A sampling station having a probe located closer to an obstacle than this criterion allows should be classified as middle scale rather than neighborhood or urban scale, since the measurements from such a station would more closely represent the middle scale. A monitoring path must be clear of all trees, brush, buildings, plumes, dust, or other optical obstructions, including potential obstructions that may move due to wind, human activity, growth of vegetation, etc. Temporary optical obstructions, such as rain, particles, fog, or snow, should be considered when siting an open path analyzer. Any of these temporary obstructions that are of sufficient density to obscure the light beam will affect the ability of the open path analyzer to continuously measure pollutant concentrations.

2.4 Spacing from Trees. Trees can provide surfaces for SO_2, O_3, or NO_2 adsorption or reactions and obstruct wind flow. To reduce this possible interference, the probe or at least 90 percent of the monitoring path should be 20 meters or more from the drip line of trees. If a tree or trees could be considered an obstacle, the probe or 90 percent of the monitoring path must meet the distance requirements of 2.3 and be at least 10 meters from the drip line of the tree or trees. Since the scavenging effect of trees is greater for O_3 than for other criteria pollutants, strong consideration of this effect must be given to locating an O_3 probe or monitoring path to avoid this problem.

2.5 Spacing from Roadways (applicable to O_3 and NO_2 only). In siting an O_3 analyzer, it is important to minimize destructive interferences from sources of NO, since NO readily reacts with O_3. In siting NO_2 analyzers for neighborhood and urban scale monitoring, it is important to minimize interferences from automotive sources. Table 1 provides the required minimum separation distances between a roadway and a probe and between a roadway and at least 90 percent of a monitoring path for various ranges of daily roadway traffic. A sampling station having a point analyzer probe located closer to a roadway than allowed by the Table 1 requirements should be classified as middle scale rather than neighborhood or urban scale, since the measurements from such a station would more closely represent the middle scale. The monitoring path of an open path analyzer must not cross over a roadway with an average daily traffic count of 10,000 vehicles per day or more. In calculating the percentage of a monitoring path over or near a roadway, one must consider the entire segment of the monitoring path in the area of potential atmospheric interference from automobile emissions. Therefore, this calculation must include the length of the monitoring path over the roadway plus any segments of the monitoring path that lie in the area between the roadway and the minimum separation distance, as determined from Table 1. The sum of these distances must not be greater than 10 percent of the total monitoring path length.

TABLE 1.—MINIMUM SEPARATION DISTANCE BETWEEN ROADWAYS AND PROBES OR MONITORING PATHS FOR MONITORING NEIGHBORHOOD— AND URBAN-SCALE OZONE AND NITROGEN DIOXIDE

Roadway average daily traffic, vehicles per day	Minimum separation distance[1], meters
≤10,000	10
15,000	20
20,000	30
40,000	50
70,000	100
≥110,000	250

[1] Distance from the edge of the nearest traffic lane. The distance for intermediate traffic counts should be interpolated from the table values based on the actual traffic count.

2.6 Cumulative Interferences on a Monitoring Path. The cumulative length or portion of a monitoring path that is affected by minor sources, obstructions, trees, or roadways must not exceed 10 percent of the total monitoring path length.

2.7 Maximum Monitoring Path Length. The monitoring path length must not exceed 1 kilometer for analyzers in neighborhood, urban, or regional scale. For middle scale monitoring sites, the monitoring path length must not exceed 300 meters. In areas subject to frequent periods of dust, fog, rain, or snow, consideration should be given to a shortened monitoring path length to minimize loss of monitoring data due to these temporary optical obstructions. For certain ambient air monitoring scenarios using open path analyzers, shorter path lengths may be needed in order to ensure that the monitoring station meets the objectives and spatial scales defined for SLAMS in Appendix D. Therefore, the Regional Administrator or the Regional Administrator's designee may require shorter path lengths, as needed on an individual basis, to ensure that the SLAMS meet the Appendix D requirements. Likewise, the Administrator or the Administrator's designee may specify the maximum path length used at monitoring stations designated as NAMS or PAMS as needed on an individual basis.

* * * * *

4. Carbon Monoxide (CO)

Open path analyzers may be used to measure CO for only middle or neighborhood scale measurement applications if the open path analyzer is designated as a SLAMS. Additional information on CO monitor siting criteria may be found in reference 12.

4.1 Horizontal and Vertical Placement. Because of the importance of measuring population exposure to CO concentrations, air should be sampled at average breathing heights. However, practical factors require that the inlet probe be higher. The required height of the inlet probe for CO monitoring is therefore 3±½ meter for a microscale site, which is a compromise between representative breathing height and prevention of vandalism. The recommended 1 meter range of heights is also a compromise to some extent. For consistency and comparability, it would be desirable to have all inlets at exactly the same height, but practical considerations often prevent this. Some reasonable range must be specified and 1 meter provides adequate leeway to meet most requirements.

For the middle and neighborhood scale stations, the vertical concentration gradients are not as great as for the microscale station. This is because the diffusion from roads is greater and the concentrations would represent larger areas than for the microscale. Therefore, the probe or at least 80 percent of the monitoring path must be located between 3 and 15 meters above ground level for middle and neighborhood scale stations. The probe or at least 90 percent of the monitoring path must be at least 1 meter vertically or horizontally away from any supporting structure, walls, parapets, penthouses, etc., and away from dusty or dirty areas. If the probe or a significant portion of the monitoring path is located near the side of a building, then it should be located on the windward side of the building relative to both the prevailing wind direction during the season of highest concentration potential and the location of sources of interest, i.e., roadways.

4.2 Spacing from Obstructions. Buildings and other obstacles may restrict airflow around a probe or monitoring path. To avoid this interference, the probe or at least 90 percent of the monitoring path must have unrestricted airflow and be located away from obstacles so that the distance from the probe or monitoring path is at least twice the height that the obstacle protrudes above the probe or monitoring path. A probe or monitoring path located near or along a vertical wall is undesirable because air moving along the wall may be subject to possible removal mechanisms. A probe must have unrestricted airflow in an arc of at least 270 degrees around the inlet probe, or 180 degrees if the probe is on the side of a building. This arc must include the predominant wind direction for the season of greatest pollutant concentration potential. A monitoring path must be clear of all trees, brush, buildings, plumes, dust, or other optical obstructions, including potential obstructions that may move due to wind, human activity, growth of vegetation, etc. Temporary optical obstructions, such as rain, particles, fog, or snow, should be considered when siting an open path analyzer. Any of these temporary obstructions that are of sufficient density to obscure the light beam will affect the ability of the open path analyzer to continuously measure pollutant concentrations.

4.3 Spacing from Roadways. Street canyon and traffic corridor stations (microscale) are intended to provide a

measurement of the influence of the immediate source on the pollution exposure of the population. In order to provide some reasonable consistency and comparability in the air quality data from microscale stations, a minimum distance of 2 meters and a maximum distance of 10 meters from the edge of the nearest traffic lane must be maintained for these CO monitoring inlet probes. This should give consistency to the data, yet still allow flexibility of finding suitable locations.

Street canyon/corridor (microscale) inlet probes must be located at least 10 meters from an intersection and preferably at a midblock location. Midblock locations are preferable to intersection locations because intersections represent a much smaller portion of downtown space than do the streets between them. Pedestrian exposure is probably also greater in street canyon/corridors than at intersections. Also, the practical difficulty of positioning sampling inlets is less at midblock locations than at the intersection. However, the final siting of the monitor must meet the objectives and intent of appendix D, sections 2.4, 3, 3.3, and appendix E, section 4.

In determining the minimum separation between a neighborhood scale monitoring station and a specific line source, the presumption is made that measurements should not be unduly influenced by any one roadway. Computations were made to determine the separation distance, and table 2 provides the required minimum separation distance between roadways and a probe or 90 percent of a monitoring path. Probes or monitoring paths that are located closer to roads than this criterion allows should not be classified as a neighborhood scale, since the measurements from such a station would closely represent the middle scale. Therefore, stations not meeting this criterion should be classified as middle scale.

TABLE 2.—MINIMUM SEPARATION DISTANCE BETWEEN ROADWAYS AND PROBES OR MONITORING PATHS FOR MONITORING NEIGHBORHOOD SCALE CARBON MONOXIDE

Roadway average daily traffic, vehicles per day	Minimum separation distance[1] for probes or 90% of a monitoring path, meters
≤10,000	10
15,000	25
20,000	45
30,000	80
40,000	115
50,000	135
≥60,000	150

[1] Distance from the edge of the nearest traffic lane. The distance for intermediate traffic counts should be interpolated from the table values based on the actual traffic count.

4.4 Spacing from Trees and Other Considerations. Since CO is relatively nonreactive, the major factor concerning trees is as obstructions to normal wind flow patterns. For middle and neighborhood scale stations, trees should not be located between the major sources of CO, usually vehicles on a heavily traveled road, and the monitor. The probe or at least 90 percent of the monitoring path must be 10 meters or more from the drip line of trees which are between the probe or monitoring path and the road and which extend at least 5 meters above the probe or monitoring path. For microscale stations, no trees or shrubs should be located between the probe and the roadway.

4.5 Cumulative Interferences on a Monitoring Path. The cumulative length or portion of a monitoring path that is affected by obstructions, trees, or roadways must not exceed 10 percent of the total monitoring path length.

4.6 Maximum Monitoring Path Length. The monitoring path length must not exceed 1 kilometer for analyzers used for neighborhood scale monitoring applications, or 300 meters for middle scale monitoring applications. In areas subject to frequent periods of dust, fog, rain, or snow, consideration should be given to a shortened monitoring path length to minimize loss of monitoring data due to these temporary optical obstructions. For certain ambient air monitoring scenarios using open path analyzers, shorter path lengths may be needed in order to ensure that the monitoring station meets the objectives and spatial scales defined for SLAMS in Appendix D. Therefore, the Regional Administrator or the Regional Administrator's designee may require shorter path lengths, as needed on an individual basis, to ensure that the SLAMS meet the Appendix D requirements. Likewise, the Administrator or the Administrator's designee may specify the maximum path length used at monitoring stations designated as NAMS or PAMS as needed on an individual basis.

* * * * *

9. Probe Material and Pollutant Sample Residence Time

For the reactive gases, SO_2, NO_2, and O_3, special probe material must be used for point analyzers. Studies [20–24] have been conducted to determine the suitability of materials such as polypropylene, polyethylene, polyvinylchloride, Tygon, aluminum, brass, stainless steel, copper, pyrex glass and teflon for use as intake sampling lines. Of the above materials, only pyrex glass and teflon have been found to be acceptable for use as intake sampling lines for all the reactive gaseous pollutants. Furthermore, EPA [25] has specified borosilicate glass or FEP teflon as the only acceptable probe materials for delivering test atmospheres in the determination of reference or equivalent methods. Therefore, borosilicate glass, FEP teflon, or their equivalent must be used for existing and new NAMS or SLAMS.

* * * * *

10. Photochemical Assessment Monitoring Stations (PAMS)

10.1 Horizontal and Vertical Placement. The probe or at least 80 percent of the monitoring path must be located 3 to 15 meters above ground level. This range provides a practical compromise for finding suitable sites for the multi-pollutant PAMS. The probe or at least 90 percent of the monitoring path must be at least 1 meter vertically or horizontally away from any supporting structure, walls, parapets, penthouses, etc., and away from dusty or dirty areas.

10.2 Spacing from Obstructions. The probe or at least 90 percent of the monitoring path must be located away from obstacles and buildings such that the distance between the obstacles and the probe or monitoring path is at least twice the height that the obstacle protrudes above the probe or monitoring path. There must be unrestricted airflow in an arc of at least 270° around the probe inlet. Additionally, the predominant wind direction for the period of greatest pollutant concentration (as described for each site in section 4.2 of Appendix D) must be included in the 270° arc. If the probe is located on the side of the building, 180° clearance is required. A monitoring path must be clear of all trees, brush, buildings, plumes, dust, or other optical obstructions, including potential obstructions that may move due to wind, human activity, growth of vegetation, etc. Temporary optical obstructions, such as rain, particles, fog, or snow, should be considered when siting an open path analyzer. Any of these temporary obstructions that are of sufficient density to obscure the light beam will affect the ability of the open path analyzer to continuously measure pollutant concentrations.

10.3 Spacing from Roadways. It is important in the probe and monitoring path siting process to minimize destructive interferences from sources of NO since NO readily reacts with O_3. Table 4 below provides the required minimum separation distances between roadways and PAMS (excluding upper air measuring stations):

TABLE 4.—SEPARATION DISTANCE BETWEEN PAMS AND ROADWAYS

[Edge of Nearest Traffic Lane]

Roadway average daily traffic, vehicles per day	Minimum separation distance between roadways and stations in meters[1]
<10,000	>10
15,000	20
20,000	30
40,000	50
70,000	100
>110,000	250

[1] Distance from the edge of the nearest traffic lane. The distance for intermediate traffic counts should be interpolated from the table based on the actual traffic flow.

10.4 Spacing from Trees. Trees can provide surfaces for adsorption and/or reactions to occur and can obstruct normal wind flow patterns. To minimize these effects at PAMS, the probe or at least 90 percent of the monitoring path should be

placed at least 20 meters from the drip line of trees. Since the scavenging effect of trees is greater for O_3 than for the other criteria pollutants, strong consideration of this effect must be given in locating the PAMS probe or monitoring path to avoid this problem. Therefore, the probe or at least 90 percent of the monitoring path must be at least 10 meters from the drip line of trees that are located between the urban city core area and the probe or monitoring path along the appropriate wind direction.

* * * * *

12. Summary

Table 5 presents a summary of the general requirements for probe and monitoring path siting criteria with respect to distances and heights. It is apparent from Table 5 that different elevation distances above the ground are shown for the various pollutants. The discussion in the text for each of the pollutants described reasons for elevating the monitor, probe, or monitoring path. The differences in the specified range of heights are based on the vertical concentration gradients. For CO, the gradients in the vertical direction are very large for the microscale, so a small range of heights has been used. The upper limit of 15 meters was specified for consistency between pollutants and to allow the use of a single manifold or monitoring path for monitoring more than one pollutant.

TABLE 5.—SUMMARY OF PROBE AND MONITORING PATH SITING CRITERIA

Pollutant	Scale [maximum monitoring path length, meters]	Height from ground to probe or 80% of monitoring path [A] (meters)	Horizontal and vertical distance from supporting structures [B] to probe or 90% of monitoring path [A] (meters)	Distance from trees to probe or 90% of monitoring path [A] (meters)	Distance from roadways to probe or monitoring path [A] (meters)
SO_2 [CDEF]	Middle [300m] Neighborhood, Urban, and Regional [1km].	3–15	>1	>10	N/A.
CO [DEG]	Micro, Middle [300m], Neighborhood [1km].	3±0.5, 3–15	>1	>10	2–10, See Table 1 for middle and neighborhood scales.
O_3 [CDE]	Middle [300m], Neighborhood, Urban, and Regional [1km].	3–15	>1	>10	See Table 2 for all scales.
Ozone precursors (for PAMS) [CDE].	Neighborhood and Urban [1 km]	3–15	>1	>10	See Table 4 for all scales.
NO_2 [CDE]	Middle [300m], Neighborhood and Urban [1km].	3–15	>1	>10	See Table 2 for all scales.
Pb [CDEFH]	Micro; Middle, Neighborhood, Urban and Regional.	2–7 (Micro), 2–15 (All other scales).	>2 (All scales, horizontal distance only).	>10 (All scales)	5–15 (Micro), See Table 3 for all other scales.
PM–10 [CDEFH]	Micro; Middle, Neighborhood, Urban and Regional.	2–7 (Micro), 2–15 (All other scales).	>2 (All scales, horizontal distance only).	>10 (All scales)	2–10 (Micro), See Figure 2 for all other scales.

[A] Monitoring path for open path analyzers is applicable only to middle or neighborhood scale CO monitoring and all applicable scales for monitoring SO_2, O_3, O_3 precursors, and NO_2.
[B] When probe is located on a rooftop, this separation distance is in reference to walls, parapets, or penthouses located on roof.
N/A—Not applicable.
[C] Should be >20 meters from the dripline of tree(s) and must be 10 meters from the dripline when the tree(s) act as an obstruction.
[D] Distance from sampler, probe, or 90% of monitoring path to obstacle, such as a building, must be at least twice the height the obstacle protrudes above the sampler, probe, or monitoring path. Sites not meeting this criterion may be classified as middle scale (see text).
[E] Must have unrestricted airflow 270° around the probe or sampler; 180° if the probe is on the side of a building.
[F] The probe, sampler, or monitoring path should be away from minor sources, such as furnace or incineration flues. The separation distance is dependent on the height of the minor source's emission point (such as a flue), the type of fuel or waste burned, and the quality of the fuel (sulfur, ash, or lead content). This criterion is designed to avoid undue influences from minor sources.
[G] For microscale CO monitoring sites, the probe must be >10 meters from a street intersection and preferably at a midblock location.
[H] For collocated Pb and PM–10 samplers, a 2–4 meter separation distance between collocated samplers must be met.

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[FR Doc. 94–20042 Filed 8–17–94; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 70

[WA–TV–1, AD–FRL–5040–1]

Clean Air Act Proposed Interim Approval or Disapproval of Operating Permit Programs in the State of Washington

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA proposes interim approval of the operating permit programs submitted by the Washington Department of Ecology (Ecology), the Washington Energy Facility Site Evaluation Council (EFSEC), the Northwest Air Pollution Authority (NWAPA), the Olympic Air Pollution Control Authority (OAPCA), the Puget Sound Air Pollution Control Agency (PSAPCA), the Spokane County Air Pollution Control Authority (SCAPCA), and the Southwest Air Pollution Control Authority (SWAPCA) for the purpose of complying with Title V of the Federal Clean Air Act which mandates that States develop and submit to EPA programs for issuing operating permits to all major stationary sources and to certain other sources.

EPA proposes two alternative actions on the operating permit programs submitted by the Benton-Franklin Counties Clean Air Authority (BFCCAA) and the Yakima County Clean Air Authority (YCCAA): disapproval or, if these permitting authorities make certain specified changes to their operating permit programs by the time EPA takes final action on this proposed rulemaking, interim approval. In the event of disapproval, Ecology's operating permit program will apply to sources located in Benton and Franklin Counties and Yakima County, respectively.

DATES: Comments on this proposed action must be received in writing by September 19, 1994.

ADDRESSES: Comments should be sent to Elizabeth Waddell, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

Copies of the State and local agencies' submittals and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Elizabeth Waddell, (206) 553-4303.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under Title V of the Clean Air Act (Act) as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable State operating permit program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permit programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop and submit to EPA programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and Part 70 which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1994 date, or by the end of an interim program, it must establish and implement a federal program.

II. Proposed Action and Implications

A. Analysis of Submission by State and Local Authorities

1. Support Materials

The program submittal by the State of Washington includes submissions by Ecology, EFSEC and the seven local air pollution control authorities (local air authorities). Collectively, these submissions meet the requirements of 40 CFR Part 70, § 70.4, for a complete program submittal including a letter of submittal from the Washington Governor's designee requesting program approval, complete program descriptions, the legal opinions of the Attorney General and the attorneys of the local air authorities, permit program documentation, and fully adopted implementing regulations of Ecology, EFSEC and the local air authorities. An implementation agreement is currently being developed between Ecology, EFSEC, and the local air authorities (collectively, the permitting authorities) and EPA.

2. Regulations and Program Implementation

a. Ecology. The statutes authorizing the Washington state operating permit program are contained in chapter 70.94 of the Revised Code of Washington (RCW), in particular RCW 70.94.161 (Operating Permits for Air Contaminant Sources—Generally—Fees, report to legislature), 70.94.162 (Annual fees from operating permit program sources to cover cost of program) and 70.94.422 (Department of health powers regarding radionuclides—Energy facility site evaluation council authority over permit program sources). RCW 70.94.161(2)(a) required Ecology to promulgate rules for a state-wide operating permit program consistent with Title V of the Clean Air Act. Chapter 173-401 of the Washington Annotated Code (WAC) sets out the specific requirements of the state-wide operating permit program. This rule, together with ch. 70.94 RCW, and the other supporting statutes and regulations submitted by Ecology, substantially meet the requirements of 40 CFR Part 70, Section 70.2 and 70.3 for applicability, Section 70.4, 70.5, and 70.6 for permit content including operational flexibility, Section 70.7 for public participation and minor permit modifications, Section 70.5 for criteria which define insignificant activities, Section 70.11 for requirements for enforcement authority, and Section 70.5 for complete application forms.

b. EFSEC. RCW 70.94.422(2) gives EFSEC authority to issue operating permits to and administer the operating permit program for large energy facilities regulated under ch. 80.50 RCW, and does not require EFSEC to apply to Ecology for delegation of the operating permit program. EFSEC has adopted by reference all of ch. 173-401 WAC and the provisions of ch. 173-400 WAC necessary to implement the operating permit program (see WAC 463-39-005). In issuing Title V permits, EFSEC will contract with Ecology or the local air authority with jurisdiction over the geographic area where the EFSEC source is located to develop the air operating permit which will be incorporated into the source's "certification," the document containing all requirements with which the EFSEC source must comply. EFSEC has used this approach in the past for Prevention of Significant Deterioration and water quality permitting issues.

c. Local Air Authorities. RCW 70.94.161(2)(b) authorizes local air authorities to request delegation from Ecology to implement the operating permit program for sources within their respective jurisdictions. Each of Washington's seven local air authorities, which together cover 22 of the 39 counties in the State, has requested and received delegation from Ecology contingent on EPA approval of the local air authority operating permit program. All Title V sources within the jurisdiction of a delegated local air authority will be subject to the operating permit program of such local air authority, except for primary aluminum smelters, kraft pulping mills, sulfite pulping mills, energy facilities under EFSEC's jurisdiction and sources on the U.S. Department of Energy's Hanford Nuclear Reservation. These sources, along with sources in the 17 counties not covered by local air authorities, will be subject to Ecology's operating permit program, with the exception of energy facilities that will be subject to EFSEC's program.

Each of the seven local air authorities has promulgated a rule authorizing the assessment and collection of fees from permit program sources as required by State law (see RCW 70.94.162(1)). With respect to the other requirements of the operating permit program, the local air authorities have taken one of four different approaches to program implementation. SCAPCA has not promulgated any rules to implement Title V, except for fee rules. Instead, SCAPCA will be implementing the operating permit program by enforcing the State rule, ch. 173-401 WAC, as authorized by State law (see RCW 70.94.161(2)(a)). SWAPCA has issued a local rule which restates the State operating permit rule (see SWAPCA Ch. 401). NWAPA, PSAPCA and OAPCA have each adopted rules requiring operating permit program sources subject to their respective jurisdictions to comply with the State operating permit program rule (see NWAPA Sec. 326; PSAPCA Reg. I, Sec. 7.01, 7.03 and 7.05; OAPCA Reg. 1, Sec. 6.01).

BFCCAA and YCCAA have each adopted a rule expressing the authority's intent to implement the State air operating permit program (BFCCAA Reg. 1, Sec. 4.01; YCCAA Reg. I, Sec.

6.01 and Sec. 12.01), and have also adopted rules addressing which sources are subject to the program; program delegation; permit application; permit content; permit issuance, renewal, reopenings and revisions; public involvement; and fee assessment (see BFCCAA Reg. 1, Sec. 4.02–4.08; YCCAA Reg. I, Sec. 6.02–6.09). These rules do not, however, cover many of the requirements of Part 70. Although both BFCCAA and YCCAA apparently intended that the State operating permit rule (ch. 173–401 WAC) would supplement and fill in the gaps in their local regulations, there is a serious question regarding whether this is the case.

There are many potential inconsistencies between the operating permit regulations of BFCCAA and YCCAA and the operating permit rule of the State. For example, the local regulations require that renewal applications be submitted at least six months prior to the expiration of the permit but do not place any outside limit on the submission of a renewal application (see BFCCAA Reg. 1, Sec. 4.06(C); YCCAA Reg. I, Sec. 6.06). State law, however, as required by Title V, provides that in no event shall a renewal application be submitted more than 18 months before the expiration of the permit (see WAC 173–401–710(1)). Because the local regulations were adopted after ch. 173–401 WAC, it is questionable whether the provisions of the State operating permit rule that are inconsistent with the operating permit rules of BFCCAA and YCCAA could be enforced against a Title V source. This is especially true for YCCAA because the YCCAA regulation that incorporates ch. 173–401 WAC by reference states that State regulations are not adopted to the extent they are inconsistent with any YCCAA regulations (see YCCAA Reg. I, Sec. 12.01).

d. Tribal Lands. The Governor's letter to EPA states that Ecology, EFSEC and the delegated local air authorities will serve as the permitting authorities for sources over which they each, respectively, have jurisdiction. Except with respect to certain sources located on the Puyallup Reservation, there is no further discussion in the submittals of Ecology, EFSEC or the local air authorities of any basis for the assertion of jurisdiction by Washington permitting authorities over sources on Tribal lands.

Opinion letters from the Washington Attorney General and PSAPCA's attorney rely on the Washington Indian (Puyallup) Land Claims Settlement, 25 USC sections 1773–1773j, and the Agreement between the Puyallup Tribe of Indians, Local Governments in Pierce County, the State of Washington, the United States of America, and certain private property owners, dated August 27, 1988 (Settlement Agreement) to support their assertion of jurisdiction over portions of the Puyallup Reservation. The Settlement Agreement specifically gives federal, state and local governments exclusive jurisdiction for the administration and implementation of federal, state and local environmental laws on all non-trust lands within the 1873 Survey Area and gives the federal government and the Puyallup Tribe the same exclusive jurisdiction over all trust and restricted lands within the 1873 Survey Area (as "non-trust lands," "trust lands," "restricted lands" and "1873 Survey Area" are defined in the Settlement Agreement). Based on the terms of the Settlement Agreement, EPA is proposing to grant interim approval of the operating permit programs of Ecology and PSAPCA for all non-trust lands within the 1873 Survey Area of the Puyallup Reservation.

Because the Washington permitting authorities have not demonstrated, consistent with applicable principles of Indian law and federal Indian policies, legal authority to regulate other sources on Tribal lands under the Clean Air Act, the proposed interim approval of the Washington operating permit programs will not extend to any trust or restricted lands within the Puyallup 1873 Survey Area or to lands within the exterior boundaries of any other Indian Reservation.[1] Title V sources located within the exterior boundaries of other Indian Reservations in Washington will be subject to the federal operating permit program, to be promulgated at 40 CFR Part 71, or subject to the operating permit program of any Tribe approved after issuance of the regulations under Section 301(d) of the Clean Air Act authorizing EPA to treat Tribes in the same manner as States for appropriate Clean Air Act provisions.[2]

e. Applicable Requirements. Part 70 requires that all federally-enforceable applicable requirements be included in an operating permit (see 40 CFR 70.4(3)(v) and 70.6(a)). RCW 70.94.161(10) could be read to require that only the most stringent of any federal, state or local requirement be included in the permit. According to the Attorney General's opinion, however, this provision does not preclude Washington permitting authorities from including all federally-enforceable applicable requirements in the permit, and several other State regulations in fact require the permitting authority to do so. The Attorney General first points to RCW 70.94.161(2)(a), which requires that the rules establishing the State's permitting program be consistent with the Federal Clean Air Act. The Attorney General then relies on WAC 173–401–600, which requires that the permit assure compliance with all applicable requirements and that, where a federally enforceable applicable requirement is less stringent than a State or local requirement, both the federal requirement and the State or local requirement be included in the permit. EPA notes, as well, that WAC 173–401–625(b) specifically requires any "state-only" terms and conditions be designated as not being federally enforceable. In order for a permit to assure compliance with a federally enforceable applicable requirement which is less stringent than a "state-only" requirement, both requirements would have to be included in the permit. Moreover, EPA notes that pursuant to WAC 173–401–640 a Title V source would be shielded from enforcement of a federally-enforceable applicable requirement only if the requirement is included in the permit or is specifically determined not to be applicable. Based on the opinion of the Attorney General and on the assurances of the Washington permitting authorities that all federally-enforceable applicable requirements will be included in Title V permits, EPA believes that RCW 70.94.161(10) does not preclude approval of the Washington submittal.

f. Compliance Orders. WAC 173–400–161 authorizes Washington permitting authorities to issue regulatory orders requiring that sources be brought into compliance in accordance with a compliance schedule.[3] It further provides that a source which has been issued such a regulatory order shall be deemed to be in compliance with "this chapter" if the source is in compliance with all of the requirements of the regulatory order, including the compliance schedule. This provision would pose a problem for Title V

[1] This is not a determination that the Washington permitting authorities could not possibly demonstrate jurisdiction over sources within the exterior boundaries of Indian Reservations in Washington. However, no such showing has been made, except as discussed above with respect to portions of the Puyallup Reservation.

[2] Tribes may also have inherent sovereign authority to regulate air pollutants from sources on Tribal lands.

[3] EFSEC has incorporated this provision by reference (see WAC 463–39–005). Several local air authorities have comparable provisions (see OAPCA Reg. 1, Sec. 329; SCAPCA Reg. I, Art. VII; SWAPCA 400–161). The same analysis of the State's authority to issue compliance orders applies for EFSEC and these local air authorities.

approval if a Washington permitting authority would be precluded from assessing penalties against a source with a Title V operating permit who had been issued and was in compliance with such a regulatory order, but was not in compliance with the underlying permit requirements. It would also be problematic if a compliance schedule submitted by a source pursuant to WAC 173–401–510(2)(h)(iii) became a regulatory order under WAC 173–400–161 when it becomes a part of a Title V operating permit and thus precluded the permitting authority from assessing penalties for the source's noncompliance with the underlying permit requirements.

The Attorney General's opinion states that a regulatory order issued under WAC 173–400–161 is a completely separate device from a Title V operating permit issued under ch. 173–401 WAC, even though both may contain compliance schedules. Moreover, the Attorney General's letter points out that WAC 173–401–620(2) makes any noncompliance with a Title V permit grounds for an enforcement action and that a permit condition can be changed only through a permit modification, not a regulatory order. Finally, the Attorney General states that even if a compliance schedule is issued under WAC 173–400–161 to a Title V source, compliance with such a schedule only constitutes compliance with the requirements of "this chapter," ch. 173–400 WAC, and not the operating permit rule, ch. 173–401 WAC. Therefore, a source could still be subject to an enforcement action for being in violation of the permit but in compliance with the compliance schedule. Based on the Attorney General's opinion, EPA believes that WAC 173–400–161 does not bar approval of the Washington submittal. If, during program implementation, Washington permitting authorities issue regulatory orders containing compliance schedules to Title V sources without collecting appropriate penalties, EPA will consider this grounds for withdrawing approval of such permitting authority's program in accordance with the provisions of 40 CFR 70.10(c).

g. Technical Assistance Visits. Washington has two statutes which address violations observed during technical assistance visits, RCW 43.21A.087 and RCW 70.94.035. RCW 70.94.035, which was enacted in 1991 and specifically applies to the air program, prohibits enforcement action "unless and until the facility owner or operator has been provided a reasonable time to correct the violation." According to the Attorney General's opinion, this provision does not prevent a permitting authority from commencing an enforcement action for a violation observed during a technical assistance visit, but merely requires the permitting authority to give the source a reasonable opportunity to comply before deciding *whether* enforcement action is appropriate. The Attorney General similarly interprets RCW 43.21A.087, enacted in 1992, which allows the permitting authority to reinspect the facility and take enforcement action "[i]f the owner or operator of the facility does not correct the violation." [4] The Attorney General also states that because RCW 70.94.035 applies specifically to the air program and specifically requires that the technical assistance program be consistent with the Federal Clean Air Act, this provision would prevail in the event of any conflict with RCW 43.21A.087, which applies to technical assistance visits under all of Ecology's environmental programs. EPA does not believe the plain language of RCW 43.21A.087 supports the Attorney General's opinion and that it could prohibit enforcement action if a violation observed during a technical assistance visit is promptly corrected. EPA does agree, however, that RCW 70.94.035 would allow enforcement action in such a case provided the enforcement action was commenced after the source had had an opportunity to comply. EPA also believes that RCW 70.94.035, and not RCW 43.21A.087, applies in the case of technical assistance visits under the air program. EPA therefore believes that Washington's technical assistance statutes, as interpreted by the Attorney General, do not bar approval of Washington's operating permit program.

h. Variances. State law allows sources to petition the permitting authority for a variance from requirements governing the quality, nature, duration or extent of discharges of air contaminants (see RCW 70.94.181; WAC 173–400–180)). Each of the local air authorities has also adopted a regulation authorizing variances under certain circumstances (see BFCCAA Reg. 1, Sec. 3.01; NWAPA Sec. 350; PSAPCA Reg. I, Sec. 4.01; OAPCA Reg. 1, Sec. 3.23; SCAPCA Reg. I, Art. III; SWAPCA Reg. 401–180; YCCAA Reg. I, Sec. 7.01). State law also prohibits any State or local air authority from incorporating a variance in a permit unless the variance has been approved by EPA as part of the State Implementation Plan or from issuing a variance that sets aside or delays any requirements of the Federal Clean Air Act except with the approval and written concurrence of the EPA (see RCW 70.94.181(8); WAC 173–400–180(3)). The program submittal is approvable based on these limitations on the issuance of variances.[5]

i. Additional Information. The full program submittal and the Technical Support Document are available for review for more detailed information about this proposed action.

3. Permit Fee Demonstration

a. *EFSEC.* RCW 80.50.071(1)(b) and (c) require that an applicant for an EFSEC certification pay all "reasonable costs actually and necessarily incurred" by EFSEC in processing applications and inspecting and determining compliance. RCW 70.94.422(2) additionally gives EFSEC the same authority as local air authorities to collect fees from Title V sources subject to EFSEC's jurisdiction. As discussed above, EFSEC will contract with Ecology or the relevant local air authority to perform certain technical tasks, including developing the Title V permit terms and monitoring compliance with those terms. Ecology and any participating local air authority will then charge EFSEC the same fees they would charge a source subject to their jurisdiction for issuing a permit and monitoring compliance. EFSEC will pass these fees onto the EFSEC source, along with its administrative costs (staff costs) for the air operating permit program as "reasonable costs actually and necessarily incurred" by EFSEC in processing applications and inspecting and determining compliance. EFSEC estimates its air operating permit program administrative costs to be approximately $1,121 per year per source. Based on this estimate, EPA believes that the combined contract and administrative fees are sufficient to meet the Act's requirements to cover the permit program costs.

b. NWAPA and SWAPCA. NWAPA and SWAPCA have opted for fees below the presumptive minimum ($30.18 a ton for FY95). NWAPA will collect the equivalent of $19.29 per ton for the first year of the program. Operating permit fees will be based on a two-tiered model in which 20% of the total fees collected will be distributed equally between all

[4] Both statutes allow Ecology to commence immediate enforcement action for any violation that places anyone in imminent danger of death or substantial bodily harm or causes substantial property damage.

[5] Although the variance regulations of BFCCAA, NWAPA, SWAPCA and YCCAA do not expressly state that EPA must approve any variance to requirements of the Federal Clean Air Act or any variance incorporated into an operating permit, the Attorney General's opinion letter confirms that State law prohibits a local authority from issuing such a variance.

the affected sources and 80% will be distributed based on the quantity of emissions emitted by each of the sources. In addition to the fees assessed by NWAPA, each of the sources will also be responsible for a portion of Ecology's oversight costs. EPA believes the combined State and local air authority fees are sufficient to cover the permit program costs based on NWAPA's detailed fee demonstration using a workload analysis. NWAPA is a small agency in a relatively rural and low cost area of the State. There are several sources in its jurisdiction that emit very large tonnages but few sources overall. This high ratio of tons of emissions to number of permits lowers the cost per ton of implementing an operating permit program. NWAPA has committed in its submittal to review its fee schedule annually and increase fees, as needed, to reflect actual program implementation costs.

SWAPCA will collect the equivalent of $19.13 per ton for the first year of the program. Operating permit fees will be based on a three-tiered model with equal weight given to each part. The model divides the fees collected into a flat fee for all affected sources, a fee based on quantity of emissions, and a fee based on the complexity of the permit. In addition to the fees assessed by the Authority, each of the sources will also be responsible for a portion of Ecology's oversight costs. EPA believes that the combined State and local air authority fees are sufficient to cover permit program costs based on SWAPCA's detailed fee demonstration using a workload analysis. As with NWAPA, SWAPCA is a small agency in a relatively rural and low cost area of the State with several sources in its jurisdiction that emit very large quantities of emissions but few sources overall. Once again, this high ratio of tons of emissions to number of permits lowers the cost per ton of implementing an operating permit program. SWAPCA has committed in its submittal to review its fee schedule annually and to increase fees, as needed, to reflect actual program implementation costs.

c. Ecology, BFCCAA, OAPCA, PSAPCA, SCAPCA and YCCAA. The fees to be assessed by Ecology, BFCCAA, OAPCA, PSAPCA, SCAPCA, and YCCAA all exceed the presumptive minimum. Fees range from $40 per ton to $64.72 per ton. In addition, each agency provided a detailed fee demonstration. Together, all permitting authorities in Washington will collect an estimated $4.6 million in the first year of program implementation. Each permitting authority has committed in its submittal to review its fee schedule annually and to increase fees, as needed, to reflect actual program implementation costs.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and Commitments for Section 112 Implementation. The Washington permitting authorities have indicated in their Title V program submittals that they are constitutionally precluded from implementing and enforcing future federally-promulgated applicable requirements by reference, but must instead first adopt state regulations in order to incorporate such requirements into permits and enforce them. Ecology has demonstrated, however, that it has broad legal authority to adopt regulations necessary to implement any and all section 112 requirements (see RCW 70.94.141(1); 70.94.331(2)). The local air authorities may include these requirements in their Title V permits as soon as Ecology adopts such requirements (see RCW 70.94.161(2)(a)).[6] EFSEC, which has the legal authority to adopt air quality standards consistent with those established by Ecology and the local air authorities (see RCW 70.94.422(2)), intends to incorporate by reference the section 112 standards adopted by Ecology. In their submittal, the Washington permitting authorities have committed to adopting regulations necessary to implement the section 112 requirements in a timely manner.

EPA has determined that this broad statutory and regulatory authority is adequate for the Washington permitting authorities to implement all section 112 requirements provided they expeditiously adopt appropriate implementing regulations as new federal regulations are promulgated. EPA regards the commitments of the Washington permitting authorities as an acknowledgement of their obligation to adopt regulations necessary to issue permits that assure compliance with section 112 applicable requirements. Should a Washington permitting authority fail to adopt regulations necessary to maintain adequate legal authority to issue timely permits, EPA will consider this grounds for withdrawing approval of such permitting authority's program in accordance with the provisions of 40 CFR 70.10(c). For further discussion of this determination, please refer to the April 13, 1993 guidance memorandum entitled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Implementation of Section 112(g) Upon Program Approval. After the effective date of the Washington operating permit programs, no new major source or major modification to an existing major source may be constructed unless it has been subject to a case-by-case determination of maximum achievable control technology (MACT) or offsets by the permitting authority under section 112(g) of the Federal Clean Air Act. The results of such case-by-case determination of MACT or offsets must be federally-enforceable by the time that construction begins on the new source or modification. Unless and until the Washington permitting authorities[7] submit, and EPA approves, air toxics permitting regulations, there will be no mechanism for making federally-enforceable MACT or offset determinations, thereby effectively prohibiting construction of new major sources and major modifications to existing major sources as of the date EPA grants interim approval of the Washington operating permit programs.

Because EPA has not yet promulgated regulations to implement section 112(g) of the Act, EPA has determined it has authority to approve many existing state air toxics permitting regulations under the authority of Title V and sections 112(g) and 112(l) of the Act solely for the purpose of implementing section 112(g) during the transition period between Title V approval and adoption of State rules implementing EPA's forthcoming section 112(g) regulations. Submission by Washington and approval by EPA of Washington's existing state air toxics permitting rules could provide Washington permitting authorities with an interim mechanism for establishing federally-enforceable restrictions for section 112(g) purposes. The scope of such an approval of Washington's air toxic regulations would be narrowly limited to section 112(g) and would not confer or imply approval for purposes of any other provision under the Act. Furthermore, such approval would be for an interim period only, until such time as the Washington permitting authorities adopt regulations consistent with regulations promulgated by EPA to implement section 112(g) of the Act.

[6] A local authority may also promulgate its own requirements, which may be not less stringent than those promulgated by Ecology (see RCW 70.94.331(6); WAC 173-400-020(2)).

[7] As stated above, as a matter of State law, once Ecology adopts air toxics permitting regulations, the local air authorities may either directly implement Ecology's regulations, may incorporate Ecology's regulations by reference or may adopt their own, more stringent regulations. The EFSEC must incorporate Ecology's regulations by reference or adopt their own regulations.

Accordingly, if Washington submits its existing air toxics permitting rules and EPA determines that such rules are approvable pending adoption of State rules implementing EPA's forthcoming section 112(g) regulations, EPA would limit the duration of such an approval to a reasonable time following promulgation of section 112(g) regulations so that the Washington permitting authorities act expeditiously to adopt regulations consistent with the section 112(g) regulations.

c. Delegation of Section 112 Standards. As discussed above, State law prohibits Washington permitting authorities from implementing and enforcing federal standards until they are adopted as State or local regulations. Therefore, the Washington permitting authorities can only request, and EPA can only grant, delegation of section 112 standards after the Washington permitting authorities adopt and submit their regulations to EPA for approval under section 112(l) of the Act.

The Washington permitting authorities have adopted all of the National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR part 61 and have submitted a request for delegation of those standards in accordance with section 112(l) of the Act. Since the adopted regulations and the requests for delegation cover sources in addition to those subject to Title V, EPA will be acting on these request under separate rulemaking pursuant to the provisions of 40 CFR part 63.

d. Commitments for Title IV Implementation. The Washington permitting authorities have committed to adopting and submitting to EPA by January 1, 1995, a program implementing Title IV of the Clean Air Act. This commitment is supported by adequate legal authority (see RCW 70.94.161(2)(c)).

B. Options for Approval/Disapproval and Implications

1. Ecology, EFSEC, NWAPA, OAPCA, PSAPCA, SCAPCA, and SWAPCA

EPA is proposing to grant interim approval to the operating permit programs submitted on November 1, 1993, by Ecology, EFSEC, NWAPA, OAPCA, PSAPCA, SCAPCA, and SWAPCA.[8] If and when this proposed action becomes final, these permitting authorities must make the following changes to receive full approval:[9]

a. Ecology. (1) Revise WAC 173–401–200(33), the definition of "Title I modification," to include any modification permitted through a minor source preconstruction permit. The EPA believes the phrase "modification under an provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) is best interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act. This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act and regulations addressing source changes that trigger the application of NESHAP established pursuant to section 112 of the Act prior to the 1990 amendments. The EPA intends to revise its criteria for interim approval in 40 CFR 70.4(d) prior to taking final action on this proposal to grant Washington interim approval so that interim approval may be granted to State programs like Washington's that currently allow a more narrow definition of Title I modification.

As noted, EPA believes the better interpretation of "Title I modifications" would preclude granting full approval to the Washington program. However, in the proposal to revise part 70, EPA will be taking comment on whether the criteria in 40 CFR 70.7(e)(2)(i)(A), including the phrase "modification under any provision of title I," should be interpreted in a manner that would allow changes reviewed under programs approved pursuant to section 110(a)(2)(C) and changes that trigger the application of NESHAP established pursuant to section 112 prior to the 1990 Amendments to be eligible for processing through minor modification procedures. Should EPA adopt this alternative interpretation, the definition of "Title I modification" in the Washington program would then be fully consistent with Part 70.

(2) Revise RCW 70.94.430(1) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii). Existing language appears to cap penalties for criminal violations at $10,000. The civil penalty authority in RCW 70.94.431(1) already meets the requirements of 40 CFR 70.11(a)(3)(i) for maximum civil penalties of not less than $10,000 per day per violation.

(3) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

The Attorney General's opinion states that false reporting is a criminal violation under Washington law because RCW 70.94.430(1) makes it unlawful to knowingly violate any regulations adopted under ch. 70.94 RCW, and WAC 173–401–520 requires that all application forms, reports and compliance certifications submitted pursuant to ch. 173–401 WAC contain a certification as to their truth, accuracy and completeness. This authority, however, does not appear to be as broad as that required by 40 CFR 70.11(a)(3)(iii). Knowing violation of the certification requirement of WAC 173–401–520 would be only one criminal violation even if the document which was falsely certified covered several false material statements. Under 40 CFR 70.11(a)(3)(iii), each false material statement must be subject to a criminal penalty. Moreover, accepting the State's interpretation would render the specific requirement of 40 CFR 70.11(a)(3)(iii) entirely superfluous. Because Part 70 otherwise requires States to have the provisions on which the Attorney General relies (see 40 CFR 70.5(d) and 70.11(a)(3)(ii)), no State would have to make any additional showing of the authority required by 40 CFR 70.11(a)(3)(iii) under the State's interpretation.

(4) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

As authority for this requirement, the Attorney General's opinion states that a knowing violation of WAC 173–400–040(7), which prohibits the use of any means which conceals or masks an emission of an air contaminant, would subject the offender to criminal penalties under RCW 70.94.430(1). Again, however, this authority does not appear to be as broad as that required by 40 CFR 70.11(a)(3)(iii). WAC 173–400–040(7) only prohibits tampering that conceals air emissions; it would not

[8] The scope of this action does not include the issuance of permits or the enforcement of standards for sewage sludge incinerators under Section 405 of the Clean Water Act, 42 USC 1345. Delegation of sewage sludge incinerator permitting under the Clean Water Act, if requested by the State, would be considered in a separate administrative action (see 40 CFR Parts 122 and 501).

[9] All changes required for Ecology to receive full approval must be made before EFSEC or any local air authority may receive full approval. In addition, in order to receive full approval, EFSEC and each local air authority must make such changes to their regulations as are necessary under applicable State and local law to incorporate into their respective regulations all required changes to Ecology's operating permit program.

prohibit tampering with equipment that monitors secondary parameters, such as fuel content or production rate.

(5) Delete WAC 173–401–735(3) entirely or revise it so that it refers to RCW 34.05.570(4)(b), rather than RCW 7.16.360. Part 70 requires that State law provide a cause of action in State court for the permitting authority's failure to take final action on a permit within the specified time period (see 40 CFR 70.4(b)(3)(xi)). WAC 173–401–735(3) authorizes a person to seek a writ of mandamus in such a case "[a]s provided in chapter 7.16 RCW." Chapter 7.16 RCW, however, authorizes the issuance of a writ of mandamus only if there is no other remedy available (see RCW 7.16.360). RCW 34.05.570(4)(b) provides an express cause of action for an agency's failure to take a required action. Therefore, WAC 173–401–735(3) must be revised to delete the reference to ch. 7.16 RCW as the basis for the cause of action.

(6) Revise WAC 173–401–530(2) to define an emissions unit as insignificant only if it is subject to no federally enforceable applicable requirement and delete the last sentence in WAC 173–401–200(16) ("These units and activities are exempt from permit program requirements except as provided in WAC 173–401–530."). Under 40 CFR 70.5(c), EPA may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, no activity for which there is an applicable requirement may be defined as insignificant. The Washington State Implementation Plan includes several "generally" applicable requirements (e.g. a 20% opacity limit for all emission units) that apply to any and all emission points and are "applicable requirements" under the part 70 rules. Together, WAC 173–401–530(2) and the last sentence of WAC 173–401–200(16) relieve sources from the requirement of demonstrating and certifying compliance with these "generally" applicable requirements for emission units that are subject to no other applicable requirement and meet the other criteria for insignificance (e.g. size, production rate, emission level). WAC 173–401–530(1) clarifies that these insignificant activities must still comply with all requirements. WAC 173–401–530(2)(b) requires that all such generally applicable requirements to which the source is subject be listed in the application and the permit. The program, taken as a whole, substantially fulfills the requirement under 40 CFR 70.6(a)(1) that a permit include emission limitations and standards that assure compliance with all applicable requirements.

b. NWAPA.

(1) Revise NWAPA Sec. 132.1 to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii). Existing language appears to cap penalties for criminal violations at $10,000.

(2) Revise NWAPA Sec. 132 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). See discussion above in paragraph (3) of Ecology's interim approval issues.

(3) Revise NWAPA Sec. 132 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). See discussion above in paragraph (4) of Ecology's interim approval issues.

(4) Revise NWAPA Sec. 133.1 to provide for maximum civil penalties of not less than $10,000 per day per violation in the case of violations of multiple standards by a specific emissions unit, as required by 40 CFR 70.11(a)(3). Existing language appears to cap penalties for violations of multiple standards by a specific emissions unit at $10,000.

c. PSAPCA.

(1) Revise PSAPCA Reg. I, Sec. 3.13(a) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii). Existing language appears to cap penalties for criminal violations at $10,000.

(2) Revise PSAPCA Reg. I, Sec. 3.13 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). See discussion above in paragraph (3) of Ecology's interim approval issues.

(3) Revise PSAPCA Reg. I, Sec. 3.13 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). See discussion above in paragraph (4) of Ecology's interim approval issues.

d. OAPCA.

(1) Revise OAPCA Reg. 1, Sec. 3.27(b)(1) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii). Existing language appears to cap penalties for criminal violations at $10,000.

(2) Revise OAPCA Reg. 1, Sec. 3.27(b) to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). See discussion above in paragraph (3) of Ecology's interim approval issues.

(3) Revise OAPCA Reg. 1, Sec. 3.27(b) to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). See discussion above in paragraph (4) of Ecology's interim approval issues.

(4) Revise the definition of "potential to emit" in OAPCA Reg. 1, Sec. 6.00 to provide that any physical or operational limitation on the capacity of a source to emit a pollutant shall be treated as part of its design only if the limitation is *federally* enforceable (see 40 CFR 70.2 (definition of potential to emit)). OAPCA regulations currently define "potential to emit" to include any such limitation that is enforceable by OAPCA.

e. SCAPCA.

(1) Revise SCAPCA Reg. I, Sec. 2.04(B) to eliminate the limitation on the control officer's authority to request criminal penalties to cases in which a violator has failed to correct the violation after a "reasonable and/or required period of time." Sections 70.11(a)(3) (ii) and (iii) require that States have authority to impose a criminal penalty for each day of violation. A requirement that a violator can be subject to criminal penalties only if the violator fails to correct the violation after an opportunity to comply is inconsistent with the requirements of part 70.

(2) Revise SCAPCA Reg. I, Sec. 2.11(A)(1) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii). Under existing language, it is not clear that criminal penalties may be assessed for each day on which a violation occurs.

(3) Revise SCAPCA Reg. I, Sec. 2.11(A) to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). See

discussion above in paragraph (3) of Ecology's interim approval issues.

(4) Revise SCAPCA Reg. I, Sec. 2.11(A) to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). See discussion above in paragraph (4) of Ecology's interim approval issues.

f. SWAPCA. No changes in the SWAPCA operating permit program are necessary to receive full approval other than those that may be necessary under applicable State and local law to incorporate into SWAPCA's regulations all required changes to Ecology's operating permit program.

2. BFCCAA and YCCAA

a. Required changes for interim approval. As discussed above, there is a serious question regarding whether BFCCAA and YCCAA have effectively incorporated by reference the State operating permit rule and, if so, whether the provisions of the State operating permit rule that are inconsistent with the operating permit rules of BFCCAA and YCCAA could be enforced against a Title V source. On that basis, EPA proposes disapproval of the operating permit programs submitted by BFCCAA and YCCAA. Both of these authorities have advised EPA, however, that they intend to make all changes necessary to receive interim approval by October 1994. Based on this assurance, EPA is proposing in the alternative to grant interim approval of the operating permit programs submitted by BFCCAA and YCCAA provided that they make the following changes by the time of final action on this rulemaking:

BFCCAA. (1) Repeal BFCCAA Reg. 1, Sec. 4.01, or revise it to incorporate by reference the State operating permit regulation, ch. 173–401 WAC, adopted on October 4, 1993, as amended to incorporate any changes made by Ecology at the time BFCCAA so amends BFCCAA Reg. 1, Sec. 4.01.

(2) Repeal BFCCAA Reg. 1, Sec. 4.02, 4.04, 4.05, 4.06 and 4.07.

YCCAA. (1) Repeal YCCAA Reg. 1, Sec. 6.02, 6.04, 6.05, 6.06, 6.07 and 6.08.

(2) Revise YCCAA Reg. 1, Sec. 12.01 to provide that the identified provisions of the Washington State Administrative Code are incorporated by reference unless the YCCAA regulation is more stringent than the State regulation.

(3) Revise YCCAA Reg. 1, Sec. 12.02 so that the identified provisions of federal law are incorporated by reference regardless of whether the federal regulations are inconsistent with YCCAA regulations. Part 70 requires that all "applicable requirements" be included in the permit (see 40 CFR 70.6(a)(1)). The term "applicable requirement" is defined to include any standard or other requirement under Sections 111 and 112 of the Act (see 40 CFR 70.2). YCCAA Reg. 1, Sec. 12.02, however, would preclude YCCAA from including a Section 111 or 112 standard in an operating permit if the YCCAA had a regulation that was less stringent than the federal standard. Therefore, YCCAA does not have the authority to include all "applicable requirements" in a permit as required by part 70.

If BFCCAA or YCCAA fails to make these required changes by the time EPA takes final action on this proposed rulemaking, EPA will disapprove the operating permit program of such local air authority in the final action. In the event of such a disapproval, Washington's Attorney General has opined that Ecology's operating permit program would apply as a matter of State law to sources located in the counties under the jurisdiction of the local air authority. On that basis, EPA intends to grant Ecology interim approval to administer the operating permit program in the event of a disapproval of either local air authority operating permit program within the jurisdiction of such local authority. Therefore, no sanctions will result from a disapproval of the operating permit program of either local air authority because all sources in the State of Washington required to have an operating permit under part 70 will be subject to either the State or a local operating permit program that will have received interim approval.

b. Required changes for full approval. EPA will grant BFCCAA and YCCAA interim approval of their operating permit programs provided they make the changes required in paragraph (a) above. If they receive interim approval, these local air authorities must make the following additional changes to receive full approval: [10]

BFCCAA. No additional changes are necessary for the BFCCAA operating permit program to receive full approval other than those that may be necessary under applicable State and local law to incorporate into BFCCAA's regulations all changes to the State operating permit program required for full approval.

YCCAA. Revise YCCAA Reg. I, Sec. 2.01, to delete the requirement that violations be "knowing." Part 70 prohibits a permitting authority from including a mental state as an element of proof for civil violations (see 40 CFR 70.11(a)(i)).

3. Effect of Interim Approval

Interim approval of these operating permit programs, which may not be renewed, extends for a period of up to two years.

During the interim approval period, the State is protected from sanctions for failure to have a program and EPA is not obligated to promulgate a federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70. In addition, the one-year deadline for submittal of permit applications by subject sources and the three-year time period for processing the initial permit applications begin upon interim approval.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the submittals of the State and local air authorities and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

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

(2) to serve as the record in case of judicial review. EPA will consider any comments received by September 19, 1994.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

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

[10] All changes required for Ecology to receive full approval must be made before BFCCAA or YCCAA may receive full approval. In addition, in order to receive full approval, BFCCAA and YCCAA must make such changes to their regulations as are necessary under applicable State and local law to incorporate into their respective regulations all required changes to Ecology's operating permit program.

entities with jurisdiction over populations of less than 50,000.

Operating permit program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal operating permit program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning operating permit programs on such grounds. *Union Electric Co.* v. *U.S.* E.P.A., 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–76719.

Dated: July 18, 1994.

Chuck Clarke,

Regional Administrator.

[FR Doc. 94–19774 Filed 8–17–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 75

[FRL–5040–2]

Acid Rain Program: Continuous Emissions Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to revise the Continuous Emission Monitoring (CEM) provisions of the Acid Rain Program for the purpose of making the implementation of the program more efficient. In the final rules section of this **Federal Register**, EPA is revising the CEM provisions as a direct final rule without prior proposal because the Agency views these provisions as noncontroversial and anticipates no adverse comments. A detailed rationale for the revisions is set forth in preamble to the direct final rule. If no adverse comments are received, the effective date of the revisions will be October 17, 1994. EPA believes that these revisions are noncontroversial because they provide a limited extension to some affected utilities to meet the requirements of the CEM rule. The extension is beneficial to both the industry and to EPA in allowing the prioritization of limited resources for assuring the smooth implementation of the Acid Rain Program.

However, if EPA does receive adverse comments, EPA will publish a document in the **Federal Register** withdrawing the direct final rule. All public comments received will be treated as comments on this proposed rule and will be addressed in a subsequent final rulemaking notice. The EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before September 19, 1994.

ADDRESSES: Any written comments on these rule revisions must be identified with the document control number "A–94–16" and must be submitted in duplicate to: EPA Air Docket (6102), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sharon Saile, CEM Section Chief, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (202) 233–9180.

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

Dated: August 4, 1994.

Carol M. Browner,

Administrator, Environmental Protection Agency.

[FR Doc. 94–20168 Filed 8–17–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300354; FRL–4904–8]

RIN 2070–AC18

Methyl-1-Alkylamido Ethyl-2-Alkyl-2-Imidazolinium Methyl Sulfate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that methyl-1-alkylamido ethyl-2-alkyl-imidazolinium methyl sulfate, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, tallow, or hogfat fatty acids, be exempted from the requirement of a tolerance when used as an inert ingredient (metal corrosion inhibitor, spreader-sticker) in propionic acid formulations applied to various grains, grasses, and hays. This proposed regulation was requested by the Witco Corp.

DATES: Comments, identified by the document control number [OPP-300354], must be received on or before September 19, 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 deliver comments to: Rm. 1132, Crystal Mall, Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of 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 the EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

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: The Witco Corp., 3200 Brookfield St., Houston, TX 77045, has submitted pesticide petition (PP) 2E4123 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for methyl-1-alkylamido ethyl-2-alkyl-imidazolinium methyl sulfate, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, tallow, or hogfat fatty acids, when used as an inert ingredient (metal corrosion inhibitor, spreader-sticker) in propionic acid formulations applied to various grains, grasses and hays, as specified in 40 CFR 180.1023.

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.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for methyl-2-alkylamido ethyl-2-alkyl-imidazolinium methyl sulfate will need to be submitted. The rationale for this decision is described below:

1. A 90-day feeding study in rats resulted in a no-observed-effect level (NOEL) of 100 mg/kg/day and a lowest-observed-effect level (LOEL) of 1,000 mg/kg/day based upon a decreased liver to body weight ratio. There were no other effects and no liver histopathology.

2. A 90-day feeding study in dogs showed a decrease in cholesterol values at dose levels greater than 4,000 ppm. However, this effect was considered an artifact of decreased food consumption. Therefore, the NOEL for systemic toxicity in this study is considered to be greater than 12,000 ppm (366 and 632 mg/kg/day for males and females, respectively.

3. A rat developmental toxicity study indicates a NOEL of 300 mg/kg/day and a LOEL of 1,000 mg/kg/day. However, at the LOEL there was only a very slight increase in the total number of litters with any kind of malformation (14% in control and 20% in the 1,000 mg/kg/day dose group) and no significant increase in the incidences of individual malformations. Thus, the true NOEL appears to lie closer to 1,000 mg/kg/day.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and 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 any of the ingredients 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 the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300354]. 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 3 of Executive Order 12291.

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, Recording and recordkeeping requirements.

Dated: August 9, 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 § 180.1133, to read as follows:

§ 180.1133 Methyl-1-alkylamido ethyl-2-alkyl-imidazolinium methyl sulfate; exemption from the requirement of a tolerance.

Methyl-1-alkylamido ethyl-2-alkyl-imidazolinium methyl sulfate, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, tallow, or hogfat fatty acids, is exempted from the requirement of a tolerance when used as an inert ingredient (metal corrosion inhibitor, spreader-sticker) in propionic acid formulations applied to various grains, grasses, and hays, as specified in 40 CFR 180.1023.

[FR Doc. 94–20326 Filed 8–17–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 2

RIN 0905–AD97

Alcohol and Drug Abuse Patient Records

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing a clarification to the regulations which govern the confidentiality of alcohol and drug abuse records. Specifically, the Department is proposing to clarify that, as to general medical care facilities, these regulations that hold themselves out as providing and provide alcohol or drug abuse diagnosis, treatment or referral for treatment and which are federally assisted, directly or indirectly.

DATES: Written comments must be received on or before October 17, 1994.

ADDRESSES: Written comments on these proposed rules may be sent to Sue Martone, SAMHSA, Room 12C15, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION: Sue Martone, Telephone (301) 443–4640.

SUPPLEMENTARY INFORMATION: The "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations, 42 CFR part 2, implement section 543 of the Public Health Service Act, 42 U.S.C.

290dd–2, as amended by section 131 of the ADAMHA Reorganization Act, Public Law 102–321 (July 10, 1992). The regulations were promulgated as a final rule on July 1, 1975 (40 FR 27802) and amended on June 9, 1987 (52 FR 21798).

The purpose of this notice is to clarify the ambiguity in the regulations regarding the definition of "program." This ambiguity was identified in the case *United States* v. *Eide*, 875 F. 2d 1429, 1438 (9th Cir. 1989), where the court held that the Veterans Administration Medical Center's (VAMC) general emergency room is a "program" as defined by the regulations. In reaching this conclusion, the court relied on the clause that "(p)rogram means a person which in whole or in part holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment, or referral for treatment." *Id.* The court ruled that the VAMC was a "person" which is defined at § 2.12 to mean "an individual, * * * Federal, State or local government or any other legal entity," and concluded that "(a) hospital emergency room, while obviously also performing functions unrelated to drug abuse, serves as a vital first link in drug abuse diagnosis, treatment and referral." *Id.*

The Department believes this interpretation too broadly defines the term "program." It is the Department's position that "program" encompasses only (1) An individual or entity (other than a general medical facility) who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or (2) an identified unit within a general medical facility which holds itself out as providing and provides alcohol or drug abuse diagnosis, treatment or referral for treatment; or (3) medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers.

This was the intent of the revisions made to the regulations in 1987. *See* 52 FR 21796, 21797 (June 9, 1987). Prior to the 1987 amendments, the regulations applied to any record relating to substance abuse whether the information was obtained from an emergency room, a general medical unit or a general practitioner so long as there was a Federal nexus. In 1987, however, it was the intent of the Department to limit the applicability of the regulations to specialized programs and personnel so as to simplify administration of the regulations. It was the Department's position that this limitation would not significantly affect the incentive to seek treatment provided by the confidentiality protection. See 52 FR at 21797. Furthermore, the Department questioned whether applicability of the regulations to general medical care facilities addressed the intent of Congress to enhance treatment incentives for alcohol and drug abuse, since many substance abuse patients are treated in a general medical care facility not because they have made a decision to seek substance abuse treatment, but because they have suffered a trauma or have an acute condition with a primary diagnosis of something other than substance abuse. *Id.*

Accordingly, as to general medical facilities, it is the Department's position that the regulations apply only to discrete, identifiable units providing alcohol or drug abuse treatment, diagnosis or referral for treatment or specialized personnel who are identified as providing such services as a primary function. By way of example, these regulations do not apply to alcohol or drug abuse prevention programs, whether based in general care facilities or otherwise, which do not hold themselves out to the community as providing alcohol or drug abuse diagnosis, treatment or referral for treatment, even though such programs may occasionally refer individuals to treatment for substance abuse as an incidental function of the prevention program. Nor do they apply to emergency room personnel who may treat substance abusers who need medical attention, unless the provision of alcohol and drug abuse diagnosis, treatment or referral for treatment is the primary function of such staff and they have been identified as providing such services, or the emergency room as a whole has promoted itself to the community as providing such services. Finally, these regulations do not apply to physicians or other medical personnel in a general medical facility who are not identified as providing such services even though they may occasionally provide drug abuse services, such as referral.

These regulations do, however, apply to federally assisted specialized drug and alcohol treatment units in general medical facilities and to identified personnel whose primary function is the provision of such services. For example, although the regulations would not ordinarily apply to a staff physician of an emergency room or an intensive care unit who refers an overdose patient to a drug abuse treatment practitioner, they would apply to a drug abuse treatment practitioner whose primary function is to provide such services.

This notice would also update the authority citation to reflect that 42 U.S.C. 290dd–3 and 290ee–3 were amended by section 131 of the ADAMHA Reorganization Act, Public Law 102–321 (July 10, 1992), 42 U.S.C. 290dd–2.

Executive Order 12866

Executive Order 12866 requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term "significant regulatory action" contained in section 3(f) of the Order, pre-publication review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) is necessary. OIRA has thus reviewed this NPRM under the Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that we analyze regulatory proposals to determine whether they create a significant impact on a substantial number of small entities. The Secretary certifies that any final rule resulting from this proposal will not have any such impact.

Paperwork Reduction Act

There are no paperwork requirements in this proposal subject to Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 2

Alcohol abuse, Alcoholism, Confidentiality, Drug Abuse, Health records, Privacy.

Dated: March 16, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: June 27, 1994.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, the Department proposes to amend part 2 of title 42, Code of Federal Regulations, as follows:

PART 2—[AMENDED]

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

Authority: Sec. 408 of Pub. L. 92–255, 86 Stat. 79, as amended by sec. 303 (a), (b) of Pub. L. 93–282, 83 Stat. 137, 138; sec. 4(c)(5)(A) of Pub. L. 94–237, 90 Stat. 244; sec.

111(c)(3) of Pub. L. 94–581, 90 Stat. 2852; sec. 509 of Pub. L. 96–88, 93 Stat. 695; sec. 973(d) of Pub. L. 97–35, 95 Stat. 598; and transferred to sec. 527 of the Public Health Service Act by sec. 2(b)(16)(B) of Pub. L. 98–24, 97 Stat. 182 and as amended by sec. 106 of Pub. L. 99–401, 100 Stat. 907 (42 U.S.C. 290ee–3) and sec. 333 of Pub. L. 91–616, 84 Stat. 1853, as amended by sec. 122(a) of Pub. L. 93–282, 88 Stat. 131; and sec. 111(c)(4) of Pub. L. 94–581, 90 Stat. 2852 and transferred to sec. 523 of the Public Health Service Act by sec. 2(b)(13) of Pub. L. 98–24, 97 Stat. 181 and as amended by sec. 106 of Pub. L. 99–401, 100 Stat. 907 (42 U.S.C. 290dd–3), as amended by sec. 131 of Pub. L. 102–321, 106 Stat. 368, (42 U.S.C. 290dd–1).

§ 2.11 [Amended]

2. In Section 2.11, the definition of *Program* is revised to read as follows:

* * * * *

Program means:

(1) An individual or entity (other than a general medical care facility) who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or

(2) An identified unit within a general medical facility which holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or

(3) Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers. (See § 2.12(e)(1) for example).

* * * * *

§ 2.12 [Amended]

3. Section 2.12(e)(1) is amended by adding the following sentence at the end to read as follows:

* * * * *

(e) * * * (1) * * * However, these regulations would not apply, for example, to emergency room personnel who refer a patient to the intensive care unit for an apparent overdose, unless the primary function of such personnel is the provision of alcohol or drug abuse diagnosis, treatment or referral and they are identified as providing such services or the emergency room has promoted itself to the community as a provider of such services.

* * * * *

[FR Doc. 94–20226 Filed 8–17–94; 8:45 am]

BILLING CODE 4160–20–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[GN Docket No. 94–90, FCC 94–202]

Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220–222 MHz Land Mobile Band and Use of Radio Dispatch Communications

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: In this Notice of Proposed Rule Making (NPRM), the Commission proposes to eliminate the rules that now prohibit wireline telephone carriers from holding licenses in the Specialized Mobile Radio (SMR) service and the commercial 220–222 MHz land mobile band. The NPRM also proposes to eliminate the current prohibition on the provision of dispatch service by cellular licensees and other licensees in the Public Mobile Services.

DATES: Comments are due by September 21, 1994 and reply comments are due by October 6, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Brien Ham or Susan McNeil, Private Radio Bureau, Land Mobile and Microwave Division, (202) 632–2443.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's NPRM in GN Docket No. 94–90, adopted August 2, 1994 and released August 11, 1994. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, N.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Washington, DC 20554.

Synopsis of the Notice of Proposed Rule Making

I. Background

A. Wireline Restrictions

1. When the Commission established the SMR service in 1974, it elected to prohibit wireline telephone common carriers from holding SMR base station licenses. Because of the dominance of the established wireline carriers in the 1970's, the Commission viewed the prohibition on wireline entry as consistent with promoting competition in the fledgling SMR industry. The Commission has also stated that the wireline prohibition was intended to ensure that SMRs would be available as a business opportunity for small entrepreneurs and to reduce incentives for wireline carriers to engage in discriminatory interconnection practices.

2. When 220–222 MHz service was established in 1991, the Commission adopted an identical restriction on wireline eligibility for commercial licenses in that service. The Commission indicated that the rationale for excluding wirelines from SMR licensing also served as the basis for the 220 MHz limitation.

3. In 1986, the Commission issued a Notice of Proposed Rule Making in PR Docket No. 86–3 that proposed to eliminate the SMR wireline restriction. The proceeding was terminated in 1992 on the grounds that the record has become stale. The Commission stated that the wireline restriction should be retained at least until the Commission could more fully evaluate "the competitive potential of private land mobile services vis-a-vis common carrier land mobile providers" so as "to preserve a climate favorable to the continued development of private land mobile competitors."

B. Dispatch Prohibition

4. The Commission currently prohibits common carriers licensed after January 1, 1982, including all cellular licensees, from offering dispatch services. The Commission has since construed the prohibition on dispatch services to include any transmission on cellular frequencies that routes communications through a dispatcher, as opposed to through a cellular switch (i.e., with no intervention by a dispatcher). On the other hand, the Commission has allowed "dispatch-type" communications to be offered through the cellular switched network as long as the communication is not directly between a dispatcher and end user.

II. Discussion

A. Licensee Eligibility in SMR and 220 MHz Commercial Service

5. In evaluating its present wireline restrictions, the Commission tentatively concludes that there is no longer a need for the SMR wireline ban or the commercial 220 MHz wireline restriction in today's competitive mobile service marketplace. First, the Commission notes that the risk of wireline carriers being able to cause competitive harm if allowed to enter the SMR market has diminished in recent

years. When the SMR wireline ban was adopted 20 years ago, mobile services were in their infancy and telecommunications was dominated by wireline carriers under the control of AT&T. Since that time, the breakup of AT&T and the rapid growth of mobile services have combined to create an environment in which wireline carrier participation in mobile services, including participation by the post-divestiture BOCs, has the potential to increase competition rather than impede it.

6. In the Broadband PCS docket, the Commission recently concluded that wireline entities should be allowed to hold broadband PCS licenses without restriction (except to the extent such entities also hold cellular interests). In that proceeding, the Commission determined that wireline participation would produce significant economies of scope between wireline and PCS networks, which, in turn, would promote rapid development of PCS and yield a broader array of PCS services at lower costs to consumers. The Commission has similarly concluded that LECs should be allowed to participate in the provision of narrowband PCS service without restriction. The Commission notes that its conclusions with respect to wireline entry into broadband and narrowband PCS are also potentially applicable to SMR and 220 MHz commercial service.

7. The Commission also questions whether the wireline restriction continues to be necessary to protect against competitive harm. THe wireline restrictions have served to eliminate any incentive for LECs to: (1) Discriminate in the offering of interconnection to nonaffiliated SMR licensees, or (2) use their market power in the local exchange market to cross-subsidize SMR services, thereby undercutting potential competition. Even if the wireline prohibition is eliminated, however, other regulatory safeguards exist and can be enforced to prevent wireline from engaging in these forms of anti-competitive behavior.

8. With respect to discrimination in interconnection, Section 201 of the Communications Act mandates that a carrier must provide reasonable interconnection to any carrier that requests it. In addition, Section 332(c)(1)(B) of the Communications Act, as amended by the Budget Act, requires the Commission pursuant to Section 201 to order common carriers to interconnect with CMRS providers (which includes any SMR or commercial 220 MHz licensee utilizing interconnection) on reasonable request. In its Order implementing this provision, the Commission determined that LECs should provide reasonable interconnection to all CMRS providers in a manner that is consistent with past requirements for cellular providers. In addition, the Commission requires LECs to offer interconnection to PMRS providers.

9. The Commission also notes that independent accounting safeguards exist to protect against cross-subsidization in the event of wireline entry into the SMR service. In the CMRS docket, the Commission indicated that the joint cost and affiliate transaction rules would apply to all CMRS providers with LEC affiliates. These rules require LECs to maintain procedures to separate the costs of the regulated activities from those of their activities that are classified as nonregulated for federal accounting purposes, and to account for their transactions with their nonregulated affiliates. Since most SMRs and commercial 220 MHz licensees fall inside the CMRS definition, these existing and applicable accounting rules should help prevent cross-subsidization.

10. Another reason for eliminating the wireline prohibition is that the SMR industry is sufficiently well-established that wireline entry is unlikely to chill further development of the service. Although SMR operations today are still relatively small in comparison to cellular operations, most available SMR spectrum has been licensed in metropolitan areas. Thus, any threat that wirelines might obtain a substantial portion of SMR spectrum and thereby hinder the development of SMR service by non-wireline carriers is substantially diminished. As a practical matter, wirelines are likely to be largely limited to entering the SMR business by acquiring existing SMR businesses, and all such transfers would be subject to Commission review under existing transfer and control rules.

11. The Commission reached a similar tentative conclusion with respect to wireline participation in commercial 220 MHz service. Although 220 MHz service was established more recently than SMR, substantial licensing has occurred and the service is closed to new applicants for the time being. Thus, wireline entry into commercial 220 MHz service would be likely to be gradual as the service develops, and would be subject to case-by-case review by the Commission. In addition, a more open eligibility policy may be suitable because of the narrowband nature of 220 MHz service. In establishing regulations for the licensing of narrowband PCS, for example, the Commission concluded that LECs should be allowed to participate in the provision of narrowband PCS service without restriction. The Commission reasoned that narrowband PCS was sufficiently disparate from any LEC offering to make negligible any ability these carriers might have to exert undue market power or restrain trade. The Commission solicits comment on whether a similar conclusion is justified in the case of 220 MHz service.

12. Additionally, repeal of the wireline ban could promote opportunities for small entrepreneurs as well as infuse new capital and expertise into the mobile services marketplace. In its request for rule making, Polar Communications suggested that the overwhelming majority of companies shut out of the SMR business by the wireline ban are small, rural telephone companies with capitalizations that are small in comparison to many dominant SMR operators. Repeal of the ban could therefore serve to further competition in the SMR market by increasing the number of small business participants in the service. Future auctions of SMR spectrum could provide additional opportunities for small business entry into SMRS through competitive bidding incentives established for small businesses, minorities, and rural telephone companies.

13. In addition, wireline entry could infuse new capital and expertise into the mobile services marketplace. The SMR industry is in transition, evolving from stand-alone analog to wide-area networks. 220 MHz is also at an important stage of technological development. During this time frame, wirelines can be a key source of capital and expertise for the development of new technological advances that will benefit these services.

14. The Commission concludes that the wireline restrictions have been outmoded by changes in the mobile services marketplace since 1974 and that there may be cause to eliminate these restrictions. Commenters are nevertheless invited to present any views that justify retaining the wireline restrictions. In particular, the Commission is interested in any concerns commenters may have about the potential ability of wirelines to unfairly influence competition in the mobile services marketplace. In addition, commenters may wish to address the alternative of retaining the restrictions for one service and not the other.

15. In proposing to allow wirelines to enter the SMR and commercial 220 MHz markets, the Commission emphasizes its intent to vigorously enforce statutory and regulatory safeguards discussed

above that prohibit wirelines from engaging in discriminatory interconnection practices. Commenters are encouraged to address how to best achieve this objective.

16. Also, assuming the wireline restrictions are repealed, the Commission seeks comment on whether existing accounting safeguards applicable to LECs with CMRS operations are sufficient to protect against cross-subsidization and discriminatory pricing, or whether structural separation requirements should also be imposed. In the Broadband PCS Second Report and Order, the Commission confirmed that the accounting safeguards would apply to PCS but concluded that no new subsidiary rules should be required because it would seriously undermine the ability of LECs to take advantage of their potential economics of scope and would jeopardize other public interest benefits of wireline participation in PCS. Commenters should address whether added structural separation requirements would similarly undermine the potential public interest benefits of wireline entry into the SMR and commercial 220 MHz markets.

17. Finally, assuming that the wireline restriction is eliminated, the issue arises whether there is a need to impose other eligibility restrictions on SMR and commercial 220 MHz applicants to address present day competitive concerns. In particular, the Commission has recognized in other contexts that it cannot yet determine that cellular licensees lack market power in the mobile services market. The Commission will defer consideration of whether this market power is sufficient to justify restrictions on cellular eligibility for SMR or 220 MHz licensing pending a decision in General Docket 93–252 on a proposal to impose a general limit on the amount of spectrum that any CMRS licensee may acquire in a given geographic market.

B. Common Carrier Dispatch Prohibition

18. The Commission proposes to amend its rules to permit all mobile service common carriers to provide dispatch service. A number of parties have indicated in the past that repeal of the dispatch ban would enhance competition in the dispatch market and thereby provide consumers with expanded choice. The Commission tentatively agrees with these views and therefore is included to repeal the present prohibition entirely. Commenters should address the Commission's conclusion that repeal of the dispatch ban will lead to more innovative service offerings and lower costs for dispatch customers. The Commission also seeks comment on whether repeal of the ban will increase opportunities for dispatch customers to obtain service from commercial vendors as an alternative to relying on internal systems or systems shared with other eligible users.

19. The Commission also encourages commenters to provide data on the current state of competition in the dispatch market, including the level of participation by small businesses. Commenters are also asked to address the potential for participation in the dispatch market by mobile service common carriers, including (1) types of dispatch services that common carrier licensees are most likely to offer, (2) any technical advantages or disadvantages to offering dispatch service on a common carrier mobile service system, and (3) the effect of common carrier entry on competition in the dispatch market. Commenters should further consider whether common carriers operating in the dispatch market could engage in discriminatory pricing or cross-subsidization activities that would place dispatch competitors at a disadvantage.

20. If the Commission concludes that immediate lifting of the dispatch prohibition could have an anti-competitive impact, one alternative would be to "sunset" the rule at some point in the future. For example, the Commission could delay repeal of the rule until August 10, 1996, three years from the date the Budget Act amendments became law. This effective date would coincide with the conclusion of the three year transition period provided in the Budget Act for existing private land mobile licensees to adjust to regulation as CMRS providers. A sunset provision would also effectively defer cellular participation in the dispatch market and thereby give the Commission more time to evaluate information concerning the state of competition in the dispatch market. The Commission seeks comment on this alternative.

21. Another alternative to outright repeal of the ban on common carrier dispatch service would be to allow mobile common carrier licensees to provide dispatch service only on a secondary basis or to impose a limit on the amount of system capacity that common carrier licensees may devote to dispatch service. Consumers appear to identify cellular as primarily a two-way service, therefore cellular providers may in any case be reluctant to divert system capacity from voice to dispatch service. On the other hand, if dispatch evolves from a primarily analog service to a primarily digital service, cellular licensees may have ample capacity to provide both radiotelephone and dispatch. In light of these factors, the Commission seeks comment on whether imposing limits on cellular dispatch is necessary or practical.

22. Finally, the Commission asks commenters to consider the treatment of dispatch offered by common carriers other than land mobile service providers, e.g. aviation, marine, and mobile satellite licensees who provide common carrier service. These categories of common carriers were not previously prohibited from offering dispatch service under old Section 332 of the Communications Act, which applied only to land mobile services. Because Section 332 as amended applies to all mobile services, however, an issue arises whether these categories of licensees now fall within the scope of the prohibition absent further Commission action. The Commission believes that Congress did not intend to extend the dispatch ban to non-land mobile licensees but meant simply to repeat and incorporate its old prohibition against common carrier land mobile service providers offering dispatch without modification and to give the Commission authority to repeal the prohibition in whole or in part. The Commission seeks comment on this view.

III. Procedural Matters

23. *Initial Regulatory Flexibility Analysis.* Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of the proposed rule changes on small entities. Written public comments are requested on the IRFA.

I. *Reason for Action.* This rule making proceeding was initiated to solicit comment on proposals to amend Sections 90.603(c), 90.703, 22.519(a) and 22.911(d) of the Commission's rules. The basic proposals are (1) Repeal the ban on wireline telephone carrier eligibility for Specialized Mobile Radio Service (SMR) and commercial 220–222 MHz (commercial 220 MHz) land mobile service and (2) permit all commercial mobile service providers to offer dispatch service in competition with SMR systems.

II. *Objectives.* In making the above proposals, the Commission intends to promote competition, growth and innovation at a time when the mobile services marketplace is undergoing regulatory changes.

III. *Legal Basis.* The proposed action is authorized under Sections 3(n), 4(i), 303(r), 332(c), and 32(d) of the

Communications Act of 1934, 47 U.S.C. 153(n), 154(i) and 303(r), 332(c) and 332(d), as amended.

IV. *Reporting, Recordkeeping and Other Compliance Requirements.* None.

V. *Federal Rules Which Overlap, Duplicate or Conflict With Rules.* None.

VI. *Description, Potential Impact, and Number of Small Entities Involved.* Many small entities could be affected by the proposals contained in the *Notice.* The full extent of the impact cannot be predicted until the issues presented in this proceeding are resolved. The Commission will evaluate comments in response to the *Notice* and will set forth its findings on the impact of the rule changes on small entities in the Final Regulatory Flexibility Analysis.

VII. *Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives.* The *Notice* solicits comments on the alternative described above. Any additional significant alternatives presented in the comments will also be considered.

24. *Ex Parte Rules/Non-Restricted Proceeding.* This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, 1.120(a).

25. *Comment Period.* For filing requirements, *see generally* 47 CFR 1.415, 1.419. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting materials. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition, commenters are requested to submit courtesy copies to the Chief, Land Mobile and Microwave Division, Private Radio Bureau, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) at the Commission's headquarters at 1919 M Street, N.W., Washington, D.C.

26. *Paperwork Reduction Act:* No significant impact.

List of Subjects

47 CFR Part 22

Public mobile services; Radio.

47 CFR Part 90

Private land mobile services; Radio.

William F. Caton,

Acting Secretary.

[FR Doc. 94–19990 Filed 8–17–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 253

Defense Federal Acquisition Regulation Supplement; Uniform Procurement Instrument Identification Numbers

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the numbering system for identifying Department of Defense (DoD) orders placed against another DoD activity's contracts and to replace the DoD activity address numbers with DoD activity address codes.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 19, 1994, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mrs. Linda Holcombe, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington DC 20301–3062. Please cite DFARS Case 92–D044 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Linda S. Holcombe, Procurement Analyst, DAR Council, (703) 604–5929, FAX No. (703) 604–5971.

SUPPLEMENTARY INFORMATION:

A. Background

For information and planning purposes, a proposed revision to the DFARS uniform procurement instrument identification numbering system was included as Attachment 1 to the Defense Acquisition Circular 91–1. The proposed revisions to DFARS Subparts 204 and 253 differ substantially from those Attachment 1 revisions and provide a streamlined, uniform system for identifying orders placed against another activity's contracts as well as a uniform system of identifying contracting activities through use of the DoD activity address codes with are universal throughout supply, logistics and procurement organizations.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.* because the numbering system proposed for DoD orders placed against another DoD activity's contracts is identical to that presently in use throughout DoD when numbering orders placed against contracts issued outside of DoD. The change from use of the DoD activity address numbers listed in DFARS Appendix G, to the use of existing DoD activity address codes prescribed by DoD 4000.25–6–M, DoD Activity Address Directory, does not affect the public because it merely changes the characters used to identify particular contracting activities. No new requirements are being imposed on the public. An Initial Regulatory Flexibility Analysis has therefore not been performed. The proposed rule applies to both large and small businesses. Comments are invited from small businesses and other interested parties. Comments from small entities will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 92–D044 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et. seq.*

List of Subjects in 48 CFR Parts 204 and 253

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Parts 204 and 253 be amended as follows:

1. The authority citation for 48 CFR Parts 204 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.7000 is revised to read as follows:

204.7000 Scope.

This subpart prescribes policies and procedures for assigning numbers to all

solicitations, contracts, and related instruments. This supbart—

(a) Does not apply to solicitations or contracts issued by the Defense Commerical Communications Office of the Defense Information Systems Agency; and

(b) Is optional for solicitations and contracts that will be completely administered and paid by purchasing office or the consignee, except that—

(1) The procurement instrument identification (PII) number, including modification numbers, shall not exceed 26 characters (excluding hyphens); and

(2) The number shall begin with the DoD activity address code (DODAAC) of the office issuing the instrument and the fiscal year in accordance with 204.7003(a) (1) and (2).

3. Section 204.7002 is revised to read as follows:

204.7002 Procedures.

(a) In assigning PII numbers—

(1) Use only the alpha-numeric characters, as prescribed in this supbart; and

(2) Do not use the letters "I" or "O".

(b) If department/agency procedures require other identification on the solicitation, contract, or other related instrument forms, enter it in such a location so as to separate it clearly from the PII number.

(c) Enter the basic PII number and any supplementary numbers in the spaces provided on the solicitation, contract, or related instrument forms. Separate the major elements by dashes, e.g., N00023–90–D–0009. If there is insufficient space provided on the form, enter the number in the upper right corner of the form and identify what it is (e.g., Supplementary PII Number N00023–90–F–0120). When issuing calls/orders against a non-DoD contract, Federal Supply Schedule or agreement, treat the non-DoD contract, schedule or agreement number as if it is a basic PII number for the purpose of completing solicitation, contract or related forms.

4. Section 204.7003 is revised to read as follows:

204.7003 Basic PII number (issued by a DoD activity).

(a) *Elements of a number.* The number consists of 13 alpha-numeric characters grouped to convey certain information.

(1) *Positions 1 through 6.*

The first six positions identify the office issuing the instrument. Use the six-position alpha/numeric DoD activity address code as prescribed by DoD 4000.25–6–M, DoD Activity Address Directory.

(2) *Positions 7 through 8.*

The seventh and eighth positions are the last two digits of the fiscal year in which the PII number is assigned.

(3) *Position 9.*

Indicate the type of instrument by entering one of the following upper case letters in position nine—

(i) Blanket purchase agreements—A

(ii) Invitations for bids—B

(iii) Contracts of all types except indefinite delivery contracts, facilities contracts, sales contracts, and contracts placed with or through other Government departments or agencies.—C

(iv) Indefinite delivery contracts—D

(v) Facilities contracts—E

(vi) Contracting actions placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD (including actions placed using the Procurement List published by the Committee for the Purchase from the Blind and Other Severely Handicapped. This letter is also used in supplementary PII numbers. See 204.7004(a)(2)(iii)(B).)—F

(vii) Basic ordering agreements—G

(viii) Agreements, including basic agreements and loan agreements, but excluding blanket purchase agreements, basic ordering agreements, and leases—H

(ix) (Do not use)—I

(x) (Do not use. This letter is used only in supplementary PII numbers. See 204.7004(a)(2)(iii)(A).—J

(xi) Short form research contract—K

(xii) Lease agreement—L

(xiii) Purchase orders—Manual (assign W when numbering capacity of M is exhausted during the fiscal year)—M

(xiv) Notice of intent to purchase—N

(xv) (Do not use)—O

(xvi) Purchase order—automated (assign V when numbering capacity of P is exhausted during a fiscal year)—P

(xvii) Request for quotation—manual—Q

(xviii) Request for proposal—R

(xix) Sales contract—S

(xx) Request for quotation—automated (assign U when numbering capacity of T is exhausted during a fiscal year)—T

(xxi) (See T)—U

(xxii) (See P)—V

(xxiii) (See M)—W

(xxiv) (Reserved for departmental use)—X

(xxv) Imprest fund—Y

(xxvi) Reserved for departmental use—Z

(4) *Positions 10 through 13.*

Enter the unique serial number of the instrument in these positions. A separate series of unique serial numbers may be used for any type of instrument listed in paragraph (a)(3) of this section. Activities shall assign such series of PII numbers sequentially. An activity may reserve blocks of serial numbers for use by its various components.

(b) *Illustration of PII number.* The following illustrates a properly configured PII number—

BILLING CODE 5000–04–M

Position	Contents
1-6	Identification of department/agency contracting office
7-8	Last two digits of the fiscal year in which the PII number is assigned
9	Type of Instrument
10-13	Four position serial number

N00062-90-C-0001

BILLING CODE 5000-04-C

5. Section 204.7004 is revised to read as follows:

204.7004 Supplementary PII (SPII) numbers.

Use supplementary numbers with the basic PII number, to identify—

(a) *Delivery orders under indefinite delivery contracts, orders under basic ordering agreements, calls under blanket purchase agreements, and DOD orders against Federal Supply Schedule contracts.*

(1) *Orders or calls issued by the office identified in the basic PII number.* Use a four-position alpha-numeric serial number added to the basic PII number. Use serial numbers beginning with 0001 and continuing through 9999. When the numeric identifiers run out, use alpha characters or a combination of alpha and numeric characters (but do not use alpha characters "I" or "O").

(2) *Orders or calls issued by an office other than the office identified in the basic PII number.* Construct a 13-position supplementary PII number as follows:

(i) *Positions 1 through 6.* To identify the office issuing the order or call, use the six-position alpha-numeric DoD Activity Address Code (DODAAC) prescribed by DoD 4000.25-6-M, DoD Activity Address Directory.

(ii) *Positions 7 and 8.*

Use the last two digits of the fiscal year in which the SPII number is assigned.

(iii) *Position 9.*

(A) For orders or calls placed against a contract or agreement issued by a department or agency within DoD, enter an upper case J.

(B) For orders or calls placed against a contract or agreement issued by a department or agency outside DoD, enter an upper case F.

(iv) *Positions 10 through 13.*

Enter the unique serial number beginning with 0001 and continuing through 9999. Each office issuing orders or calls may assign a separate series of unique serial numbers for the J or F instrument types listed in (iii). When the numeric identifiers run out, use alpha characters as follows: A000–ZZZZ, except do not use the letters "I" and "O".

Activities shall assign such series of SPII numbers sequentially. An activity may reserve blocks of serial numbers for use by its various components.

(b) *Amendments to solicitations.*

Number amendments to solicitations sequentially using a four-position numeric serial number added to the basic PII number and beginning with 0001, e.g., N00062-91-R-1234-0001.

(c) *Modifications to contracts and agreements.*

(1) Number modifications to contracts and agreements using a six-position alpha-numeric serial number added to the basic PII number.

(2) *Position 1.*

Identify the office issuing the modification—

(i) Contract administration office

(ii) Contracting office

(3) *Position 2.*

Identify Air Force provisioned orders, initial or amended shipping instructions meeting the conditions given below, and definization of letter contracts by using only the letters prescribed below. If none of the following situations apply, then assign the modification a serial number using positions two through six, but do not use I, K through Q or S through Z in this position two. See examples in paragraph (c)(5) of this section.

(i) Use K, L, M, N, P or Q in position two if the modification is issued by the Air Force and is a provisioned item order.

(ii) Use S in position two if the modification provides initial or amended shipping instructions and the price changes.

(iii) Use T, U, V, W, X or Y in position two if the modification provides initial or amended shipping instructions when the contract has f.o.b origin delivery terms and the price does not change.

(iv) Use Z in position two if the modification definitizes a letter contract.

(4) *Positions 3 through 6.*

Use a separate series of serial numbers for each type of modification listed in paragraph (c)(3) of this section.

(5) Examples of proper numbering for positions 2–6 (the first position will be either "A" or "P") are as follows:

Normal modification	Provisioned items order (reserved for use by the Air Force only)	Shipping instructions
00001–99999.	K0001–K9999	S0001–S9999
then	KA001–KZ999	SA001–SZ999
A0001–A9999.	L0001–L9999 .	T0001–T9999

Normal modification	Provisioned items order (reserved for use by the Air Force only)	Shipping instructions
B0001–B9999.	LA001–LZ999	TA001–TZ999
and so on to.	M0001–M9999	U0001–U9999
H0001–H9999.	MA001–MZ999	UA001–UZ999
then	N0001–N9999	V0001–V9999
J0001–J9999.	NA001–NZ999	VA001–VZ999
then	P0001–P9999	W0001–W9999
R0001–R9999.	PA001–PZ999	WA001–WZ999
then	Q0001–Q9999	X0001–X9999
AA001–HZ999.	QA001–QZ999	XA001–XZ999
then	.....	Y0001–Y9999
JA001–JZ999.		YA001–YZ999
RA001–RZ999.		

(6) If the contract administration office is changing the contract administration or disbursement office for the first time and is using computer-generated modifications to notify many offices, it uses the six-position supplementary number ARZ999. If either office has to be changed again during the life of the contract, the supplementary number will be ARZ998, and on down as needed.

(7) Each office authorized to issue modifications shall assign the supplementary identification numbers in sequence. Do not assign the numbers until it has been determined that a modification is to be issued.

(d) *Modifications to calls or orders issued by the office identified in the basic PII number.*

Use a two-position alpha-numeric suffix, known as a call or order modification indicator, to identify these modifications.

(1) Modifications issued by a purchasing office begin with 01, 02, and so on through 99, then B1 through B9, BA through BZ, C1 through C9, and so on through ZZ.

(2) Modifications issued by a contract administration office begin with 1A, 1B, and so on through 9Z, followed by A1, A2, and so on to A9, then AA, AB, and so on through AZ.

(e) *Modifications to calls or orders issued by an office other than the office identified in the basic PII number.*

Number these modifications as prescribed in paragraph (d) of this section. Disregard the instructions in paragraph (c)(3) for identifying certain types of modifications by coding position two, and assign the modification a serial number using positions two through six, e.g., A00001 or P00001.

PART 253—FORMS

6. Section 253.204–70(b)(2) is revised to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

(a) * * *

(b) (1) * * *

(2) Block B2, Mod. Order or Other ID Number. Enter the Supplemental procurement instrument identification number (if there is one) that was assigned in accordance with 204.7004 or as permitted by 204.7000. Calls and orders will have either a four-position or a 13-position number (see 204.7004(a)) and modifications (including modifications of calls or orders) will have either a six position or a two-position modification number (see 204.7004(c), (d) or (e)).

* * * * *

[FR Doc. 94–20224 Filed 8–17–94; 8:45 am]

BILLING CODE 5000–04–M

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48 CFR Parts 215 and 244 and Appendix C to 48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement; Greatest Value Sources

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of Defense is proposing changes to the Defense Federal Acquisition Regulation Supplement to clarify its existing policy concerning the selection of subcontractors based on greatest value and also to provide more definitive items to consider when evaluating contractors' vendor performance rating systems.

DATES: Comments on the proposed rule should be submitted in writing at the address shown below on or before October 17, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric R. Mens, PDUSD (A&T)DP/DAR, IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 604–5971. Please cite DFARS Case 93–D020 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Eric R. Mens, (702) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation (FAR) at 15.605(c) currently authorizes contracting officers to select the source which offers the greatest value to the Government. The Government's policy with regard to contractors applying the "greatest value" concept to the selection of subcontractors is not as clear. The proposed rule revised the Defense FAR Supplement (DFARS) to add language at 215.806–1(a)(1) to clarify the Government's existing policy as it pertains to the selection of subcontractors based on the greatest value; adds language at DFARS 244.202–2 with regard to the basis for the selection of subcontractors which contracting officers should consider when consent to subcontract is required; and revises Appendix C–207.5 to establish more definitive items for Government personnel to consider when evaluating contractor vendor rating systems in the course of conducting a Contractor Purchasing System Review.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because (1) the rule merely clarifies the Government's existing policy on contractor selection of subcontractors based on greatest value, (2) the requirement to prepare documentation to support the prime contractor's selection of subcontractors already exists, and (3) most small entities are not subject to the requirements for a Contractor Purchasing System Review under FAR subpart 44.3. Moreover, the revised Appendix C guidance for evaluating prime contractor vendor rating systems is intended to emphasize the importance of maintaining competitive opportunities for subcontractors while selecting such sources on the basis of greatest value. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 610 (DFARS Case 93–D020) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional reporting or recordkeeping

requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.* Contractors which may be subject to the proposed rule are already required by the FAR and DFARS to conduct and document an appropriate and adequate cost or price analysis before awarding any subcontract. The proposed rule does not impose any requirement for contractors to establish a formal system for the selection of subcontractors and suppliers based on greatest value. Rather, the rule clarifies the Government's existing policy of recognizing that, where such vendor rating systems exist, they may be a valuable tool in the establishment of best value sources. This rule also provides a list of more definitive items for consideration in the evaluation of a contractor's purchasing system, if applicable, under FAR subpart 44.3.

List of Subjects in 48 CFR Parts 215 and 244 and Appendix C to 48 CFR Chapter 2

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Parts 215 and 244 and Appendix C to 48 CFR Chapter 2 are amended as follows:

1. The authority citations for 48 CFR Parts 215 and 244 and Appendix C to 48 CFR Chapter 2 are revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.806–1(a)(1) is revised to read as follows:

215.806 Subcontract pricing considerations.

215.806–1 General.

* * * * *

(a)(1) Contractor and subcontractor proposals may reflect the selection of sources whose proposals offer the greatest value to the Government in terms of performance and other factors. If the selection is based on greatest value rather than lowest price, the analysis supporting subcontractor selection should include a discussion of the factors considered in the selection. If the contractor's analysis is not adequate, return it for correction of deficiencies.

* * * * *

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

3. Subpart 244.2 is added to read as follows:

Subpart 244.2—Consent to Subcontracts

Sec.
244.202 Contracting officer's evaluation.
244.202–2 Considerations.

Subpart 244.2—Consent to Subcontracts

244.202 Contracting officer's evaluation.

244.202–2 Considerations.

(a) Where other than lowest price is the basis for subcontractor selection, has the contractor adequately substantiated the selection as offering the greatest value to the Government?

Appendix C to 48 CFR Chapter 2—Contractor Purchasing System Reviews

4. Section C–207.5 is amended by revising paragraph (b) to read as follows:

C–207.5 Subcontractor responsibility and vendor performance rating system (IIG5).

(a) * * *

(b) *Vendor performance rating systems.* Contractor vendor performance rating systems may be a valuable element in the contractor's selection of subcontractors that offer the greatest value to the Government. State in the report whether the contractor has a vendor rating system. If the contractor has a system in place, evaluate its effectiveness in selecting sources. Consider whether the system—

(1) Allows consistency of comparisons among competing subcontractors;

(2) Protects rating information;

(3) Provides appropriate documentation for each element rated;

(4) Allows adequate opportunities for new subcontractor to compete;

(5) Provides for evaluations by appropriate functional areas; and

(6) Is kept current and accurate.

[FR Doc. 94–20223 Filed 8–17–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[I.D. 081594A]

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council has submitted Amendment 7 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before October 11, 1994.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

Requests for copies of Amendment 7, which includes a regulatory impact review and an environmental assessment, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; FAX 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared amendment to a fishery management plan be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an amendment, immediately publish a document that the amendment is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

Amendment 7 proposes to: Change the minimum size limits of certain species, require charter vessels/headboats and dealers to obtain Federal permits, clarify one of the earned income requirements for a vessel permit, restrict the sale/purchase of snapper-grouper species, modify the criteria for determining when a vessel is operating as a headboat, modify the requirements for possessing multi-day bag limits, specify allowable gear, authorize permits for experimental fishing, modify the management unit for scup, add to the FMP's lists of problems in the snapper-grouper fishery and its objectives, and modify the framework procedure for implementing or modifying certain management measures.

Proposed regulations to implement Amendment 7 are scheduled for publication within 15 days.

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

Dated: August 15, 1994.

David S. Crestin,

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

[FR Doc. 94–20321 Filed 8–15–94; 2:03 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 159
Thursday, August 18, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Suitability Study of Snowbird Creek for Inclusion in the National Wild and Scenic Rivers System; Nantahala National Forest (National Forests in North Carolina), Graham County, NC

AGENCY: USDA, Forest Service.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement (EIS) to evaluate the environmental impacts of including suitable segments of Snowbird Creek, classified as wild, scenic, and/or recreational, in the National Wild and Scenic Rivers System. The decision to recommend the nomination of suitable river segments to the National Wild and Scenic Rivers System rests with the Secretary of Agriculture. The Wild and Scenic Rivers Act (PL 90–542) reserves to Congress the authority to include rivers in the National Wild and Scenic Rivers System.

The agency invites written comments on the suitability of this river for designation and on significant issues related to including it in the National Wild and Scenic Rivers System. In addition, the agency gives notice of the full environmental analysis and decision making process that has been occurring on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision. The Supervisor of the National Forests in North Carolina is responsible for the preparation of the EIS.

ADDRESSES: Send written comments to Snowbird Creek Wild and Scenic River Study, c/o Randle Phillips, Forest Supervisor, P.O. Box 2750, Asheville, NC 28802.

FOR FURTHER INFORMATION CONTACT: Melinda McWilliams, Wild and Scenic Rivers Study Team Leader, U.S. Forest Service, P.O. Box 2750, Asheville, NC 28802, 704/257–4253.

SUPPLEMENTARY INFORMATION: In 1982, the Nationwide River Inventory developed by the National Park Service, U.S. Department of Interior, identified Snowbird Creek as a potential wild and scenic study river. The 1987 Final Environmental Impact Statement (FEIS) for the Land and Resource Management Plan for the Nantahala and Pisgah National Forests determined Snowbird Creek to be eligible for designation, with potential wild and recreational classifications for different segments. (That information and additional findings will be documented in this EIS.) The river was determined to be potentially suitable for designation pending further study. This follow-up study to the Forest Plan FEIS was begun in 1991. The decision to be made in this river study is whether or not the river is suitable for designation. If found suitable, the decision to be made in the EIS is whether or not to recommend all or portions of the suitable segments for designation and inclusion in the National Wild and Scenic Rivers System. Based on the final recommendation made by the Secretary of Agriculture, the Forest Plan will be amended as appropriate.

The study and EIS will consider Snowbird Creek in its entirety, from its headwaters to the backwaters of Santeetlah Lake, for a total of 20.2 miles. The area of consideration is a corridor a minimum of ¼ mile from each stream bank for the entire length of the study segment. This corridor includes both public and private lands.

Significant issues identified during initial scoping include the effects of designation on private lands, the need to protect the free-flowing condition and resource values of the river, and general opposition to any type of federal designation.

A range of alternatives will be developed based on issues and concerns raised during the study process. As a minimum, one alternative will maintain current management with a recommendation of nondesignation for Snowbird Creek (the no action alternative). Other potential alternatives include: 1. Recommend designation for all eligible segments. 2. Recommend designation or nondesignation for specific river segments based on identified issues. The environmental impact statement will disclose the direct, indirect, and cumulative effects of implementing each alternative.

Public participation is important at several points during the analysis process. The first point was the scoping process (40 CFR 1501.7). The scoping process includes, but is not limited to: (1) identifying potential issues, (2) identifying issues to be analyzed in depth, (3) eliminating insignificant issues or those that have been covered by a relevant previous environmental analysis, (4) exploring additional alternatives, and (5) identifying potential (direct, indirect, and cumulative) environmental effects of the alternatives.

During the scoping process, the Forest Service sought information, comments, and assistance from Federal, State, and local agencies and individuals or organizations who may be interested in or affected by the proposal. News releases were published in local newspapers and individual letters were distributed to government agencies, organizations, landowners along the rivers and individuals assumed to be interested in this action. Informal contacts through phone calls and visits have also occurred throughout the study. Additional mailings and media releases will occur when the Draft EIS and Final EIS are completed and available for public review.

The responsible official is Mike Espy, Secretary of Agriculture, Administration Bldg., 12th Street and Jefferson Drive, S.W., Washington, DC 20250.

The Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by January 1995. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Upon release of the draft environmental impact statement, projected for January 1995, reviewers must structure their participation in the environmental review of the proposal so that it is

meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* vs. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but are not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* vs. *Hodel*, 803F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* vs. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposal participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages and chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions at the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by July 1995.

The Secretary of Agriculture will consider comments, responses, and environmental consequences discussed in the final environmental impact statement and applicable laws, regulations, and policies in making his recommendation to the President regarding the suitability of this river for inclusion in the National Wild and Scenic Rivers System. The decision on the inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

Dated: August 8, 1994.

Sterling J. Wilcox,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 94–20268 Filed 8–17–94; 8:45 am]

BILLING CODE 3410–11–M

Suitability Study of East Fork Pigeon River for Inclusion in the National Wild and Scenic Rivers System; Pisgah National Forest (National Forests in North Carolina), Haywood County, NC

AGENCY: USDA, Forest Service.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement (EIS) to evaluate the environmental impacts of including suitable segments of East Fork Pigeon River, classified as wild, scenic, and/or recreational, in the National Wild and Scenic Rivers System. The decision to recommend the nomination of suitable river segments to the National Wild and Scenic Rivers System rests with the Secretary of Agriculture. The Wild and Scenic Rivers Act (PL 90–542) reserves to Congress the authority to include rivers in the National Wild and Scenic Rivers System.

The agency invites written comments on the suitability of this river for designation and on significant issues related to including it in the National Wild and Scenic Rivers System. In addition, the agency gives notice of the full environmental analysis and decision making process that has been occurring on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision. The Supervisor of the National Forests in North Carolina is responsible for the preparation of the EIS.

ADDRESSES: Send written comments to East Fork Pigeon River Wild and Scenic River Study, c/o Randle Phillips, Forest Supervisor, P.O. Box 2750, Asheville, NC 28802.

FOR FURTHER INFORMATION CONTACT: Melinda McWilliams, Wild and Scenic Rivers Study Team Leader, U.S. Forest Service, P.O. Box 2750, Asheville, NC 28802, 704/257–4253.

SUPPLEMENTARY INFORMATION: In 1982, the Nationwide River Inventory developed by the National Park Service, U.S. Department of Interior, identified East Fork Pigeon River as a potential wild and scenic study river. The 1987 Final Environmental Impact Statement (FEIS) for the Land and Resource Management Plan for the Nantahala and Pisgah National Forests determined East Fork to be eligible for designation, with potential wild and recreational classifications for different segments. (That information and additional findings will be documented in this EIS). The river was determined to be potentially suitable for designation pending further study. This follow-up study to the Forest Plan FEIS was begun in 1990. The decision to be made in this river study is whether or not the river is suitable for designation. If found suitable, the decision to be made in the EIS is whether or not to recommend all or portions of the suitable segments for designation and inclusion in the National Wild and Scenic Rivers System. Based on the final recommendation made by the Secretary of Agriculture, the Forest Plan will be amended as appropriate.

The Environmental Impact Statement will consider the following river segments:

East Fork Pigeon River.	Confluence of Dark Prong and Yellowstone Prong downstream to first U.S. Highway 276 crossing.	4.0 miles
Dark Prong.	Headwaters to East Fork.	2.6 miles
Yellowstone Prong.	Headwaters to East Fork..	3.2 miles

The area of consideration for each stream is a corridor a minimum of ¼ mile from each stream bank for the entire length of the study segment. These corridors include only public lands.

Significant issues identified during initial scoping include the effects of designation on private lands and the need to protect the free-flowing condition and resource values of these rivers.

A range of alternatives will be developed based on issues and concerns raised during the study process. As a minimum, one alternative will maintain current management with a recommendation of nondesignation for East Fork, Dark Prong and Yellowstone Prong (the no action alternative). Other potential alternatives include: 1. Recommend designation for all eligible segments. 2. Recommend designation or nondesignation for specific river segments based on identified issues. The environmental impact statement will disclose the direct, indirect, and cumulative effects of implementing each alternative.

Public participation is important at several points during the analysis process. The first point was the scoping process (40 CFR 1501.7). The scoping process includes, but is not limited to: (1) Identifying potential issues, (2) identifying issues to be analyzed in depth, (3) eliminating insignificant issues or those that have been covered by a relevant previous environmental analysis, (4) exploring additional

alternatives, and (5) identifying potential (direct, indirect, and cumulative) environmental effects of the alternatives.

During the scoping process, the Forest Service sought information, comments, and assistance from Federal, State, and local agencies and individuals or organizations who may be interested in or affected by the proposal. News releases were published in local newspapers; individual letters were distributed to government agencies, organizations, landowners along the rivers and individuals assumed to be interested in this action; and a meeting was held in the local river community. Informal contacts through phone calls and visits have also occurred throughout the study. Additional mailings and media releases will occur when the Draft EIS and Final EIS are completed and available for public review.

The responsible official is Mike Espy, Secretary of Agriculture, Administration Bldg., 12th Street and Jefferson Drive, SW., Washington, DC 20250.

The Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by February 1995. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Upon release of the draft environmental impact statement, projected for February 1995, reviewers must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but are not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposal participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages and chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions at the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by August 1995.

The Secretary of Agriculture will consider comments, responses, and environmental consequences discussed in the final environmental impact statement and applicable laws, regulations, and polices in making his recommendation to the President regarding the suitability of this river for inclusion in the National Wild and Scenic Rivers System. The decision on the inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

Dated: August 8, 1994.

Sterling J. Wilcox,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 94–20267 Filed 8–17–94; 8:45 am]

BILLING CODE 3410–11–M

Suitability Study of Wilson Creek for Inclusion in the National Wild and Scenic Rivers System; Pisgah National Forest (National Forests in North Carolina), Avery and Caldwell Counties, NC

AGENCY: USDA, Forest Service.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement (EIS) to evaluate the environmental impacts of including suitable segments of Wilson Creek, classified as wild, scenic, and/or recreational, in the National Wild and Scenic Rivers System. The decision to recommend the nomination of suitable river segments to the National Wild and Scenic Rivers System rests with tne Secretary of Agriculture. The Wild and Scenic Rivers Act (Pub. L. 90–542) reserves to Congress the authority to include rivers in the National Wild and Scenic Rivers System.

The agency invites written comments on the suitability of this river for designation and on significant issues related to including it in the National Wild and Scenic Rivers System. In addition, the agency gives notice of the full environmental analysis and decision making process that has been occurring on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision. The Supervisor of the National Forests in North Carolina is responsible for the preparation of the EIS.

ADDRESSES: Send written comments to Wilson Creek Wild and Scenic River Study, c/o Randle Phillips, Forest Supervisor, P.O. Box 2750, Asheville, NC 28802.

FOR FURTHER INFORMATION CONTACT: Melinda McWilliams, Wild and Scenic Rivers Study Team Leader, U.S. Forest Service, P.O. Box 2750, Asheville, NC 28802, 704/257–4253.

SUPPLEMENTARY INFORMATION: In 1982, the Nationwide River Inventory developed by the National Park Service, U.S. Department of Interior, identified Wilson Creek as a potential wild and scenic study river. The 1987 Final Environmental Impact Statement (FEIS) for the Land and Resource Management Plan for the Nantahala and Pisgah National Forests determined Wilson Creek to be eligible for designation, with potential wild and recreational classifications for different segments, but not suitable. This finding of not suitable was appealed. This analysis, begun in 1990, is being conducted in response to that appeal. The decision to be made in the river study is whether or not the river is suitable for designation. If found suitable, the decision to be made in the EIS is whether or not to recommend all or portions of the suitable segments for designation and inclusion in the National Wild and Scenic Rivers System. Based on the final recommendation made by the Secretary of Agriculture, the Forest Plan will be amended as appropriate.

The study and EIS will consider Wilson Creek in its entirety, from its headwaters on Grandfather Mountain to its confluence with Johns River, for a total of 23.3 miles. The area of consideration is a corridor a minimum of ¼ mile from each stream bank for the entire length of the study segment. This

corridor includes both public and private lands.

Significant issues identified during initial scoping include the potential for designation to restrict undesirable uses on private lands within the river corridor, the effects of designation on private lands, and protection of the free-flowing condition and resource values of the river. Some people oppose any type of federal designation.

A range of alternatives will be developed based on issues and concerns raised during the study process. As a minimum, one alternative will maintain current management with a recommendation of nondesignation for Wilson Creek (the no action alternative). Other potential alternatives include: 1. Recommend designation for all eligible segments. 2. Recommend designation or nondesignation for specific river segments based on identified issues. The environmental impact statement will disclose the direct, indirect, and cumulative effects of implementing each alternative.

Public participation is important at several points during the analysis process. The first point was the scoping process (40 CFR 1501.7). The scoping process includes, but is not limited to: (1) Identifying potential issues, (2) identifying issues to be analyzed in depth, (3) eliminating insignificant issues or those that have been covered by a relevant previous environmental analysis, (4) exploring additional alternatives, and (5) identifying potential (direct, indirect, and cumulative) environmental effects of the alternatives.

During the scoping process, the Forest Service sought information, comments, and assistance from Federal, State, and local agencies and individuals or organizations who may be interested in or affected by the proposal. News releases were published in local newspapers and individual letters were distributed to government agencies, organizations, landowners along the rivers and individuals assumed to be interested in this action. Informal contacts through phone calls and visits have also occurred throughout the study. Additional mailings and media releases will occur when the Draft EIS and Final EIS are completed and available for public review.

The responsible official is Mike Espy, Secretary of Agriculture, Administration Bldg., 12th Street and Jefferson Drive, S.W., Washington, DC 20250.

The Draft Environmental Impact Statement is expected to be filed with the Environmental protection Agency (EPA) and available for public review by November 1994. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Upon release of the draft environmental impact statement, projected for November 1994, reviewers must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but are not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposal participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages and chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions at the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by June 1995.

The Secretary of Agriculture will consider comments, responses, and environmental consequences discussed in the final environmental impact statement and applicable laws, regulations, and policies in making his recommendation to the President regarding the suitability of this river for inclusion in the National Wild and Scenic Rivers System. The decision on the inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

Dated: August 8, 1994.

Sterling J. Wilcox,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 94–20269 Filed 8–17–94; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

South Mississippi Electric Power Association; Notice of Intent To Hold Scoping Meeting and Prepare an Environmental Assessment and/or Environmental Impact Statement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Intent to Hold Scoping Meeting and Prepare an Environmental Assessment and/or Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794) may prepare an Environmental Assessment and/or an Environmental Impact Statement (EIS) for its Federal action related to a proposal by South Mississippi Electric Power Association to construct a 230 kV transmission line. REA may provide financing assistance to South Mississippi Electric Power Association for project construction costs.

DATES: REA will conduct a scoping meeting in an open house forum as follows: Paulding, Mississippi, September 21, 1994, 7–9:30 p.m.

ADDRESSES: Jasper County Courthouse, Highway 503, Paulding, Mississippi.

FOR INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: South Mississippi Electric Power Association proposes to construct a 230 kV transmission line from an existing

substation located west of Waynesboro in Wayne County, Mississippi, through the southwest corner of Clarke County, Mississippi, to the eastern part of Jasper County, Mississippi, where South Mississippi Electric Power Association will construct a 230/69 kV substation near the community of Missionary. The total length of the line will be 36 miles. Additions will be necessary at the existing substation west of Waynesboro to accommodate the new transmission line.

Alternatives to be considered by REA and South Mississippi Electric Power Association include: (a) no action, (b) adding new capacitor banks at other substations on South Mississippi Electric Power Association's transmission system, (c) constructing a 230/161 kV substation near Homewood, Mississippi, a 230/69 kV substation near Missionary, Mississippi, and 29 miles of 230 kV transmission line from Homewood to Missionary, and (d) alternative transmission line routes.

To be presented at the public scoping meeting will be an alternative evaluation and macro-corridor study prepared by South Mississippi Electric Power Association. The alternative evaluation and macro-corridor study is available for public review at REA at the address provided in this notice or at South Mississippi Electric Power Association, 7037 U.S. Highway 49, Hattiesburg, Mississippi. It can also be reviewed at the Mary Weems Parker Memorial Library, in Heidelberg, Mississippi, the East Mississippi Regional Library, 116 Water Street, Quitman, Mississippi, and the Waynesboro Library, 712 Wayne Street, Waynesboro, Mississippi.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from REA and South Mississippi Electric Power Association will be available to discuss REA's environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the September 21 public scoping meeting. Written comments should be sent to REA at the address provided in this notice.

From information provided in the alternative evaluation and macro-corridor study, input from government agencies, private organizations, and the public, South Mississippi Electric Power Association will prepare an environmental analysis to be submitted to REA for review. If significant effects are not evident based on a review of the environmental analysis and other relevant information, REA will prepare an environmental assessment to determine if the preparation of an EIS is warranted.

Should REA determine that the preparation of an EIS is not warranted, it will prepare a finding of no significant impact (FONSI). The FONSI will be made available for public review and comment for 30 days. REA will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental procedures as prescribed by CEQ and REA environmental policies and procedures.

Dated: August 12, 1994.

Adam M. Golodner,

Deputy Administrator—Program Operations.

[FR Doc. 94–20307 Filed 8–17–94; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, September 14, and Thursday, September 15, 1994, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on September 14 and 15, 1994, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at Hilton Inn, 620 Perry Park Way, Gaithersburg, MD 20899.

Agenda

—Welcome an Update
—Overview of Meeting
—Cryptographic Activities
—Security and Privacy Electronic Benefits Transfer (EBT) Systems
—NIST Activities
—Pending Business
—Public Participation
—Discussion of December Meeting Agenda
—Close

Public Participation

The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by September 9, 1994. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: August 12, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–20324 Filed 8–17–94; 8:45 am]

BILLING CODE 3510–CN–M

International Laboratory Accreditation Conference (ILAC) 1994

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Meeting notice.

SUMMARY: A pre-conference meeting will be held for persons interested in the International Laboratory Accreditation Conference (ILAC) meeting scheduled for October 17–21, 1994 in Hong Kong. Persons planning to attend the ILAC 94 meeting or wishing to participate in the review of the conference agenda and related issues should attend this pre-conference meeting. ILAC is an informal organization of approximately 45 nations and 12 international organizations whose purpose is to promote: (1) The development of

national programs for accrediting testing laboratories, (2) the employment of harmonized accreditation criteria, and (3) the development of bilateral or multilateral arrangements which would encourage importers to accept the results of tests and data made by laboratories that have been accredited under a laboratory accreditation program in exporting nations.

DATES: The pre-conference meeting will be held Friday, October 7, 1994 from 10:00 am to 4:00 pm.

ADDRESSES: The meeting will be held in conference room 3708 at the Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to attend these meetings or seeking additional information should contact Mr. John L. Donaldson, Chief, Standards Code and Information Program: by mail at the National Institute of Standards and Technology, Administration Building, Room A629, Gaithersburg, MD 20899; by telephone at 301–975–4029 or by fax on 301–963–2871.

SUPPLEMENTARY INFORMATION: Conferences in support of ILAC's stated purpose have been held since 1977 to develop information about laboratory accreditation systems, to provide a forum for discussing differences among such systems, to describe basic principles and criteria for operating such systems, and to develop bilateral or other arrangements which would establish mutual recognition of such systems or of test reports issued by laboratories accredited under such systems. These bilateral arrangements are intended to minimize technical barriers to trade.

The U.S. delegation is chaired by the Chief of the Standards Code and Information Program of the National Institute of Standards and Technology. Those interested in attending the meeting in Hong Kong as a member of the U.S. Delegation, using his or her own financial resources for registration fees, hotel accommodations, food, and travel expenses, can do so by registering with the Conference Secretariat, HOKLAS, Hong Kong's accreditation body. Such persons should have a background in standards development, laboratory accreditation, product testing or product certification activities. Conference registration materials are available from NIST.

Notice is given that the U.S. Delegation at its October 7th meeting will review documents distributed in advance of the ILAC meeting to be held in Hong Kong during October 17–21, 1994. All persons planning to attend the ILAC meeting, as well as those interested in the meeting but unable to attend, are invited to participate in this pre-conference meeting. At the meeting the agenda will be reviewed along with committee reports and issues and recommendations to be considered at the plenary meeting. U.S. delegation consensus positions will be developed as appropriate.

Dated: August 12, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–20264 Filed 8–17–94; 8:45 am]

BILLING CODE 3510–13–M

National Institute of Standards and Technology

Announcement of a Meeting To Discuss an Opportunity To Join a Cooperative Research and Development Consortium for Developing a Methodology for Evaluating Seams of Rubber Roofing Membranes

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on October 11, 1994 to discuss the possibility of setting up a cooperative research consortium on the development of a methodology for evaluating the long-term performance of tape-bonded seams of vulcanized-rubber roofing membranes. Parties interested in participating in the consortium should be prepared to invest adequate resources in the collaboration and be firmly committed to the goal of developing performance evaluation methodology.

Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may provide "personnel, service, facilities, equipment or other resources with or without reimbursement (but not funds to non-federal parties)"—to the cooperative research program.

The meeting will be held on October 11, 1994 at 8:30 a.m., room B221, Building 226 at NIST in Gaithersburg, MD, for interested parties. The meeting will discuss the possible formation of a research consortium including NIST and industry to conduct research in this area. This is not a grant program

DATES: The meeting will be held on October 11, 1994. Interested parties should contact NIST to confirm their attendance at the address, telephone number or FAX number shown below no later than September 30, 1994.

ADDRESSES: The meeting will be held at 8:30 a.m., room B221, Building 226, National Institute of Standards and Technology, Gaithersburg, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Walter Rossiter, Building 226, room B348, National Institute of Standards and Technology, Gaithersburg, MD 20899. Telephone: 301–975–6719; FAX: 301–990–6891.

Dated: August 15, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–20325 Filed 8–17–94; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

August 12, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryover, swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 9730, published on March 1, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 12, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on August 19, 1994, you are directed to amend the directive dated February 23, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Philippines:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
237	901,361 dozen.
239	10,247,127 kilograms.
331/631	4,633,587 dozen pairs.
333/334	204,313 dozen.
335	104,991 dozen.
336	684,754 dozen.
338/339	2,029,451 dozen.
340/640	985,850 dozen.
341/641	707,171 dozen.
342/642	506,441 dozen.
345	136,757 dozen.
347/348	1,909,611 dozen.
350	86,944 dozen.
351/651	545,989 dozen.
352/652	1,967,088 dozen.
359–C/659–C [2]	705,960 kilograms.
361	610,142 numbers.
369–S [3]	85,103 kilograms.
431	180,296 dozen pairs.
433	3,614 dozen.
443	43,700 numbers.
445/446	29,321 dozen.
447	8,654 dozen.
611	4,761,013 square meters.
633	41,705 dozen.
634	422,035 dozen.
635	396,898 dozen.
636	1,426,644 dozen.
638/639	1,917,144 dozen.
643	601,099 numbers.
645/646	659,512 dozen.
647/648	831,432 dozen.
649	6,655,748 dozen.
650	86,652 dozen.
659–H [4]	1,140,102 kilograms.
847	634,115 dozen.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O [5], 360, 362, 363, 369–O [6], 400–414, 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [7], 665, 666, 669–O [8], 670–O [9], 831–846 and 850–859, as a group.	110,405,695 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[5] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C).

[6] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[7] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090 (Category 659–H).

[8] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[9] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–20258 Filed 8–17–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the United Arab Emirates

August 12, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 363 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 2827, published on January 19, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 12, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on August 15, 1994, you are directed to amend the directive dated January 14, 1994 to increase the limit for the Category 363 to 5,300,000 numbers [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–20259 Filed 8–17–94; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1993.

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 12, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 2827, published on January 19, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 12, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on August 19, 1994, you are directed to amend the directive dated January 14, 1994 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted twelve-month level [1]
336/636	182,175 dozen.
338/339	492,095 dozen of which not more than 312,252 dozen shall be in Categories 338–S/339–S [2].
342/642	224,217 dozen.
352	297,086 dozen.
847	189,182 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–20257 Filed 8–17–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) for the Final Environmental Impact Statement (FEIS) for Mission Expansion/Multiple Construction at Camp Grayling, MI

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: It was determined that the FEIS adequately addressed the biological, physical, socioeconomic, and cultural impacts of the selected alternative. Consideration was also given to the Army's need to provide the best training facilities possible utilizing state-of-the-art training methods. It concludes that the process followed in preparing this FEIS was administratively correct and that the selected alternative complies with all applicable State and Federal laws and regulations and includes mitigation and monitoring (Sections V and VI of the ROD).

This Record of Decision explains the rationale for, and authorizes continued actions toward, implementing the following three projects:

Two vehicle storage buildings (totaling 71,000 square feet) will be constructed at the site of a current vehicle storage and maintenance facility using standard commercial building practices. This will allow equipment prone to leaks to be stored in buildings with concrete floors, improving Camp Grayling's ability to contain any leaked fuel, oil or hydraulic fluid.

The proposed replacement of the bulk fuel dispensing/storage facility will provide a more convenient facility that is more physically secure and environmentally safe. The new bulk fuel

storage facility will have a capacity between 100,000 and 150,000 gallons of fuel for military vehicles. All fuel storage tanks will be above-ground.

The purpose of the Multi-Purpose Range Complex, Heavy, Reduced (MPRC–H–R), is twofold. First, it is designed to upgrade a WWII era armor training range, which is currently inadequate, to allow training to current U.S. Army standards. Second, it is designed to simulate a battlefield and will provide more effective combat training than the current facility. This project replaces four existing ranges and will result in a facility better able to protect natural resources from effects of armor training.

In making the decision, consideration was given to the impacts addressed in the FEIS, scoping meetings, transcripts, public hearings, and all oral and written comments received during the public comment periods associated with the preparation of the FEIS.

ADDRESSES: Copies of the Record of Decision will be mailed to individuals who participated in the ROD's public comment process or who request a copy. Copies will also be placed in the local public library and a summary printed in a display advertisement in two local newspapers.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory N. Huntington, Environmental Manager, Michigan Department of Military Affairs, 2500 S. Washington Avenue, Lansing, Michigan 48913–5101.

Dated: August 12, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health), OASA (IL&E).

[FR Doc. 94–20225 Filed 8–17–94; 8:45 am]

BILLING CODE 3710–08–M

Department of Army

Preparation of an Environmental Impact Statement (EIS) for Projects and Activities Associated With Future Programs at White Sands Missile Range (WSMR)

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This notice of availability is for the White Sands Missile Range Draft Environmental Impact Statement (DEIS). The DEIS addresses the potential impacts of several categories of future test projects being planned at WSMR. The future testing categories include: missile testing (i.e. Multiple Launch Rocket System, Special Launch Vehicle, and Standard Missile), high altitude testing (i.e. High Altitude Balloon Experiment and Research Rockets), environmental testing (Large Blasts, Temperature Testing), high energy (Lasers, RADARS).

In the past, WSMR incorporated the National Environmental Policy Act (NEPA) requirements into project planning on a case-by-case basis. To better evaluate the cumulative effects of unrelated actions being planned at the same time the DEIS incorporates all known and future programs. The analysis addresses potential impacts and cumulative effects. Mitigation of these effects is incorporated into the proposed action. The lead agency is U.S. Army (White Sands Missile Range). The U.S. Air Force, Ballistic Missile Defense Organization, Defense Nuclear Agency, and National Aeronautics and Space Administration are cooperating agencies.

The proposed action includes a combination of three different functions: (1) Continuation of current project activities and existing operations and services, including routine maintenance; (2) modernization or removal of outdated facilities and improvements in infrastructure, utilities, and services as necessary; (3) acceptance of new test programs that are projected, and resulting changes in site usage and services. The program changes may include expansions or reductions in the scope of existing activities, with consequent requirements for either increases or decreases in utilities and service.

The no action alternative is the other alternative considered. This alternative represents the status quo and presumes that current operations would continue at approximately their current rates into the future. This alternative means no new projects would be conducted at WSMR. All existing actions which are currently the subject of environmental documentation including associated mitigation measures and mitigative planning strategies, would be implemented under the no action alternative.

The alternative of closing WSMR is briefly discussed and put aside as out of scope. No Congressional or DoD indications have been given that this action is contemplated, and special NEPA processes to address the shutdown and conversion of military bases have been established for such analyses.

DATES: This notice announces the beginning of the public hearing period and comment process. Comments should be received on or before September 2, 1994 following the public hearings. Public hearings will be held within the next six weeks in Las Cruces, Alamogordo, Socorro, and Albuquerque, New Mexico. Exact dates and locations will be advertised in the local media.

ADDRESSES: Anyone wishing to receive a copy of this DEIS may send a postcard with their name and address to Advanced Sciences Inc., 555 Telshor, Suite 310, Attn: Tim Cohen, Las Cruces, NM 88001. Persons and organizations wishing to comment on the EIS may attend the public meetings or may send written comments to Commander, White Sands Missile Range, Attn: STEWS–DES/Robert Andreoli, White Sands Missile Range, NM 88002–5048.

Dated: August 8, 1994.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of Defense (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 94–20248 Filed 8–17–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.116A; 84.116B]

Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications) Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

Eligible Applicants: Institutions of higher education or combinations of such institutions and other public and private nonprofit educational institutions and agencies.

Deadline for Transmittal of Preapplications: October 18, 1994.

Deadline for Transmittal of Final Applications: March 15, 1995.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: May 15, 1995.

Applications Available: August 18, 1994.

Available Funds: The President's budget includes $20,326,000 for the Fund for the Improvement of Postsecondary Education for FY 1995. Of this amount, it is anticipated that approximately $5,250,000 will be available for an estimated 75 new awards under the Comprehensive Program. The Congress has not yet completed action on the FY 1995 appropriation. The estimates in this

notice assume passage of the Administration's request.

Estimated Range of Awards: $15,000 to $150,000 per year.

Estimated Average Size of Awards: $70,000.

Estimated Number of Awards: 75.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 82, 85, and 86, with the exceptions noted in 34 CFR 630.4(a)(2); and (b) The regulations for this program in 34 CFR Part 630.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3), 34 CFR 630.12 and 34 CFR 630.11(a), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that respond to immediate problems or issues and that seek to improve postsecondary education opportunities.

Invitational Priorities

Under 34 CFR 75.105(c)(1) and 34 CFR 630.12, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Applications to support new ways of ensuring equal access to postsecondary education, and to improve rates of retention and program completion, especially for low-income and underrepresented minority students, whose retention and completion rates continue to lag disturbingly behind those of other groups.

Invitational Priority 2—Applications to create programs that prepare students for entering the workforce and that serve the continuing education and retraining needs of workers.

Invitational Priority 3—Applications to improve the campus climate by creating an environment that is safe, welcoming, and conducive to learning for all students.

Invitational Priority 4—Applications to restructure institutions in ways that reassert the primacy of teaching and learning; and to increase learning productivity—that is, to transform programs and teaching to promote more student learning relative to institutional resources expended.

Invitational Priority 5—Applications to promote cooperation between colleges and universities and elementary and secondary schools in order to improve students' preparation for, access to, and success in college. In particular, the Secretary seeks innovative school-college partnerships to improve articulation and develop new ways to improve both pre-service and in-service teacher education at both the elementary and secondary level.

Invitational Priority 6—Applications to support innovative reforms of undergraduate, graduate, and professional curricula that improve not only what students learn, but how they learn.

Invitational Priority 7—Applications to support the development of faculty as professionals by assessing and rewarding effective teaching; helping institutions and faculty find ways to increase their emphasis on teaching and other means of involvement with student learners; promoting new and more effective teaching methods; and improving the preparation—especially the teaching skills—of graduate students who will be future faculty members.

Invitational Priority 8—Recognizing that many innovative postsecondary educational programs have already been locally developed and implemented, the Secretary invites applications to disseminate these programs to other institutions.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Address an important problem or need;

(2) Represent an improvement upon, or important departure from, existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of availability of other funding sources for the proposed activities.

Under 630.32, the Secretary determines the methods that will be used in applying the selection criteria.

For preapplications (preliminary applications), the Secretary will give greater weight to the selection criteria under *Significance for Postsecondary Education.* The Secretary will give equal weight to *Feasibility,* and *Appropriateness of funding projects.* For final applications (applications), all criteria are equally important. Within each of these criteria, the Secretary gives equal weight to each of the subcriteria. In applying the criteria, the Secretary first analyzes a preapplication or application in terms of each individual criterion and subcriterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

FOR APPLICATIONS OR INFORMATION CONTACT: Fund for the Improvement of

Postsecondary Education (FIPSE), U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3100, ROB-3, Washington, D.C. 20202–5175. Telephone: (202) 205–0104 to order applications; or (202) 708–5750 for information. Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**. 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.

Program Authority: 20 U.S.C. 1135–1135a–3.

Dated: August 12, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–20446 Filed 8–17–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office; Notice of Federal Assistance Award to Center for Waste Reduction Technologies American Institute of Chemical Engineers

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), is announcing its intention to award a cooperative agreement on a non-competitive basis to the Center for Waste Reduction Technologies (CWRT) of the American Institute of Chemical Engineers (AIChE) for work involving research and development, collaborative workshops, technology transfer and education which are supportive of and complementary to the Office of Industrial Technologies (OIT) programs at DOE. The OIT programs seek to improve energy efficiency and waste reduction in the nation's industrial sector. This is not a notice for solicitation of proposals or financial assistance applications.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Chicago Operations Office, 9800 S. Cass Ave., Argonne, IL 60439, Attention: Ms. Patricia J. Schuneman, Contracting Officer.

SUPPLEMENTARY INFORMATION: The AIChE has established the CWRT to develop and implement technologies which will increase energy efficiency and reduce waste in the chemical industry. The membership of the CWRT includes chemical producers, refiners, manufacturers and chemical industry engineering and service contractors. The CWRT, through its chemical industry partners, sponsors research and development, and educational and technology transfer activities in support of these objectives. Through the proposed Cooperative Agreement, DOE will participate with CWRT in selecting and supporting research and development on technologies which have broad applicability to the process/manufacturing sector, with particular interest in the chemical and refining industries. In all cases, the emphasis will be on supporting research that advances generic technology solutions on which commercial technologies will subsequently be based. DOE will participate with CWRT in conducting industry based workshops to identify the highest priority areas for research and development. DOE and CWRT will also disseminate the results of the research through the workshops, and through cooperative activities with universities in engineering curriculum development.

In accordance with 10 CFR 600.7, it has been determined that the activity to be funded meets the criterion for noncompetitive financial assistance in that it will be conducted by the CWRT using its own resources and those provided by private industry, but support provided by DOE will enhance the public benefits to be derived.

Funding in the amount of approximately $3,000,000 is to be provided by the DOE, with CWRT providing approximately $6,000,000. The anticipated term of the proposed cooperative agreement will be forty-eight months from the effective date of the award.

Issued in Chicago, Illinois, on August 3, 1994.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 94–20340 Filed 8–17–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Notice of Federal Assistance Award to Electric Power Research Institute

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to a non-competitive financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2) is announcing its intention to make a financial assistance award of $3,200,000 to the Electric Power Research Institute (EPRI) for a twelve month period, to evaluate commercial-prototype wind turbines in typical utility operating environments. The program will entail a 50/50 cost sharing between DOE and EPRI.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden CO 80401, Attention: J.W. Meeker, Contract Specialist. The telephone number is 303–275–4748. Dr. Paul K. Kearns is the Contracting Officer.

SUPPLEMENTARY INFORMATION: This is not an unsolicited application. The proposed effort is the result of a Memorandum of Understanding signed in September 1992, between DOE and EPRI that outlines the roles of each in deploying and evaluating commercial-prototye wind turbines in typical utility operating environments under a collaborative venture known as the Utility Wind Turbine Verification Project.

The programmatic evaluation [see 10 CFR 600.7(b)(2)(ii)(D)] completed for this proposal resulted in a recommendation to fund this grant application for the following reasons:

Wind energy in the U.S. has made significant progress in moving toward broad use as an alternative to fossil-fueled conventional generation. The number of wind turbines installed continues to increase and costs are dropping. However, there still exists a strong need to develop more cost-effective, widely-deployable machines, and to evaluate the technical and economic performance of new machines approaching commercial reality. In support of the implementation of the Energy Policy Act of 1992, the DOE Wind Program initiated the Utility Wind Turbine Verification Program with EPRI, to deploy and evaluate commercial-prototype wind turbines in typical utility operating environments.

The collaboration between DOE and EPRI will fund commercialization activities and provide a means to bridge the technology transfer gap between

DOE wind turbine development activities and utility purchases. The joint efforts will increase utility participation and acceptance of U.S. manufactured advanced wind turbines by accelerating utility adoption by 3–5 years and enhancing entry into new markets.

The probability of success is high because of the unique relationship between DOE and EPRI, and the over 15 years of experience EPRI brings into the program in the field of wind energy.

The staff of EPRI is uniquely qualified to provide this service. Mr. Earl Davis, Manager Wind Power Integration, EPRI, is a highly qualified manager with over 15 years of experience in the wind energy business. As the manager for all wind activities at EPRI, Mr. Davis is considered to be the most qualified individual available to accomplish this project.

The proposed budget was reviewed and is considered to the appropriate and adequate.

The major public benefit to be derived from this project is the hastening of wind power commercialization, and the realization of its environmental and energy-security benefits. DOE views the EPRI/DOE collaboration as a logical extension of its significant Federal investment in turbine development activities that are assisting industry to incorporate cutting edge technologies into prototype wind turbines. As utility interest and commitment to wind energy grows an opportunity has been created to achieve major reductions in greenhouse gas emissions, while contributing to increased economic productivity by accelerating wind technology development and commercialization through collaborative actions with key stakeholders.

Both EPRI and DOE have ongoing programs to foster the development and application of wind energy as an alternative domestic supply option. The broad objective of both the DOE and EPRI programs is aimed at ensuring the diversified regional deployment of commercially available cost-competitive, utility-grade wind turbines for the 2000 time-frame. The project to be funded is a logical continuation of work currently being funded by DOE through the DOE Wind Program. No other potential applicants have the experience or the capability to do this work in the amount of time and for the amount of money that is proposed by the applicant.

Issued in Golden, Colorado, on August 5, 1994.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 94–20341 Filed 8–17–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Federal Assistance Award to Future Energy Resources Corportion

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to an unsolicited financial assistance application.

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 Future Energy Resources Corporation (FERCO) to design, construct, and validate a large-scale integrated gasifier and gas turbine combined cycle (IGCC) technology.

ADDRESSES: Comments and questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Wilton Webb, Contract Specialist. The telephone number is 303–275–4724.

SUPPLEMENTARY INFORMATION: DOE has evaluated, in accordance with Section 600.14 of the Federal Assistance Regulations, the unsolicited proposal entitled "Vermont Gasifier Project" and recommends that the unsolicited proposal be accepted for support without further competition in accordance with Section 600.14 of the Federal Assistance Regulations.

Under this proposed cooperative agreement, FERCO will form and lead an industrial and utility consortium to design, construct, and validate a large-scale integrated gasifier and gas turbine combined cycle (IGCC) technology at the McNeil Generating Station in Burlington, Vermont.

The proposed project is a three-phase effort. Phase I, with a duration of about 8 months, will include the design and permitting of the gasifier process. Phase II, with a duration of about 20 months, will include the construction and extensive testing of the facility to gasify approximately 200 tons-per-day of wood chips and generate hot product gas for combustion in the existing McNeil Station wood boiler. Lastly, in Phase III (also 20 months in duration), a 15 MWe advanced gas turbine and gas clean-up module will be constructed, tested, and operated.

FERCO will provide overall management of project, with support from Battelle Memorial Institute (Battelle), ZURN National Energy Production Corporation (NEPCO), ZURN NEPCO consultants, and burlington Election Department (BED). Battelle, the original developer of the proposed gasifier concept, will provide further refinement of the design (gasifier, combustor, and solids circulating system) and project scale-up. ZURN NEPCO, experienced in a wide variety of power plant technologies and fuel types, will provide turnkey architect/engineering services in conjunction with selected consultants. BED will provide site-specific information, assist in establishing the facility layout, and interface with the required governmental agencies to obtain facility permits.

The proposal has been found to be meritorious in the DOE evaluation. The FERCO program represents a unique opportunity to validate a large-scale integrated gasifier and gas turbine combined cycle. The team proposed by FERCO has the capabilities and commitment which should provide a basis for a successful project. The proposed project is not eligible for financial sssistance under a recent, current, or planned solicitation.

The program cost is estimated to be $28,400,000 total, with the DOE share being $10,700,000. This award will not be more until 14 calendar days after publication of the notice to allow for public comment.

Issued in Golden, Colorado, on August 5, 1994.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 94–20336 Filed 8–17–94; 8:45 am]

BILLING CODE 6450–01–M

Jemez Pueblo; Notice of Intent

AGENCY: Albuquerque Operations Office.

ACTION: Notice of intent.

SUMMARY: The Albuquerque Operations Office (ALO) intends to enter into a noncompetitive financial assistance cooperative agreement with the Jemez Pueblo (Pueblo). Assistance of $100,000 will support the development of a comprehensive proposal for funding from the Department of Energy (DOE) for the purpose of oversight, monitoring and evaluation of environmental and cultural issues associated with operations at DOE facilities at Los Alamos, New Mexico. The proposed award will provide the Pueblo with technical and administrative resources

necessary to the identification, understanding, and development of environmental issues impacting the Pueblo lands and its people.

DATES: The proposed effective date is September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Address comments to the attention of Tracy Loughead, Office of Environment/ Project Management, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400. Telephone: (505) 845–5977. Comments must be received prior to the proposed effective date.

SUPPLEMENTARY INFORMATION: The financial assistance is authorized under the DOE Organization Act, Public law 95–91, as amended. This funding supports an Accord between the Pueblo and the DOE which established a government-to-government relationship and provided for the sharing of information regarding environmental issues related to DOE's Los Alamos facilities which are near the Pueblo. There are four pueblos which entered into Accords for this purpose (Pueblo de Cochiti, The Pueblo of Santa Clara, and the Pueblo of San Ildefonso). Similar cooperative agreements are being entered into with them; therefore, all eligible recipients have been identified, and a non-competitive award is appropriate. In particular, this award meets the criteria of 10 CFR 600.(b)(2)(i)(B), (C), (D), and (E) in that:

(1) The implementation of the Accord was to have been conducted by the Pueblo using its own resources; however, DOE support of the activity will enhance the ability of the Pueblo to carry out the intent of the Accords and be of benefit to the public. DOE knows of no other entity which is conducting or is planning to conduct similar activities.

(2) The Pueblo is a unit of government and the implementation of the Accord together with any follow-on cooperative agreement is related to the performance of this governmental function within the Pueblo's jurisdiction.

(3) The Pueblo has the exclusive capability to perform the implementation of the cooperative agreement in consonance with the spirit of the Accord. The Pueblo is the governmental authority that has jurisdiction over Indian lands considered most affect by the Los Alamos National Laboratory.

(4) The Pueblo is a sovereign entity for certain purposes, and in that respect, is similar to a foreign government. The purpose of the cooperative agreement is to extend the value of the previously signed Accord, thus affirming and strengthening the Government-to-Government relationship between DOE and the Pueblo.

Issued in Albuquerque, New Mexico on August 4, 1994.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–20338 Filed 8–17–94; 8:45 am]

BILLING CODE 6450–01–M

Albuquerque Operations Office; Notice of Intent To Enter Into a Noncompetitive Financial Cooperative Agreement With the Pueblo de Cochiti

SUMMARY: The Albuquerque Operations Office (ALO) intends to enter into a noncompetitive financial assistance cooperative agreement with the Pueblo de Cochiti (Pueblo). Assistance of $100,000 will support the development of a comprehensive proposal for funding from the Department of Energy (DOE) for the purpose of oversight, monitoring and evaluation of environmental and cultural issues associated with operations at DOE facilities at Los Alamos, New Mexico. The proposed award will provide the Pueblo with technical and administrative resources necessary to the identification, understanding, and development of environmental issues impacting the Pueblo lands and its people.

DATES: The proposed effective date is September 1, 1994.

FOR FURTHER INFORMATION: Address comments to the attention of Tracy Loughead, Office of Environment/ Project Management, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400. Telephone: (505) 845–5977. Comments must be received prior to the proposed effective date.

SUPPLEMENTARY INFORMATION: The financial assistance is authorized under the DOE Organization Act, Public Law 95–91, as amended. This funding supports an Accord between the Pueblo and the DOE which established a government-to-government relationship and provided for the sharing of information regarding environmental issues related to DOE's Los Alamos facilities which are near the Pueblo. There are four pueblos which entered into Accords for this purpose (Jemez Pueblo, The Pueblo of Santa Clara, and the Pueblo of San Ildefonso). Similar cooperative agreements are being entered into with them; therefore, all eligible recipients have been identified, and a non-competitive award is appropriate. In particular, this award meets the criteria of 10 CFR 600.(b)(2)(i)(B),(C),(D), and (E) in that

(1) The implementation of the Accord was to have been conducted by the Pueblo using its own resources; however, DOE support of the activity will enhance the ability of the Pueblo to carry out the intent of the Accords and be of benefit to the public. DOE knows of no other entity which is conducting or is planning to conduct similar activities.

(2) The Pueblo is a unit of government and the implementation of the Accord together with any follow-on cooperative agreement is related to the performance of this governmental function within the Pueblo's jurisdiction.

(3) The Pueblo has the exclusive capability to perform the implementation of the cooperative agreement in consonance with the spirit of the Accord. The Pueblo is the governmental authority that has jurisdiction over Indian lands considered most affect by the Los Alamos National Laboratory.

(4) The Pueblo is a sovereign entity for certain purposes, and in that respect, is similar to a foreign government. The purpose of the cooperative agreement is to extend the value of the previously signed Accord, thus affirming and strengthening the Government-to-Government relationship between DOE and the Pueblo.

Issued in Albuquerque, New Mexico on August 4, 1994.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–20339 Filed 8–17—94; 8:45 am]

BILLING CODE 6450–01–M

Office of Basic Energy Sciences; Chicago Operations Office; DOE Headquarters Washington, DC

AGENCY: Department of Energy.

ACTION: Acceptance of unsolicited application.

SUMMARY: The Department of Energy (DOE), Office of Basic Energy Sciences, through the Chicago Operations Office, announces that it intends to award a grant to the Kansas State University (KSU) of Manhattan, Kansas. The proposed award meets the criteria in 10 CFR 600.14 d & e. The financial assistance will provide assistance in the renovation of the Cryogenic Electron Beam Ion Source (CRYEBIS), and Linear Accelerator (LINAC) facility at the Kansas State University Department of Physics. The facilities will be upgraded and renovated to enhance the operating parameters of the CRYEBIS and LINAC

facilities, therefore enhancing the research capabilities of KSU in the arena of atomic physics. This renovation project is scheduled for three years from September 1, 1994 thru August 31, 1997.

SUPPLEMENTARY INFORMATION: The proposed renovation will be conducted by the Kansas State University and Argonne National Laboratory personnel. Since Kansas State University has exclusive domestic capability to perform the activity successfully based on unique equipment and technical expertise, the award will be made on a non-competitive basis. The proposed renovation will affect the following areas:

A. This effort will entail improving the operation of the laboratory's cryogenic system that liquifies gaseous helium and delivers liquid helium to accelerator components.

B. Improvements will also be made to the CRYEBIS to increase its operating voltage by replacing amplifiers, adding an electron gun and power supplies for higher voltage operation.

C. Additionally one of the existing beam lines will be improved to take advantage of the operating CRYEBIS operating parameters. This will entail installation of a pumping system to achieve extremely low pressures for investigating fundamental processes by which ions interacts with a surface.

Results of this renovation will greatly enhance the capability to conduct research in atomic physics. The proposed work will also leverage a relatively larger investment already made to insure DOE technology programs are not hindered by the lack of basic information on chemical and physical processes involving highly charged ions. The DOE will provide funds in the amount of $621,000.00 for the three year project period. This award will not be made for at least 14 calendar days after publication of this notice to allow for public comment.

FOR FURTHER INFORMATION CONTACT: Ronald E. Cone Jr., CD–F, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–9014.

Issued in Chicago, Illinois, on August 4, 1994.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 94–20337 Filed 8–17–94; 8:45 am]

BILLING CODE 6450–01–M

Nevada Operations Office; Implementation of Noncompetitive Financial Assistance

AGENCY: Navada Operations Office, Department of Energy.

ACTION: Notice of issuance of a financial assistance solicitation restricted eligibility.

SUMMARY: Navada Operations Office of the Department of Energy announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7 and 600.9, it intends on issuing on a restricted eligibility basis, Financial Assistance solicitation Number DE–PS08–94NV11598 for the Mathematics, Science, and Technology Education Program.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Marlene M. Kolicius, Contracts Division, P.O. Box 98518, Las Vegas, NV 89193–8518, Telephone Number: (702) 295–1080, FAX Number: (702) 295–5305.

A copy of the solicitation can be obtained by contacting Ms. Kolicius at the above address, telephone number, or FAX number. All technical questions should be addressed to Loretta Helling, Office of External Affairs at the above address. Applicants who have previously requested copies of financial assistance solicitations from Nevada Operations Office are currently on a mailing list and will be furnished a copy of the solicitation.

SUPPLEMENTARY INFORMATION: Eligible organizations will be invited to submit applications indicating what efforts they will undertake to improve two major mathematics, science, and technology education programs/activities designed to address the needs of pre-college students (Grades K–12). The two major programs to be identified in the solicitation include (1) Mathematics, Science, and Technology Teacher Training and Professional Development to include summer basic and applied research, curriculum development activities, mathematics/science teacher workshops, and other related professional development opportunities to lead to improved student interest in mathematics, science, and technology education; (2) Special Services and Outreach to Underrepresented Populations; minorities, females, and the disabled designed to motivate the interest of these students in mathematics, science, and technology to increase their representation in these career paths.

This solicitation is being restricted to educational institutions, 26 U.S.C. 501 (C)(3), tax-exempt organizations, and not-for-profit entities including professional and/or technical associations located in the state of Nevada; the counties of Beaver, Iron, and Washington in the state of Utah; and Inyo County in the state of California due to the special on-going relationship between these counties and the programs conducted at the Nevada Test Site.

DOE anticipates that 10 to 15 grants will be awarded from the total funding available of $337,555, the funds being equally divided between the two major programs. The maximum award amount shall be limited to $50,000 for Teacher training, with a range of $30,000 to $50,000 and $30,000 for Underrepresented Populations, with a range to $20,000 to $30,000. This solicitation is expected to be released on or about August 10, 1994. Project periods of grants to be awarded are expected to be up to 24 months and begin on or about September 26, 1994.

Issued in Las Vegas, Nevada, on August 4, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94–20335 Filed 8–17–94; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER93–540–002, et al.]

American Electric Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 10, 1994.

Take notice that the following filings have been made with the Commission:

1. American Electric Power Corporation

[Docket No. ER93–549–002]

Take notice that on July 25, 1994, American Electric Power Service Corporation, on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, operating companies of the American Electric Power (AEP) System (collectively "the AEP Companies") tendered for filing a Second Revised Transmission Service and Ancillary Control Area Services Tariff. The Second Revised Tariff is proposed as a substitute for the Revised Transmission Service and Ancillary Control Area Services Tariff accepted for filing by the Commission by order of September 3, 1993, in this docket. The

Second Revised Tariff reflects, among other things, the Commission's summary disposition of certain issues in its September 3, 1993, order, as affirmed on rehearing. The AEP Companies request an effective date of August 1, 1994.

Copies have been served upon all participants in this docket and upon the state regulatory commissions in Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. JEB Corporation

[Docket No. ER94–1432–000]

Take notice that on July 25, 1994, JEB Corporation (JEB) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

JEB intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where JEB sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. JEB is not in the business of generating, transmitting, or distributing electric power.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company

[Docket No. ER94–2505–000]

Take notice that on July 29, 1994, Illinois Power Company (Illinois) tendered for filing a Services Agreement between Illinois and Louis Dreyfus Electric Power, Inc. (LDEP). Illinois states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between Illinois and LDEP.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. AES Power Inc.

[Docket No. ER94–1519–000]

Take notice that on August 1, 1994, AES Power Inc. (AESPI) submitted for filing with the Commission two Service Agreements under Rate Schedule FERC No. 1. One is for service to East Kentucky Power Corporation, Inc. and the second is for service to American Municipal Power-Ohio, Inc. The Service Agreements are to be effective July 1, 1994.

Comment date: August 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power Company

[Docket No. ER94–1520–000]

Take notice that on August 1, 1994, Pennsylvania Power Company tendered for filing a document entitled "Petition of Pennsylvania Power Company For Permission To Charge A Decrease In Rates Under Settlement Agreements Pending Commission Action".

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER94–1521–000]

Take notice that on August 2, 1994, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Amendment No. 2 (Amendment) dated July 21, 1994, to the Long-Term Power Sales Agreement (Agreement) between PacifiCorp and The Arizona Power Pooling Association (APPA) dated March 4, 1991, designated PacifiCorp Rate Schedule, FERC No. 310.

The Amendment revises the minimum load factor that APPA must purchase firm energy associated with firm capacity under the Agreement commencing with the 1994 Summer Season.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of May 1, 1994, be assigned to the Amendment, this date corresponding to date the 1994 Summer Season commenced.

Copies of this filing were supplied to APPA, the Public Utility Commission of Oregon, the Utah Public Service Commission and the Washington Utilities and Transportation Commission.

Comment date: August 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER94–1522–000]

Take notice that on August 2, 1994, Portland General Electric Company (PGE) tendered for filing a service agreement under FERC Electric Tariff, Original Volume No. 1 (PGE–1) with West Kootenay Power. PGE has requested that the Service Agreement with West Kootenay Power be accepted by the Commission, effective July 29, 1994. Copies of the filing have been served on the parties included in the distribution list defined in the filing letter.

Comment date: August 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Public Service Company

[Docket No. ER94–1523–000]

Take notice that on August 2, 1994, Maine Public Service Company (Maine Public) filed an executed Service Agreement with Enron Power Marketing, Inc. Maine Public states that the service agreement is being submitted pursuant to its tariff provision pertaining to the short-term non-firm sale of capacity and energy which establishes a ceiling rate at Maine Public's cost of service for the units available for sale.

Maine Public requests that the service agreement become effective on August 1, 1994, and requests waiver of the Commission's regulations regarding filing.

Comment date: August 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Tucson Electric Power Company

[Docket No. ER94–1524–000]

Take notice that on August 2, 1994, Tucson Electric Power Company (Tucson) tendered for filing a 1994–95 Block Energy Sale Agreement between Tucson and Texas-New Mexico Power Company (TNP). The Agreement provides for the sale by Tucson to TNP of 50 MW of block energy for a period of one-year.

The parties request an effective date of August 3, 1994, and therefore request waiver of the Commission's regulations with respect to notice of filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: August 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. West Texas Utilities Company

[Docket No. ER94–1526–000]

Take notice that on August 2, 1994, West Texas Utilities Company (WTU) tendered for filing a corrected form of Supplement to Exhibit A for the TR–1 Service Specification Sheet under WTU's TR–1 Tariff. The filing corrects an inadvertent typographical error in the Supplement as originally filed in Docket No. ER94–11154–000, accepted by letter order of June 2, 1994.

WTU states that a copy of the filing has been served on each of WTU's TR–1 customers and the Public Utility Commission of Texas.

WTU requests waiver of the notice requirements to permit an effective date of June 15, 1994, the date the

Supplement, as originally filed, was accepted for filing.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Carolina Power & Light Company

[Docket No. ER94–1527–000]

Take notice that on August 2, 1994, Carolina Power & Light Company (CP&L) filed, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a Power Supply Agreement Between Carolina Power & Light Company and the Town of Waynesville, North Carolina, (PSA) applicable to wholesale electric service provided by CP&L to the Town of Waynesville (Waynesville). CP&L states that the PSA revises the rates, terms and conditions under which CP&L will provide service to Waynesville. Upon the effective date, CP&L states that Waynesville no longer will take service under Resale Service Schedule RS88–2B.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1528–000]

Take notice that on August 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC 117 an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in the annual fixed rate carrying charges of $187.08. Con Edison has requested that this increase take effect as of September 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Mid-Continent Area Power Pool

[Docket No. ER94–1529–000]

Take notice that Mid-Continent Area Power Pool, on August 2, 1994, tendered for filing amendments to the Mid-Continent Area Power Pool Agreement, to implement a megawatt mile-based Transmission Service Charge for specified transmission services provided by MAPP Participants. Copies of the filing were served on the Illinois Commerce Commission, Iowa State Utilities Board, Michigan Public Service Commission, Minnesota Public Utilities Commission, Montana Public Service Commission, Nebraska Power Review Board, North Dakota Public Service Commission, South Dakota Public Utilities Commission, and Public Service Commission of Wisconsin.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Acme Power Marketing, Inc.

[Docket No. ER94–1530–000]

Take notice that on August 2, 1994, Acme Power Marketing, Inc. (ACME) tendered for filing with the Federal Energy Regulatory Commission pursuant to Rule 205, 18 CFR 385.205, an Application for Order Accepting Blanket Market-Based Rate Schedule and Granting Waivers, Blanket Approvals and Disclaimer of Jurisdiction.

ACME intends to engage in electric power transactions as a marketer and/or broker. In transactions where ACME sells electric energy it proposes to make such sales on rates, terms and conditions to be mutually agreed upon with the purchasing party. ACME is not in the business of generating, transmitting, or distributing electric power.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Power & Light Company

[Docket No. ER94–1531–000]

Take notice that on August 3, 1994, Puget Sound Power & Light Company (Puget) tendered for filing a letter agreement for Temporary Transmission Service between the Bonneville Power Administration (Bonneville) and Puget dated as of July 29, 1994. Under the Agreement, Puget is to temporarily provide transmission service for a Bonneville load so that Bonneville can perform critical maintenance and replacement work on facilities in its Ellensburg substation which normally would carry that load.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER94–1533–000]

Take notice that on August 4, 1994, PECO Energy Company (PECO) tendered for filing an Agreement between PECO and General Public Utilities Corporation (GPU) dated July 29, 1994.

PECO states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to GPU. In order to optimize the economic advantage to both PECO and GPU, PECO requests that the Commission waive its customary notice period and permit the agreement to become effective on August 5, 1994.

PECO states that a copy of this filing has been sent to GPU and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Maine Public Service Company

[Docket No. ER94–1534–000]

Take notice that on August 4, 1994, Maine Service Company (Maine Public) filed an executed Service Agreement with New England Power Company. Maine Public states that the service agreement is being submitted pursuant to its tariff provisions pertaining to the short-term non-firm sale of capacity and energy which establishes a ceiling rate at Maine Public's cost of service for the units available for the sale.

Maine Public requests that the service agreement become effective on August 1, 1994, and requests waiver of the Commission's regulations regarding the filing.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. John L. Goolsby

[Docket No. ID–2848–000]

Take notice that on August 1, 1994, John L. Goolsby (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Nevada Power Company
Director—Bank of America Nevada

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Jerry Herbst

[Docket No. ID–2849–000]

Take notice that on August 1, 1994, Jerry Herbst (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Nevada Power Company
Director— Bank of America Nevada

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. Charles A. Lenzie

Docket No. ID–2850–000

Take notice that on August 1, 1994, Charles A. Lenzie (Applicant) tendered

for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Nevada Power Company

Director—Bank of America Nevada

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

21. Newark Bay Cogeneration Partnership, L.P.

[Docket Nos. QF86–1014–006 and EL94–27–000]

On August 2, 1994, Newark Bay Cogeneration Partnership, L.P. (Newark Bay) tendered for filing an amendment to its filing in these dockets.

The amendment pertains to information relating to Newark Bay's Petition For Temporary Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA).

Comment date: August 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary

[FR Doc. 94–20241 Filed 8–17–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–284–000, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 11, 1994.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corporation

[Docket Nos. ER94–284–000 ER94–1007–000 and ER94–1047–000]

Take notice that on August 4, 1994, Wisconsin Public Service Corporation (WPSC) tendered for filing modifications to its formula rates under its T–1 transmission tariff. WPSC states that the modifications have been made in response to informal requests by the Commission staff.

WPSC states that it does not object to a March 1, 1994, effective date for the reduction in the return on equity under the tariff which it tendered for filing on February 10, 1994. WPSC requests an October 1, 1994, effective date for the remaining modifications to the tariff, which it characterizes as having little or no effect on revenues. Finally, WPSC requests that the new service agreement in Docket No. ER94–284–000 become effective January 1, 1994; that the new service agreements and notice of termination of service in Docket No. ER94–1007–000 become effective on May 1, 1994; and that the amended service agreement in Docket No. ER94–1047–000 become effective on June 1, 1994, all as contemplated by the original filings in those dockets.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power

[Docket No. ER94–1347–000]

Take notice that on August 4, 1994, Wisconsin Electric Power Company tendered for filing an amendment to its June 13, 1994, filing in the above-referenced docket.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Midwest Power Systems, Inc.

[Docket No. ER94–1532–000]

Take notice that on August 4, 1994, Midwest Power Systems, Inc., tendered for filing a Notice of Cancellation of Rate Schedule No. 74.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Corporation

[Docket No. ER94–1536–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on August 4, 1994, tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12 (1993), as an initial rate schedule, an agreement with Enron Power Marketing, Inc. (Enron). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Enron and Enron will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on August 5, 1994, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Enron.

Comment date: August 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Golden Spread Electric Cooperative, Inc.

[Docket No. ES94–33–000]

Take notice that on August 5, 1994, Golden Spread Electric Cooperative, Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue long-term debt securities in the amount $819,000.

Comment date: September 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. LSP-Cottage Grove, L.P.

[Docket No. QF94–142–000]

On August 4, 1994, LSP-Cottage Grove, L.P. of 101 East Main Street, Bozeman, Montana 59715, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the cogeneration facility will be located in the City of Cottage Grove, in Washington County, Minnesota. The facility will consist of a combustion turbine generator, a heat recovery boiler and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used by 3M-Cottage Grove for heating and various manufacturing processes. The maximum net power production capacity of the facility will be 245.1 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence on January 1, 1995.

Comment date: Thirty days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

7. Duquesne Light Company

[Docket No. TX94–8–000]

Take notice that on August 5, 1994, Duquesne Light Company filed an application requesting that the Commission order the following companies to provide 300 MW of firm transmission service for a twenty-year term: Public Service Electric and Gas Co., PECO Energy Co., Pennsylvania Power & Light Co., Baltimore Gas and Electric Co., Jersey Central Power & Light Co., Metropolitan Edison Co., Pennsylvania Electric Co., Potomac Electric Co., Atlantic City Electric Co., Delmarva Power & Light Co., and UGI Corp.

Duquesne has requested firm transmission service that provides flexibility in changing receipt and delivery points, and also has requested non-firm service to the extent Duquesne is not using its full firm reservation. Duquesne has requested that service commence no later than the date any facilities upgrades necessary to provide the service are installed.

Comment date: August 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20243 Filed 8–17–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11346-001, IA]

FORIA Hydro Corporation; Notice of Environmental Assessment Scoping[1]

August 12, 1994.

On March 28, 1994, the Federal Energy Regulatory Commission (Commission) issued a notice indicating that staff is ready to conduct an environmental analysis (REA Notice) for the proposed Fort Dodge Mill Dam Project, located on the Des Moines River, in Webster County, Iowa. The REA Notice also requested comments (mandatory or recommended license terms and conditions, or prescriptions) from federal, state, and local resource agencies, licensees and developers, Indian tribes, and any other interested groups (Parties). Parties were given until May 28, 1994, to file comments.

The purpose of this notice is to advise all Parties as to the scope of our environmental analysis and to seek additional information pertinent to this analysis. The scope as presented herein is based on the information filed with the Commission by FORIA Hydro Corporation (the Applicant), comments received from the Parties thus far, and the staff's independent analysis.

Proposed Action

The Applicant proposes to install new generating equipment at an existing dam, reservoir and powerhouse to be called the Fort Dodge Mill Dam Project.

The proposed project would include the following features: (1) An existing dam 372 feet long and 18 feet high; (2) an existing impoundment with a surface area of 90 acres with a normal surface elevation of approximately 990 feet above mean sea level; (3) an existing powerhouse containing two new turbine-generator units at a total installed capacity of 1,260 kilowatts; and (4) a proposed 13.8-kilovolt transmission line.

In addition to the proposed two new turbine-generator units, the Applicant proposes to install a new flat trashrack (with 2-inch clear bar spacing) at the project intake.

The Applicant proposes the following measures relating to project operation to protect environmental resources in the project area. A 34-cubic-feet-per-second minimum flow over the project dam is proposed to protect water quality and fishery resources in the downstream pool area and side channel. The project would be operated in a run-of-river mode, with only minor fluctuations in the headpond elevation to account for natural variations in river flow. In the operational plan for the Fort Dodge Mill Dam Project, the Applicant also proposes to implement a plan to verify run-of-river operation and a seasonal water quality monitoring program for the impoundment.

Project Alternatives

The Commission staff will consider alternatives, including environmental measures not proposed by the Applicant. The staff will review and consider alternative recommendations for additional resource protection, or environmental measures that may be appropriate to include in an original license. Modifications could include recommendations by the agencies, the general public, and the staff.

In addition to these alternatives, the staff will evaluate the no-action alternative, which would maintain the existing environment or status quo at the project. There would be no enhancement of existing environmental resources.

Scope of the Environmental Analysis

Cumulative Effects

a. Geographic Scope

We believe that water quality and resident fisheries can be affected in a cumulative manner by the Fort Dodge Mill Dam Project being analyzed in this Environmental Assessment (EA) and by other activities on the Des Moines River. These activities include sediment and nutrient concentrations in the Des Moines River and associated tributaries due to channel straightening, land cultivation, and water treatment by the City of Fort Dodge.

The geographic scope of analysis defines the physical limits or boundaries of the proposed action's effect on the resources. Since the proposed action affects the resources differently, the geographic scope for each resource may vary. In this case, for water quality and fishery resources, the geographic scope of analysis will encompass the mainstem of the Des Moines River from river mile 387 upstream to the confluence of the Raccoon River with the Des Moines River. We chose this geographic scope for these resources because the effects of project operation are limited to this area and, in this case, these resources are directly and indirectly affected by project operation.

b. Temporal Scope

The temporal scope includes a discussion of the past, present, and future actions and their effects on water quality and the fishery resources. Based

[1] This supersedes the Notice of Environmental Assessment Scoping previously issued July 15, 1994, 59 FR 37229, July 21, 1994.

on the license term, the temporal scope will look 30 to 50 years into the future, concentrating on the effect on the resource from reasonably foreseeable future actions (e.g., the effect of potential future water withdrawals within the project vicinity). The historical discussion will, by necessity, be limited to the amount of available information for each resource.

We are seeking further information from Federal, state, and other agencies and non-governmental organizations (NGO's) pertaining to past, present, and future actions and effects on the resources (in the form of previous studies, present plans, and future plans, goals or forecasts).

Environmental Issues

A preliminary list of environmental issues identified by the staff for coverage in an EA is presented in this section. The list is not intended to be exhaustive or final, but is an initial listing of issues that have been raised and appear to be important. The staff will review all issues raised during the scoping process and make decisions as to the level of analysis needed. If preliminary analysis indicates that any issues presented in this scoping document have little potential for causing significant impacts, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

The following issues apply to the Fort Dodge Mill Dam Project:

- Potential effects on geology and soils resources due to dredging upstream and downstream of the dam.
- An evaluation of the project's potential effect on dissolved oxygen (DO) downstream of the project and the need for additional studies of DO.
- Effects of project operation and non-project factors on vegetation and wildlife.
- Effects of project operation on any federally listed threatened or endangered species in the project area.
- Probability of eligibility of dam and powerhouse on the National Register of Historic Places.
- Consider the need for measures to enhance recreational opportunities.

The EA will assess the project-specific effects on the above resources and whether these effects contribute adversely or beneficially to the affected environment.

EA Preparation Schedule

The preliminary schedule for preparing the EA for the Fort Dodge Mill Dam Project is:

Milestones	Target date
Scoping	Summer 1994.
Draft EA	September 30, 1994.
Final EA	November 30, 1994.

Request for Comments

The Commission's scoping objectives are to:

- Identify significant environmental issues,
- Determine the depth of analysis appropriate to each issue,
- Identify the resource issues not requiring detailed analysis, and
- Identify reasonable project alternatives.

Federal, state, and local resource agencies, licensees and developers, Indian tribes, NGO's and other interested groups, and the general public are requested to file with the Commission information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing of the Fort Dodge Mill Dam Project being analyzed in this EA. The types of information sought include:

- Information, quantified data, or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of, and information from, any other EA, environmental impact statement, or similar document or study (previous, on-going, or planned) relevant to the proposed licensing activity in the mainstem of the Des Moines River.
- Existing information and any data that would aid in describing the past and present actions and effects of the project on water quality and the fisheries. For example, fish stocking/management histories of the Des Moines River, historic water quality data and the reasons for improvement or degradation of the quality, any wetland habitat losses or proposals to develop land and water resources.
- Identification of any federal, state, or local resource plans and future project proposals that encompass the mainstem of the Des Moines River with information on when they will be implemented, if known. For example, proposals to construct or operate water treatment facilities, recreation areas, water diversions, or implement fishery management programs.
- Documentation that would support a conclusion that the project *does not* or *does* contribute to cumulative adverse or beneficial effects on resources and therefore should be excluded from further study or excluded from further consideration of cumulative effects within the mainstem of the Des Moines River. Documentation should include, but is not limited to: how the project interacts with other projects and other developmental activities; results from studies; resource management policies; and reports from Federal, state, and local agencies.

To be useful in preparing the EA, the requested information must be filed with the Commission no later than 30 days past the date of this notice. Address all communications to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426.

All filings must clearly show at the top of the first page "Fort Dodge Mill Dam Project, FERC No. 11346".

When filing scoping comments, you should submit an original and 8 copies; this will assure that staff receives your information quickly. Parties to the proceedings (as identified on the official Service List for the Fort Dodge Mill Dam Project) must also send copies of their filings, and all attachments, to the other parties listed on the official service list. The official service list is available from the Secretary of the Commission at the same address above.

Any questions concerning the scoping process should be directed to Mary Golato (202–219–2804) at the Federal Energy Regulatory Commission, Office of Hydropower Licensing (HL 20.1), 825 North Capitol Street, NE, Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20273 Filed 8–17–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 10867–001, IN]

Holliday Historic Restoration Associates, Ltd.; Notice of Environmental Assessment Scoping [1]

August 12, 1994.

On January 10, 1994, the Federal Energy Regulatory Commission (Commission) issued a notice indicating that staff is ready to conduct an environmental analysis (REA Notice) for the proposed Holliday Hydroelectric Project, located on the West Fork of the White River in Noblesville Township, Hamilton County, Indiana. The REA Notice also requested comments (mandatory and recommended license terms and conditions and prescriptions)

[1] This supersedes the Notice of Environmental Assessment Scoping issued July 15, 1994, 59 FR 37231, July 21, 1994.

from Federal, state, and local resource agencies, licensees and developers, and any other interested groups (the parties). Parties were given until March 10, 1994, to file comments.

The purpose of this notice is to advise all parties as to the proposed scope of the staff's environmental analysis and to seek additional information pertinent to this analysis. The proposed scope of analysis as presented herein is based on the information filed with the Commission by Holliday Historic Restoration Associates, Ltd. (the Applicant), comments received from the parties thus far, and the staff's independent analysis.

Proposed Action

The Applicant proposes to rehabilitate a retired hydroelectric facility owned by Public Service Company of Indiana, Inc. (PSI). The facility is located on the West Fork of the White River, a tributary of the Wabash River, in central Indiana, and used as a source of cooling water for an adjacent coal-fired, steam-electric generating plant owned and operated by PSI. (From 1950 to 1965, the hydroelectric facility, then known as the unlicensed Noblesville Project, was operated by PSI to provide energy for use at PSI's adjacent coal-fired, steam-electric generating plant.) The Applicant intends to use revenues from the rehabilitated project to restore the historic powerhouse and open it to the public for historic tours.

The proposed project would include the following features: (1) An existing concrete dam, 350 feet long and 10 feet high; (2) an existing 11-acre impoundment, with a normal water surface elevation of 764 feet mean sea level; and (3) an existing 25-foot by 50-foot powerhouse that would contain two new turbine-generator units having a total generating capacity of 450 kilowatts.

In addition to the proposed two new turbine-generator units, the Applicant proposes to renovate an existing upstream fish passage facility (concrete flume) and install two new angled trashracks (with 3/4-inch clear bar spacing) above the project intakes, and provide a downstream fish passage facility.

To enhance public recreation, the Applicant proposes to develop a new parking area and picnic facilities on the west bank upstream from the dam, as well as, a footbridge across the PSI inlet area, connecting to an existing canoe portage around the dam. Other improvements to the area would include the construction of safety fencing and other safety measures. As indicated earlier, historical tours of the powerhouse would be conducted on weekends for the public.

The Applicant proposes measures relating to project operation to protect and enhance environmental resources in the project area. A 40-cubic-feet-per-second (cfs) minimum flow over the project dam is proposed to protect water quality and fishery resources in the downstream pool area and side channel. The project would be operated in a run-of-river mode, with only minor fluctuations in the headpond elevation to account for natural variations in river flow. In the operational plan for the Holliday Project, the Applicant also proposes to implement a plan to verify run-of-river operation and a seasonal water quality monitoring program for the impoundment.

Project Alternatives

The Commission staff will consider alternatives, including environmental measures not proposed by the Applicant. The staff will review and consider alternative recommendations for additional resource protection, or enhancement measures that may be appropriate to include in an original minor license. Modifications could include recommendations by the agencies, the general public, and the staff.

In addition to these alternatives, the staff will evaluate the no-action alternative, which would maintain the existing environment or status quo at the project. Under this alternative the project impoundment would continue to provide cooling water for the adjacent coal-fired, steam-electric generating plant, as at present. We use this alternative to set baseline environmental conditions for comparison with other alternatives.

Scope of the Environmental Assessment

The geographic scope of analysis defines the physical limits or boundaries of the proposed action's effects on the resources. Since the proposed action affects the resources differently, the geographic scope for each resource may vary. We have identified no effects of operating the Holliday Project that, when coupled with other activities on the West Fork of the White River, would affect environmental resources in a cumulative manner. Therefore, for water quality, fish and wildlife resources, cultural resources, recreation, and all other resources we will focus our analysis on the project area and the West Fork of the White River, unless otherwise persuaded by comments during the scoping process.

The temporal scope includes a discussion of the past, present, and future actions and their effects on water quality, fish and wildlife resources, cultural resources and recreation. Based on the license term, the temporal scope will look 30 to 50 years into the future, concentrating on the effect on the resource from reasonably foreseeable future actions. The historical discussion will, by necessity, be limited to the amount of available information for each resource.

We are seeking further information from Federal, state, and other agencies and non-governmental organizations (NGO's) pertaining to past, present, and future actions and effects on the aforementioned resources (in the form of previous studies, present plans, and future plans, goals or forecasts) in the Wabash River Basin.

Environmental Issues

A preliminary list of environmental issues identified by the staff for coverage in an Environmental Assessment (EA) is presented in this section. The list is not intended to be exhaustive or final, but is an initial listing of issues that have been raised and appear to be important. The staff will review all issues raised during the scoping process and make decisions as to the level of analysis needed. If preliminary analysis indicates that any issues presented in this scoping document have little potential for causing significant adverse effects, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

The following project-specific issues apply to the Holliday Project:

- Effects of the proposed mode of operation on dissolved oxygen and water temperature in the project impoundment and downstream river reach:
- Effects of flow-pattern changes from operating the proposed project, and minimum flow needs for the protection of fishery resources and water quality in the pool area and side channel immediately downstream of the project dam;
- Project effects of entrainment and turbine-induced mortality on resident fishes;
- Fish passage needs at the project dam;
- Effects on the historical value of the project dam and powerhouse, both determined eligible for inclusion in the National Register of Historic Places; and
- Effects on public recreational use at the project.

The EA will assess the project-specific effects on the above resources and

whether these effects contribute adversely or beneficially to the affected environment.

EA Preparation Schedule

The preliminary schedule for preparing the EA for the Holliday Project is:

Milestones	Target date
Scoping	Summer 1994
Draft EA	November 1994
Final EA	January 1995

Request for Comments

The Commission's scoping objectives are to:

• Identify significant environmental issues;

• Determine the depth of analysis appropriate to each issue;

• Identify the resource issues not requiring detailed analysis; and

• Identify reasonable project alternatives.

Federal, state, and local resource agencies, licensees and developers, Indian tribes, NGO's, other interested groups, and the general public are requested to file with the Commission information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the environmental effects of the proposed licensing of the Holliday Project being analyzed in the EA. The types of information sought include:

• Information, quantified data, or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues;

• Identification of, and information from, any other environmental assessment, environmental impact statement, or similar document or study (previous, on-going, or planned) relevant to the proposed licensing activity on the West Fork of the White River;

• Existing information and any data that would assist in describing the past and present actions and effects of the project and other developmental activities on water quality, fish and wildlife resources, cultural resources, and recreation. For example, fish stocking/management histories of the West Fork of the White River, historic water quality data and the reasons for improvement or degradation of the quality, locations of wastewater treatment outfalls or water intakes, or proposals to develop land and water resources within the river;

• Identification of any Federal, state, or local resource plans and future project proposals that encompass the West Fork of the White River, with information on when the plans would be implemented, if known. For example, proposals to construct or operate water treatment facilities, recreation areas, water diversions, or implement fishery management programs; and

• Documentation that would support a conclusion that the proposed project *does* or *does not* contribute to cumulative adverse or beneficial effects on resources and, therefore, should be excluded from further study or included for further consideration of cumulative effects. Documentation should include, but not be limited to: how the project interacts with other projects on the river and other developmental activities; results from studies; resource management policies; and reports from Federal, state, and local agencies.

To be useful in preparing the EA, the requested information must be filed with the Commission no later than 30 days past the date of this notice. Address all communications to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426.

All filings must clearly show at the top of the first page "Scoping Comments, Holliday Project, FERC No. 10867."

When filing scoping comments, you should submit an original and 8 copies; this will assure that the staff receives your information. Parties to the proceedings (as identified on the official Service List for the Holliday Project) must also send copies of their filings, and all attachments, to the other parties listed on the official Service List. The official Service List is available from the Secretary of the Commission at the same address above.

Any questions concerning the scoping process should be directed to Mary Golato (202–219–2804) or Frank Karwoski (202–219–2782) at the Federal Energy Regulatory Commission, Office of Hydropower Licensing (HL–20.1), 810 First St., NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20274 Filed 8–17–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–351–000]

Black Marlin Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

August 10, 1994.

Take notice that on August 5, 1994, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of Black Marlin's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, proposed to be effective September 1, 1994:

First Revised Sheet No. 314

Black Marlin states that in conjunction with its implementation of Order 636 and in compliance with the Commission's order dated October 14, 1993, in Docket No. RS92–56–002, Black Marlin filed its form of Electronic Bulletin Board Subscriber Agreement (Subscriber Agreement) to become part of its FERC Gas Tariff, First Revised Volume No. 1. Paragraph 3, of the Subscriber Agreement provides that EBB Customers will reimburse Black Marlin $135.61 plus applicable taxes for licensing charges Black Marlin incurs to provide service. The licensing fees incurred by Black Marlin for new customers have risen to $157.42 plus applicable taxes and will continue to change periodically.

Black Marlin states that it is filing herein to remove the fixed dollar amount from the form of Subscriber Agreement in its tariff. Black Marlin states that it will continue to charge new EBB Customers only the actual charges incurred by Black Marlin on their behalf, with no administrative or handling fees or other forms of consideration. The change proposed herein will eliminate the need for a tariff filing each time the licensing fees are changed.

Black Marlin requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary, specifically (but not limited to) Section 154.22 of the Commission's Regulations, so as to permit the tariff sheets submitted herewith to become effective September 1, 1994.

Black Marlin further states that copies of the filing have been mailed to each of its customers affected by this filing and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 17, 1994. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20242 Filed 8–17–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–707–000]

Northern Natural Gas Company; Request Under Blanket Authorization

August 12, 1994.

Take notice that on August 9, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP94–707–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to upgrade the CRI Feeders Delivery Point located at Section 34, T6N, R13E, in Texas County, Oklahoma, in order to provide increased natural gas deliveries to Amarillo Natural Gas, Inc. (Amarillo), under the blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states the proposed increased service at the Amarillo/CRI Feeders Delivery Point will impact its peak day and annual deliveries by increasing the peak day volumes from 80 Mcf to 1,100 Mcf and by increasing the annual volumes from 19,000 Mcf to 133,200 Mcf. Northern indicates that the total estimated cost to upgrade the Amarillo/CRI Feeders Delivery Point will be $16,000, and will be financed in accordance with the General Terms and Conditions of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accomplish the increased service to the Amarillo/CRI Feeders Delivery Point without detriment or disadvantage to Northern's other customers.

Northern states that a copy of this filing has been mailed to each of the affected state commissions.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20244 Filed 8–17–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–703–000]

Texas Gas Transmission Corporation; Request Under Blanket Authorization

August 12, 1994.

Take notice that on August 8, 1994, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94–703–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate a delivery facility for International Paper Company (International Paper), under Texas Gas' blanket certificate issued in Docket No. CP82–407–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that previously it installed the International Paper-Pineville Meter Station (IP–Pineville), located in Rapides Parish, Louisiana, pursuant to Section 284.3(c) of the Commission's Regulations to implement a transportation service for IP Investment Holdings, Ltd., an intrastate pipeline and an affiliate of International Paper, under the authority of Section 311 of the Natural Gas Policy Act of 1978 (NGPA), for ultimate delivery to International Paper. Texas Gas now proposes to use the metering facility for Part 284 blanket authorization service. Texas Gas avers that its proposal will not impact its peak day and annual deliveries.

Any person or the Commission Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20245 Filed 8–17–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2009–003 North Carolina]

Virginia Electric and Power Co.; Public Viewing of Comments and Statements of the Scoping Meetings for the Gaston and Roanoke Rapids Project

August 12, 1994.

On Monday, August 15, 1994, copies of the written comments and statements submitted by the commentators who attended the scoping meetings held on July 14, 18, and 20, 1994, for the Lake Gaston Project will be made available for public review. These documents will be available for review in the Commission's Public Referrence Branch, Room 3104, located at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20246 Filed 8–17–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30371; FRL–4905–5]

Ciba-Geigy Corp.; Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products 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 September 19, 1994.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30371] and the registration/file number, attention Product Manager (PM) 25, to: Public

Response and Program Resources Branch, Field Operations Divisions (7506C), 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 25, Robert Taylor, Rm. 241, CM #2, (703–305–6800).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 100–TAG. Applicant: Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419. Product name: Exceed WG. Herbicide. Active ingredient: Prosulfuron 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea at 57 percent. Proposed classification/Use: None. For postemergence weed control in field corn (grown for grain, silage, or seed), popcorn, and sweet corn. (PM 25)

2. File Symbol: 100–TAE. Applicant: Ciba-Geigy Corporation. Product name: Prosulfuron Technical. Herbicide. Active ingredient: Prosulfuron 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea at 96 percent. Proposed classification/Use: None. For formulation into herbicides. (PM 25)

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: August 5, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–20329 Filed 8–17–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–604; FRL–4901–5]

Rhone Poulenc Ag Co. et al.; Filing and Amendment of Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition (PP) for the fungicide fosetyl-Al by the Rhone-Poulenc Ag Co. and an amended pesticide petition submitted by Rohm & Haas Co. for fenbuconazole.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. 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. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attention: Cynthia Giles-Parker (PM-22), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in the petition at the following office location/telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5540.

SUPPLEMENTARY INFORMATION: EPA is giving notice of a filing of a pesticide petition and an amendment to a petition as follows:

Initial filing

1. *PP 1F4014.* Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, has submitted a pesticide tolerance petition (PP 1F4014) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a(d)), amend 40 CFR 180.415 to establish a tolerance for the fungicide fosetyl-Al, aluminum tris(*O*-ethylphosphonate), in or on tomatoes at 3 parts per million (ppm).

Amended Filing

2. *PP 2F4127.* Rohm & Haas Co., Agricultural Chemicals Registration and Regulatory Affairs, Independence Mall, Philadelphia, PA 19105, has submitted an amendment to PP 2F4127, notice of which originally published in the **Federal Register** of December 30, 1992 (57 FR 62334). The original notice proposed amendment to 40 CFR part 180 by establishing a regulation to permit combined residues of fenbuconazole (*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile) in or on wheat (grain, straw, and processed fractions), poultry, meat, milk, and eggs. The petition, as amended, proposes to amend 40 CFR part 180 by establishing a regulation to permit combined residues of fenbuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-phenyl-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolites RH-9129 [*cis*-5-(4-chlorphenyl)dihydro-3-phenyl-3-(1*H*-

1,2,4-triazole-1-ylmethyl-)-2(3*H*)-furanone] and RH-9130 [trans-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-)-2(3*H*-furanone] in or on the following commodities: wheat grain at 0.05 part per million (ppm); and wheat straw at 10 ppm. It also proposes combined residues of fenbuconazole and its metabolite RH-7968 [4-chlorophenyl-*alpha*-(hydroxymethyl)-*alpha*-phenyl-benzenebutanenitrile] in or on fat (cattle, hogs, horses, and sheep) at 0.05 ppm and combined residues of fenbuconazole and its metabolites RH-9129, RH-9130, and RH-7968 in or on liver (cattle, hogs, horses, and sheep) at 0.3 ppm.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food and feed additives, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: August 8, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–20334 Filed 8–17–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 94–876]

State Petitions to Retain Authority Over Intrastate Mobile Service Rates

August 12, 1994.

The following petitions have been filed by states seeking to retain authority over intrastate mobile service rates. The full text of these documents is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800.[1] Comments on the petitions must be filed within 30 days of the date of public notice of the petition in the **Federal Register.** *See* 47 CFR 1.4(b)(1). Replies are due 15 days after the expiration of the filing period for comments. All comments and replies should reference the specific file number assigned to the state petition in issue and should be filed with the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.[2]

Petition of Public Utilities Commission, State of Hawaii, for Authority to Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii, PR File No. 94–SP1.

Petition to Extend State Authority Over Rate and Entry Regulations of All Commercial Mobile Radio Services, filed by the Arizona Corporation Commission, PR File No. 94–SP2.

Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates (accompanied by Request for Proprietary Treatment of Documents Used in Support of Petition to Retain Regulatory Authority Over Intrastate Cellular Service Rates), PR File No. 94–SP3.

Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut (filed August 9, 1994), PR File No. 94–SP4.

Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana, PR File No. 94–SP5.

Petition to Extend Rate Regulation Filed by the New York State Public Service Commission, PR File No. 94–SP6.

Statement of the Public Utilities Commission of Ohio's Intention to Preserve Its Right for Future Rate and Market Entry Regulation of Commercial Mobile Radio Services, PR File No. 94–SP7.

State Petition for Authority to Maintain Current Regulation of Rates and Market Entry (Sect. 20.12) filed by the Public Service Commission of Wyoming, PR File No. 94SP8.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–20263 Filed 8–17–94; 8:45 am]

BILLING CODE 6712–01–M

[1] Pending a determination on its request for confidential treatment, material submitted by the State of California under seal will not be made available. A redacted version, however, will be available for viewing and copying.

[2] Some state petitions were erroneously labeled "GN Docket No. 93–252." All parties should use the state-specific file numbers listed in the text in the future.

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Royal Cruise Line Limited, One Maritime Plaza, Suite 1400, San Francisco, California 94111

Vessel: QUEEN ODYSSEY

Dated: August 12, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–20238 Filed 8–17–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Mellon Bank Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be

accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania; to acquire U.S. Bancorp Escrow Company, Seattle, Washington, and thereby engage in purchasing all of the assets of U.S. Bancorp Escrow Company, which provides escrow closing services primarily for residential mortgages originated in the United States. Applicant intends to transfer the assets of U.S. Bancorp Escrow Company to a newly formed *de novo* subsidiary, Mellon Mortgage Company. Activities to be conducted by Mellon Mortgage are permitted under § 225.25(b)(3) of the Board's Regulation Y and will be conducted throughout the United States and overseas. Applicant previously received approval from the Federal Reserve System to engage in trust company activities overseas.

Board of Governors of the Federal Reserve System, August 12, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20270 Filed 8–17–94; 8:45 am]

BILLING CODE 6210–01–F

Northeast Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 12, 1994.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Northeast Bancshares, Inc., Mesquite, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Bancshares-Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Northeast National Bank, Mesquite, Texas.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. West Coast Bancorp, Newport Beach, California; to acquire 18 percent of the voting shares of Business & Professional Bank, Woodland, California.

Board of Governors of the Federal Reserve System, August 12, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20271 Filed 8–17–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0301]

Animal Drug Export; Fenbendazole 10% Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Vet-A-Mix, Inc., has filed an application requesting approval for export of the animal drug fenbendazole 10 percent suspension for cattle and sheep to Ireland for sale in Ireland and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of food animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

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: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Vet-A-Mix, Inc., P.O. Box A, 604 West Thomas Ave., Shenandoah, IA 51601–0148, has filed application number 8320 requesting approval for export to Ireland for sale in Ireland and the United Kingdom of the animal drug fenbendazole 10 percent suspension. The product is intended for use in cattle and sheep for the control of certain gastrointestinal roundworm and lungworm infections. The application was received and filed in the Center for Veterinary Medicine on August 8, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 29, 1994, and to provide an additional copy of the submission directly to the contact

person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: August 11, 1994.

Richard H. Teske,

Deputy Director, Pre-market Review, Center for Veterinary Medicine.

[FR Doc. 94–20347 Filed 8–17–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1994:

Name: Council on Graduate Medical Education Medical Licensure Subgroup.

Time: September 8, 1994, 9:00 a.m.

Place: Holiday Inn, Crowne Plaza, Rockville Room, 1750 Rockville Pike, Rockville, MD 20857.

Open for entire meeting.

Purpose: Review the operations of the American Medical Association's National Credentials Verification System and recommend if appropriate, an alternative credentials verification system or process for physicians that assures nondiscriminatory policies and practices in the operation of the system.

Review the policies and practices of State Medical Boards in licensing international medical graduates and U.S. medical graduates, and determine the effects of such policies and practices.

Report and make recommendations to Congress, the Secretary of Health and Human Services and the Council on Graduate Medical Education regarding the finding of the subgroup.

Agenda: The first meeting of the Subgroup will be to review the charge to the subgroup, review the contract awarded to study the State Medical Board process, and review the operations of the National Credentials Verification System.

Anyone requiring information regarding the meeting should contact Stanford Bastacky, D.M.D., M.H.S.A. telephone (301) 443–6785; Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: September 10–11, 1994.

Place: Fairmont Hotel, 1717 North Akard Street, Dallas, Texas 75201–2399, (214) 720–2020.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The meeting will convene each morning at 8:00 a.m. and adjourn at approximately 5:00 p.m. on Saturday and 3:00 p.m. on Sunday. The agenda for this meeting shall include the updates for the Bureau of Primary Health Care, the Division of National Health Service Corps, and the Division of Scholarships and Loan Repayments. Other adenda items include presentations on mental and dental health issues.

Anyone requiring information regarding the subject Council should contact Ms. Nada Schnabel, National Advisory Council on the National Health Service Corps, 8th floor, 4350 East West Highway, Rockville, Maryland 20857, Telephone (301) 594–4147.

Agenda Items are subject to change as priorities dictate.

Dated: August 15, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–20349 Filed 8–17–94; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 5, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request)

1. Radioactive Drug Research Committee Report on Research Use of Radioactive Drugs; Membership Summary and Study Summary—0910–0053 (Extension)—Use of radioactive drugs for certain research purposes must be approved and reported by Radioactive Drug Research Committees. These Committees, comprised of sufficient scientific expertise, and established at medical institutions. Reports, submitted annually or when a special summary is required, are used to monitor Committee compliance with the regulations. *Respondents:* Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Recordkeeping—Minutes of Meetings, 21 CFR 361.1(c)(2)	110	1	10 hours.
Reporting—Committee Membership Summary 21 CFR 361.1(c)(3) (form FDA 2914)	110	1	1 hour.
Reporting—Study Summary (form FDA 2915) 21 CFR 361.1(c)(3)	110	2.5	3 hours.

Estimated Total Annual Burden ..... 2,035 hours

2. National College Health Risk Behavior Survey—New—This data collection is a one-time survey among college students to estimate the extent to which they engage in health risk behaviors that increase their risk or mortality, morbidity, and social problems. *Respondents:* Individuals or households; *Number of Respondents:* 6,300; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.5 hour; *Estimated Annual Burden:* 3,150 hours.

3. The National Environmental Policy Act; Policies and Procedures–21 CFR part 25—0910–0190 (Extension)—The National Environmental Policy Act (NEPA) requires each Federal Agency to consider the environmental effects of its actions. Firms wishing to market new products regulated by the Food and Drug Administration must submit applications requesting approval. Certain applications must contain environmental information for determining whether the proposed action will have a significant environmental impact. *Respondents:* Businesses or other for-profit, Federal Agencies or employees, small businesses or organizations; *Estimated Annual Burden Hours:* 1;

(**Note:** Burden for these information requirements is included in individual

clearances where NEPA considerations apply).

4. Research and Research Training Grant Applications and Related Forms—0925–0001 (Revision)—PHS 398 and 2590 are used to apply for research project grants, Research Career Awards (RCA), and Institutional National Research Service Awards (NRSA). PHS 2271 is used for NRSA, some RCA programs, and research supplements for underrepresented minorities in biomedical research; PHS 3734 when research project transferring to another institution; and HHS 568 to report inventions made during course of work under grant/award. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Application for Public Health Service Grant (PHS 398)	62,554	1	35.92 hours.
Continuation of a Public Health Service Grant (PHS 2590)	25,527	1	20 hours.
Statement of Appointment (PHS 2271)	14,021	1	.25 hour.
Relinquishing Rights to a Research Grant (PHS 3734)	784	1	.50 hour.
Final Invention Statement (HHS 568)	11,218	1	.10 hour.

Estimated Total Annual Burden.....2,762,785 hours

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address:

Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503

Dated: August 12, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–20227 Filed 8–17–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–942–94–4730–02]

Colorado: Filing of Plats of Survey

July 14, 1994.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., July 14, 1994.

The plat representing the dependent resurvey of portions of the west boundary, the subdivisional lines, and the metes-and-bounds survey of certain tracts, and the subdivision of section 30, T. 6 S., R. 99 W., Sixth Principal Meridian, Colorado, Group No. 1011, was accepted June 13, 1994.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of section 19, T. 2 N., R. 85 W., Sixth Principal Meridian, Colorado, Group No. 1037, was accepted May 16, 1994.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat (in three sheets), representing the dependent resurvey of portions of the Colorado-New Mexico State Line, (south boundary), the Eighth Standard Parallel North (south boundary, T. 33 N. R. 7 W.), the east and west boundaries, subdivisional lines, and the subdivision of certain sections, and the survey of a portion of the subdivision of section 10, T. 32 N., R. 7 W., New Mexico Principal Meridian , Colorado, Group No. 970, was accepted June 7, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 11, 14, and 15, T. 12 S., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 976, was accepted May 24, 1994.

The plat (in four sheets), represents the dependent resurvey of a portion of certain mineral claims, the Metes-and-Bounds survey of irregular lot lines and a portion of the south right-of-way of Soda Creek Road, in section 10, T. 4 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 690, was accepted May 17, 1994.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquires about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Darryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 94–20214 Filed 8–17–94; 8:45 am]

BILLING CODE 4310–JB–M

Bureau of Reclamation

Cancellation to Continue Work Under the National Environmental Policy Act on Four Projects Located in California.

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of cancellation.

SUMMARY: The Bureau of Reclamation (Reclamation) is cancelling plans to continue work under the National Environmental Policy Act on four draft environmental impact reports/draft environmental impact statements (DEIR/DEIS). Cancellation of the DEIR/DEIS's is due to abandonment of plans, public controversy, threatened species, economic considerations, and unresolved legal issues, as well as the age of the studies.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Kleinsmith, Environmental Specialist, Mid-Pacific Region, Bureau of Reclamation, Attention: MP–152, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 978–5129.

SUPPLEMENTARY INFORMATION: Listed below are the specific projects and National Environmental Policy Act Compliance activity being impacted by this notice:

1. Arvin-Edison Water Storage and Exchange Program, Central Valley Project, California. The notice of availability for this DEIR/DEIS was published in 57 FR 5460, Feb. 14, 1992.

The DEIR/DEIS for Arvin-Edison intended to focus on providing more ground-water storage and better operating efficiencies for both Arvin-Edison and Metropolitan Water District of Southern California (MWD). Due to requirements of the Central Valley Project Improvement Act and related Delta water quality standards, Arvin-Edison Water Storage District and the MWD do not want to proceed with this project at this time. Once Delta issues are resolved, the project may be modified and reinstated.

2. Enlargement of Lake Cachuma and Bradbury Dam Safety Modifications, Cachuma Project, California. The notice of availability of this DEIR/DEIS was published in 55 FR 53201, Dec. 27, 1990.

The study for the Enlargement of Lake Cachuma and Bradbury Dam Safety Modifications is being cancelled because the State of California has abandoned plans to enlarge Lake Cachuma, thus reducing the project to safety modifications. The safety modification project has been on hold for several years pending completion of additional seismic studies. Reclamation will prepare an appropriate environmental compliance document on the safety modifications when the project is resumed.

3. City of Santa Rosa, Public Law 84-984 Loan Project, Santa Rosa, Small Reclamation Project Act, California. The notice of availability for the DEIR/DEIS was published in 55 FR 51776, Dec. 17, 1990.

The purposes of the proposed Small Reclamation Loan Act project in the city of Santa Rosa (City) were to provide increased capacity for the City's tertiary sewage treatment plant, enhancement of wildlife resources, and irrigation of 7,500 acres of presently unirrigated land. Due to a high degree of public controversy related to the impacts of the alternatives presented in the DEIR/DEIS and subsequent easing of wastewater discharge standards into the Russian River by the State Water Resource Control Board, the City will not proceed with the final DEIR/DEIS. The City is in the process of scoping and redefining the project. Reclamation's role, if any, in any future project is not defined at this time.

4. Westlands Water District Water Supply Replacement Project (Westlands Intertie), Central Valley Project, California. Notice of availability was published in 54 FR 16170, Apr. 4, 1989.

Westlands Water District decided not to proceed with this project due to issues related to threatened species and economic considerations.

Dated: August 11, 1994.

Roger K. Patterson,

Regional Director.

[FR Doc. 94-20285 Filed 8-17-94; 8:45 am]

BILLING CODE 4310-94-P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32521]

Cen-Tex Rail Link, Ltd.—Trackage Rights Exemption—Texas Central Railroad Company

Texas Central Railroad Company (TEXC) has agreed to grant local and overhead trackage rights to Cen-Tex Rail Link, Ltd. (CT) on TEXC's lines of railroad between approximately milepost 104.6 at Dublin, TX and approximately milepost 129.5 at Gorman, TX, a distance of approximately 24.9 miles. The trackage rights will connect with CT's lines at Dublin and will provide CT with direct access to shipper facilities on the TEXC rail line. Consummation is scheduled to occur upon the effective date of this exemption or soon thereafter.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Kevin M. Sheys, 1020 19th St., NW, Suite 400, Washington, DC 20036.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 12, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Acting Secretary

[FR Doc. 94-20317 Filed 8-17-94; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB-308 (Sub-No. 2X)]

Central Michigan Railway Company—Abandonment Exemption—In Bay County, MI

Central Michigan Railway Company (CMGN) [1] has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad, known as the Brown Hoist/South Water Spur, in Bay City, Bay County, MI. The line consists of two segments, totalling approximately 3.54 miles: (1) the Brown Hoist segment, extending between milepost 0.00 and milepost 1.16, a distance of approximately 1.16 miles, and (2) the South Water Street segment, extending between a connection with the Brown Hoist segment at milepost 0.85 (also known as milepost 6.35) and milepost 3.97, a distance of approximately 2.38 miles.

CMGN has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) no overhead traffic moves or could move over the line (the stub-ended Brown Hoist/South Water Spur is not a through route and thus cannot be utilized for overhead traffic); (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 17, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental

[1] CMGN is affiliated with the Detroit and Mackinac Railway Company, both of which are class III rail carriers. The Detroit and Mackinac Railway Company owns, but does not currently operate, rail lines between Bay City and the northern portions of the Lower Peninsula of Michigan.

issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] be filed by August 29, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 7, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Thomas J. Litwiler, Two Prudential Plaza, 45th Floor, 180 North Stetson Ave., Chicago, IL, 60601.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

CMGN has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 23, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 10, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–20318 Filed 8–17–94; 8:45 am]

BILLING CODE 7035–01–P

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–3 (Sub-No. 116X)]

Missouri Pacific Railroad Company—Abandonment Exemption—Smith County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Missouri Pacific Railroad Company (MP) of a 1.462-mile portion of its Tyler Branch rail line extending from milepost 25.538 to the end of the line at milepost 27.0, near Swan, Smith County, TX. Swan, at milepost 26.3 is a nonagency station. This exemption is subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 17, 1994. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by August 26, 1994, petitions to stay must be filed by September 2, 1994, and petitions to reopen must be filed by September 12, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–3 (Sub-No. 116X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Jeanna L. Regier, 1416 Dodge Street #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: August 11, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–20316 Filed 8–17–94; 8:45 am]

BILLING CODE 7035–01–P

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

National Institute of Justice

Office of Justice Programs

1994–95 National Institute of Justice Program Plan

AGENCY: Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of the availability of the 1994–95 National Institute of Justice Program Plan.

SUMMARY: The National Institute of Justice (NIJ) is publishing this Notice of the availability of its 1994–95 National Institute of Justice Program Plan.

DATES: The next deadline for receipt of proposals is October 15, 1994.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Carol V. Petrie, Acting Director, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531 To obtain copies of the 1994–95 National Institute of Justice Program Plan, call the National Criminal Justice Reference Service (NCJRS), 1–800–851–3420, Box 6000, Rockville, MD 20850. The Plan can also be accessed and downloaded—by section through the NCJRS Electronic Bulletin Board, (301) 738–8895, 24 hours a day, or in its entirety via the Library of Congress Internet Gopher Server; telnet to marvel.loc.gov.

SUPPLEMENTARY INFORMATION: The following supplementary infromation is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

The 1994–95 National Institute of Justice Program Plan out-lines the NIJ research and evaluation agenda for 1994, provides descriptions of program areas for which research and evaluation proposals will be solicited, provides application instructions and forms, outlines requirements for award recipients, and lists contact persons for program areas.

(NIJ plans to award an evaluation of the Comprehensive Communities Program in fiscal year 1994. Therefore, no proposals are being solicited for this evaluation for the October 15, 1994 deadline.)

The following is provided to supplement information contained in the Program Plan:

Page Limits

Grant applications for $50,000 or more submitted under goals I–V should not exceed 30 double spaced pages. Appendices should be limited to curriculum vitae or resumes, and bibliographies. Required federal forms and budget narratives are not included in the 30 page limit.

Grant applications for less than $50,000 submitted under goals I–V should not exceed 15 double spaced pages. Appendices should be limited to curriculum vitae or resumes, and bibliographies. Required federal forms and budget narratives are not included in the 15 page limit.

Page limits for Goal VI Programs are as follows:

Individual Programs

Data Resources Program: 15 Double-Spaced Pages
Visiting Fellowship Program:
Over $50,000 30 Double-Spaced Pages
Under $50,000 15 Double-Spaced Pages
Post Doctoral Fellowship Program: 20 Double-Spaced Pages
Assistant Attorney General's Research Fellowship Program: 15 Double-Spaced Pages
Graduate Research Fellowship at Historically Black Colleges and Universities: 15 Double-Spaced Pages
Graduate Law Enforcement Technology Fellowship: 15 Double-Spaced Pages
Yound Scholars Fellowship Program: 15 Double-Spaced Pages

Agency Based Programs

State and Local Participatory Evaluation Program: 15 Double-Spaced Pages
State and Local Participatory Research Program: 15 Double-Spaced Pages
Interagency Partnership Program: 15 Double-Spaced Pages

Small Grants

Small grant proposals are accepted under all six goal areas. Any proposal under $50,000 will be considered a small grant application and be subject to the 15 double-spaced page limit.

Young Scholars

NIJ is issuing two additional deadlines for this program: November 15, 1994 and January 15, 1995.

Carol V. Petrie,

Acting Director, National Institute of Justice.

[FR Doc. 94–20252 Filed 8–17–94; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–064]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 19, 1994. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–New), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Information Collection from the Public in Support of the NASA Acquisition Process Reports Required under Contracts with a value More than $500,000.
OMB Number: 2700–New.
Type of Request: New.
Frequency of Report: On occasion.
Type of Respondent: Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.
Number of Respondents: 709.
Responses Per Respondent: 50.
Annual Responses: 35,450.
Hours Per Response: 30.
Annual Burden Hours: 1,063,500.
Number of Recordkeepers: 0
Annual Hours Per Recordkeeping: 0
Annual Recordkeeping Burden Hours: 0
Total Annual Burden Hours: 1,063,500.
Abstract-Need/Uses: Reporting requirements under NASA contracts to effectively manage and administer and ensure compliance within the terms of the contract.

Dated: August 12, 1994.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 94–20276 Filed 8–17–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice 94–063]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 19, 1994. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0004), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie Berry, NASA Reports Officer, (2020) 358–1368.

Reports

Title: Report on NASA Subcontracts.
OMB Number: 2700–0004.
Type of Request: extention.
Frequency of Report: On occasion.

Type of Respondent: Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.
Number of Respondents: 126.
Responses Per Respondent: 75.
Annual Responses: 9,450.
Hours Per Response: .25.
Annual Burden Hours: 2,363.
Number of Recordkeepers: 0.
Annual Hours Per Recordkeeping: 0.
Annual Recordkeeping Burden Hours: 0.
Total Annual Burden Hours: 2,363.
Abstract-Need/Users: This report enables NASA to evaluate the extent to which its subcontracting program is attaining its stated purpose to distribute its procurements as widely as possible, in order to encourage a broad national base of research capability, to assist small business, small disadvantaged business, and to aid labor surplus areas.

Dated: August 12, 1994.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 94–20277 Filed 8–17–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice 94–062]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 19, 1994. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–NEW), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: NASA Customer Satisfaction Surveys Under Executive Order 12862.
OMB Number: 2700–New.
Type of Request: New.
Frequency of Report: On occasion.
Type of Respondent: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Number of Respondents: 1,000.
Responses Per Respondent: 1.
Annual Responses: 1,000.
Hours Per Response: 0.5.
Annual Burden Hours: 500.
Number of Recordkeepers: 0.
Annual Hours Per Recordkeeping: 0.
Annual Recordkeeping Burden Hours: 0.
Total Annual Burden Hours: 500.
Abstract-Need/Uses: Information collection is required to conduct customer satisfaction surveys as required by Executive Order 12862, "Setting Customer Standards".

Dated: August 12, 1994.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 94–20278 Filed 8–17–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice 94–061]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted for OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 19, 1994. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–New), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Information Collection from the Public in Support of the NASA Acquisition Process Bids and Proposals for contracts with an estimated value more than $500,000.
OMB Number: 2700–New.
Type of Request: New.
Frequency of Report: On occasion.
Type of Respondent: Individuals or households, State or local governments, Businesses or other for-profit, non-profit institutions, Small businesses or organizations.
Number of Respondents: 15,694.
Responses Per Respondent: 1
Annual Responses: 15,694.
Hours Per Response: 240.
Annual Burden Hours: 3,766,560.
Number of Recordkeepers: 0.
Annual Hours Per Recordkeeping: 0.
Annual Recordkeeping Burden Hours: 0.
Total Annual Burden Hours: 3,766,560.
Abstract-Need/Uses: Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission.

Dated: August 12, 1994.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 94–20279 Filed 8–17–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice 94–060]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C.

Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to public a notice in the Federal Register notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Office. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 19, 1994. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–New), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie Berry, NASA Reports Office, (202) 358–1368.

Reports

Title: Information Collection from the Public in Support of the NASA Acquisition Process Purchase Orders for Goods and Services with a Value of $25,000 or less.
OMB Number: 2700-New.
Type of Request: New.
Frequency of Report: On occasion.
Type of Respondent: Individuals or households, state or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organization.
Number of Respondents: 319,276.
Responses Per Respondent: 1.
Annual Responses: 319,276
Hours Per Response: .625.
Annual Burden Hours: 199,538.
Number of Recordkeepers: 0.
Annual Hours Per Recordkeeping: 0.
Annual Recordkeeping Burden Hours: 0.
Total Annual Burden Hours: 199,538.
Abstract-Need/Uses: Information collected to evaluate bids submitted to NASA for the award of purchase orders for goods and services.

Dated: August 12, 1994.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 94–20280 Filed 8–17–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice (94–059)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 19, 1994. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-New), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Information Collection from the Public in Support of the NASA Acquisition Process Bids and Proposals for contracts with an estimated value more than $500,000.
OMB Number: 2700-New.
Type of Request: New.
Frequency of Report: On occasion.
Type of Respondent: Individuals or households, State or local governments, Businesses or other for-profit, non-profit institutions, Small businesses or organizations.
Number of Respondents: 657.
Responses Per Respondent: 1.
Annual Responses: 657.
Hours Per Response: 1,250.
Annual Burden Hours: 821,250.
Number of Recordkeepers: 0.
Annual Hours Per Recordkeeping: 0.
Annual Recordkeeping Burden Hours: 0.
Total Annual Burden Hours: 821,250.
Abstract-Need/Uses: Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission.

Dated: August 12, 1994.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 94–20281 Filed 8–17–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice 94–057]

Intent To Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant Final Touch of Virginia, Inc., of Richmond, Virginia, a partially exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,266,252, which issued on November 30, 1993, and entitled "Ceramic Slip Casting Technique." The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. The fields of use will be limited to the medical and laser industries. NASA will negotiate the final terms and conditions and grant the partially exclusive license, unless within 60 days of the Date of this Notice, written objections to the grant, together with any supporting documentation, are received. All written objections to the grant will be reviewed and a recommendation will be made and forwarded to the Associate General Counsel (Intellectual property) whether to grant the partially exclusive license.

DATES: Comments to this notice must be received by October 17, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: August 9, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–20283 Filed 8–17–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice (94–058)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 19, 1994. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-New), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Information Collection from the Public in Support of the NASA Acquisition Process Reports Required under Contracts with a value Less than $500,000.
OMB Number: 2700-New.
Type of Request: New.
Frequency of Report: On occasion.
Type of Respondent: Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.
Number of Respondents: 4,875.
Responses Per Respondent: 30.
Annual Responses: 146,250.
Hours Per Response: .20.
Annual Burden Hours: 2,925,000.
Number of Recordkeepers: 0.
Annual Hours Per Recordkeeping: 0.
Annual Recordkeeping Burden Hours: 0.
Total Annual Burden Hours: 2,925,000.
Abstract-Need/Uses: Reporting requirements under NASA contracts to effectively manage and administer and ensure compliance within the terms of the contract.

Dated: August 12, 1994.

Eva L. Layne,
Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 94–20282 Filed 8–17–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

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 Dance Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on September 7–9, 1994. The panel will meet from 9:00 a.m. to 7:00 p.m. on September 7–8 and from 9:00 a.m. to 5:00 p.m. on September 9 in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 2:30 p.m. to 5:00 p.m. on September 9 for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 7:00 p.m. on September 7–8 and from 9:00 a.m. to 2:30 p.m. on September 9 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TYY 202/682–5496, at 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, D.C., 20506, or call 202/682–5439.

Dated: August 12, 1994.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–20254 Filed 8–17–94; 8:45 am]

BILLING CODE 7537–01–M

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202)606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

Date: August 31, 1994.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to Teacher-Scholar

Program, submitted to the Division of Education Programs, for projects beginning after December 1, 1994.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94–20256 Filed 8–17–94; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems.

Date and Time: September 8, 1994; 9 a.m.–4 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 580, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Edward Bryan, Program Director, Environmental Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–20291 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems.

Date and Time: September 6, 1994; 9 a.m.–4 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 580, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Edward Bryan, Program Director, Environmental Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard, Arlington VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–20290 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee for Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee For Geosciences.

Date and Time: September 8 and 9, 1994; 8 a.m.–5 p.m.

Place: Room 380, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Ian D. MacGregor, Section Head, Special Projects Section, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1553.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Education and Human Resources Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: August 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–20288 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Materials Research (1203).

Date and Time: September 7, 1994/7 a.m.–9 p.m.; September 8, 1994/8 a.m.–8 p.m.; September 9, 1994/8 a.m.–5 p.m.

Place: Northwestern University, Center of Science and Technology of Advanced Cement-Based Materials, McCormick School of Engineering and Applied Sciences, Department of Civil Engineering, 2145 Sheridan Road, Evanston, IL 60208.

Type of Meeting: Closed.

Contact Person: Dr. John C. Hurt, Program Director, Engineering Education and Centers Division, Room 585 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1383.

Purpose of Meeting: To provide advice and recommendations regarding the Science and Technology Center at Northwestern University.

Agenda: To review and evaluate the Science and Technology Center at Northwestern University.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–20289 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–M

Notice of Workshop

The National Science Foundation (NSF) will hold a one day workshop on September 12, 1994. The workshop will take place at the Holiday Inn Arlington at Ballston, located at 4610 North Fairfax Drive, Arlington, Virginia. Sessions will be held from 8:30 a.m. to 4:00 p.m.

The goal of the Workshop is to provide a forum for gathering views to help the National Science Foundation and the mathematical/scientific community shape a common vision of the desired shape of all undergraduate

mathematical sciences courses as well as the learning of mathematics and use of mathematics in course work in other disciplines.

The Workshop will not operate as an advisory committee. It will be open to the public. Participants will include approximately 35 leaders in science, engineering and mathematics education.

For additional information, contact Dr. James Lightbourne, Division of Undergraduate Education, 4201 Wilson Boulevard, Arlington, VA, 703–306–1670.

Dated: August 11, 1994.

Dr. Robert F. Watson,

Division Director, Undergraduate Education.

[FR Doc. 94–20287 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems.

Date and Time: September 7, 1994; 9:00 am–4:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Edward Bryan, Program Director, Environmental Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–20292 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems.

Date and Time: September 9, 1994; 9:00 am–4:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, room 565, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Norman Caplan, Program Director, Ocean Systems, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–20293 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting of the Special Emphasis Panel in Biological Sciences (1754). This is a joint meeting between Divisions of Molecular and Cellular Biosciences (MCB) and Integrative Biology and Neuroscience (IBN).

Name: Special Emphasis Panel in Biological Science.

Date and Time: September 9, 1994; 8:30 a.m. to 5:00 p.m.

Place: The National Science foundation, 4201 Wilson Boulevard, room 680, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Robert L. Uffen, (MCB) and Dr. Karen A. Sigvardt, (IBN) Program Directors, NSF.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–20294 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil & Mechanical Systems; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Special Emphasis Panel in Civil & Mechanical Systems.

Date and Time: September 9, 1994, 8:00 a.m. to 5:00 p.m.

Place: NSF, Room 530, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact: Dr. John B. Scalzi, Program Director, 703–306–1361.

Type of Meeting. Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial research.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 15, 1994.

M. Rebecca Winkler,

Committee Manager Officer.

[FR Doc. 94–20295 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry Division, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemistry.

Date and Time: September 8–9, 1994, 8:00 a.m. to 5:00 p.m.

Place: Room 320 and 370 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Seymour J. Lapporte and Francis J. Wodarczyk, Office of Special Projects, Chemistry Division, 4201 Wilson Boulevard—Room 1050, Arlington, VA 22230, telephone: (703) 306–1847.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate applications for Small Business Innovation Research (SBIR)—Topic 2.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; and personal information concerning individuals associated with the applications. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–20297 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date & Time: September 8–9, 1994.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia.

Contact Person: Dr. George Lea, Program Director, Computational Engineering, Division of Electrical and Communications Systems, room 675, NSF, 4201 Wilson Blvd., Arlington, VA 22230, telephone: 703/306–1339.

Purpose of Meeting: To review proposals submitted to the NSF in response to the National Challenge Groups—Fiscal Year 1994, requests for proposals.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C.552b(c)(4) and (6) of the Government Sunshine Act.

Dated: August 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–20296 Filed 8–17–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Georgia Power Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-57 and DPR-5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 located in Appling County, Georgia.

The proposed amendments would replace the current Technical Specifications (TS) with a set of TS based on the new Boiling Water Reactor (BWR) Owners Group Standard Technical Specifications, NUREG-1433, "Standard Technical Specifications General Electric Plants, BWR/4." The adoption of the Owners Group approved TS is part of an industry-wide initiative to standardize and improve the TS. Hatch Unit is the lead plant for adoption of the BWR Owners Group standardized TS.

The changes in the TS can be grouped into 4 categories: non-technical changes, more stringent requirements, relocation of requirements to other controlled documents, and relaxation of existing requirements.

Non-technical changes are intended to make the TS easier to use for plant operations personnel.

More stringent requirements are either more conservative than the corresponding requirements in the current TS, or are additional restrictions which are not in the current TS. The more stringent requirements provide an additional safety margin.

Relocation of requirements involves items that are currently in the TS but do not meet the criteria set forth in the Commission's Policy Statement on Technical specification Improvement. These items may be removed from the TS and placed in some other controlled document. Once these items have been relocated, the licensee generally would be able to revise them under the provisions of 10 CFR 50.59 without a license amendment.

The relaxation of existing requirements is based on operating experience. When restrictions are shown to provide little or no safety benefit and place a burden on the licensee, their removal from the TS may be justified. In most cases, relaxations have previously been granted to individual plants on a plant-specific basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 19, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CAR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the

petition without requesting leave of the Board up to prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to prevent evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Indentification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 25, 1994, as supplemented on July 8 and August 8, 1994, which are 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 Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 12th day of August 1994.

For the Nuclear Regulatory Commission.

Leonard A. Wiens,

Acting Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-20262 Filed 8-17-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280, 50-281, 50-338, 50-339]

Virginia Electric and Power Company (Surry Power Station Units 1 and 2) (North Anna Power Station Units 1 and 2); Exemption

I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. DPR-32 and DPR-37, which authorize operation of the Surry Power Station Units 1 and 2, and NPF-4 and NPF-7, which authorize operation of the North Anna Power Station Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of two pressurized water reactors at each of the licensee's two sites, Surry Power Station Units 1 and 2, located in Surry County, Virginia, and North Anna Power Station Units 1 and 2, located in Louisa County, Virginia.

II

Title 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), in part, states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated May 27, 1994, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Currently, employee and contractor identification badges, coupled with their associated access control cards, are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Surry and North Anna sites. Station security personnel are required to maintain control of the badges while the individuals are offsite. This practice has been in effect at the Surry and North Anna Power Stations since each operating license was issued. Security personnel retain each identification badge, as well as the associated access control card, when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistant enclosure. An individual who meets the access authorization requirements is issued an individual picture identification card and an individual access control card which allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is "screened" by the required detection equipment and by the issuing security officer. Having received the badge, the individual proceeds to the access portal, inserts the access control card into the card reader, enters a personal identification number (PIN), and passes through the turnstile which unlocks if the preset criteria are met. Once inside the station, the individual's PIN is not required in order to further utilize the access authorization card.

This present procedure is labor intensive since security personnel are required to verify badge issuance, ensure badge retrieval, and maintain the badges in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badges from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge, the requested exemption would allow employees and contractors to keep their badges at the time of exiting the protected area. The process of verifying badge issuance, ensuring badge retrieval, and maintaining badges could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the photograph identification badge, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the tamplate is stored for subsequent use in the identity verification process required for entry into the protected area. Authorized individuals insert their access authorization card into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the "signature" template.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. They system of identification badges coupled with their associated access control cards will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all the individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at each site.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Virginia Electric and Power Company an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (59 FR 40927).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11th day of August 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–20261 Filed 8–17–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34526; International Series Release No. 699; File No. SR–Amex–94–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change, by the American Stock Exchange, Inc. Relating to the Listing and Trading of Options and Full-Value and Reduced-Value Long-Term Options on the Nikkei Stock Index 300

August 11, 1994.

I. Introduction

On May 31, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of options and long-term options ("LEAPS") [3] based on the Nikkei Stock Index 300 ("Nikkei 300 Index" or "Index"), as well as LEAPS based on a reduced-value Index. On June 10, 1994, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On July 14, 1994, the Exchange filed Amendment No. 2 to the proposed rule change.[5]

The proposed rule change was published for comment in the **Federal Register** on June 17, 1994.[6] No comments were received on the proposed rule change. This order approves the Exchange's proposal and Amendment Nos. 1 and 2 thereto.

II. Description of the Proposal

A. General

The Amex proposes to trade standardized index option contracts based on the Nikkei 300 Index, an index comprised of 300 representative stocks of the first section[7] of the Tokyo Stock Exchange ("TSE"). The Amex also proposes to list LEAPS on the full-value Index and LEAPS on a reduced-value Index that will be computed at one-tenth of the value of the Index. Nikkei 300 Index LEAPS will trade independently of and in addition to regular Nikkei 300 Index options traded on the Exchange; however, as discussed below, position and exercise limits of Index LEAPS and regular Index options will be aggregated.[8]

B. Composition and Maintenance of the Index

The Nikkei 300 Index was designed by Nihon Keizai Shimbun, Inc. ("NKS"). The Amex represents that Index component stocks were selected by NKS for their high market capitalizations, and their high degree of liquidity, and are representative of the relative distribution of industries within the broader Japanese equity market. As of the date of this order, the Amex had not yet formally executed a licensing agreement with NKS to list options on the Nikkei 300 Index.

As of July 8, 1994, the total capitalization of the Index was approximately US$2.47 trillion.[9] Market capitalizations of the individual stocks in the Index ranged from a high of US$83.8 billion to a low of US$1.03 billion, with a median of US$3.56 billion and a mean of US$8.25 billion. In addition, the average daily trading volume of the stocks in the Index, for the six-month period ending June 30, 1994, ranged from a high of 4,740,000 shares to a low of 6,000 shares, with a mean and median of approximately 676,000 and 417,000 shares, respectively. The highest weighted component stock in the Index accounts for 3.39 percent of the Index. The five largest Index components account for approximately 14.9 percent of the Index's value. The lowest weighted component stock comprises 0.042 percent of the Index, and the five smallest Index components account for approximately 0.25 percent of the Index's value.

The Index is maintained by NKS. To maintain the continuity of the Index, NKS will adjust the Index divisor to reflect certain event relating to the component stocks. These events include, but are not limited to, changes in the number of shares outstanding, spin-offs, certain rights issuances, and mergers and acquisitions. The Amex represents that NKS reviews the composition of the Index periodically.

C. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[10] Trading hours for the options will be from 9:30 a.m. to 4:15 p.m. (New York time). The multiplier for the Index will be 100. Strike prices on Index options and full-value Index LEAPS will be set to bracket the Index level at $5.00 intervals. In addition, the Exchange may list near-the-money (*i.e.*, within ten points above or below the current Index value) option series on the Index at 2½ point strike price intervals when the value of the Index is below 200 points. The Exchange intends to list options series with expirations in the three near-term calendar months, plus up to three additional calendar months in the March, June, September, December cycle. As described in more detail below, the Exchange also intends to list Index LEAPS, and LEAPS on a reduced-value Index, that will expire from 12 to 36 months from the date of their issuance.

D. Calculation of the Index

The Nikkei 300 Index is capitalization-weighted and reflects changes in the prices of the Index component securities relative to the base date of the Index (October 1, 1982). The value of the Index is calculated by multiplying the price of each component security by the number of shares outstanding of each such security, adding the products, and dividing by the current Index divisor. The Index divisor is adjusted to reflect certain events relating to the component

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] "LEAPS" is an acronym for Long-Term Equity Anticipation Securities. LEAPS are long-term index option series that expire from 12 to 36 months from their date of issuance. *See* Amex Rule 903C.

[4] In Amendment No. 1, the Amex amended its proposal to provide that (1) the exercise settlement value for all of the Nikkei Stock Index 300 expiring option contracts will be calculated by Nihon Keizai Shimbun based upon the opening price of each of the component securities in Japan on the last business day prior to expiration; (2) the position and exercise limits for Nikkei Stock Index 300 option contracts in the series with the nearest expiration month will be 30,000 contracts; (3) the trading unit for Nikkei Stock Index 300 options is the Index value multiplied by $100; (4) for valuation purposes, one Nikkei Stock Index 300 unit (1.0) is assigned a fixed value of one U.S. dollar; and (5) the Tokyo Stock Exchange has recently requested that a new comprehensive surveillance sharing agreement be entered into for options on the Nikkei Stock Index 300, which agreement will cover the sharing of surveillance information regarding the index's component securities. See Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Division of Market Regulation, Commission, dated June 10, 1994.

[5] In Amendment No. 2, the Exchange lowered the proposed position limits for Index options and Index LEAPS to 25,000 contracts on the same side of the market, provided that no more than 15,000 contracts are in series in the nearest expiration month. See Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Derivatives Oversight, Division of Market Regulation, Commission, dated July 14, 1994.

[6] See Securities Exchange Act Release No. 34198 (June 10, 1994), 59 FR 31282 (June 17, 1994).

[7] First section stocks are distinguished from second section stocks by more stringent listing standards.

[8] See *infra* Section II.G.

[9] Based on the July 8, 1994 exchange rate of Y98.2 per US$1.00.

[10] A European-style option can be exercised only during a specified period before the option expires.

stocks.[11] The Index had a closing value of 299.47 on July 13, 1994.

Because trading does not occur on the TSE during the Amex's trading hours, the daily dissemination of the Index value is calculated by the Amex once each day based on the most recent official closing price of each Index component security as reported by the TSE. This closing value is disseminated throughout the trading day on the Amex.

E. Settlement of Index Options

Options on the index (including full-value and reduced-value Index LEAPS) will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in an option series normally will be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day. The exercise settlement value for all of the index's expiring options will be calculated by NKS based upon the opening price of each of the component securities in Japan on the last business day prior to expiration. If a stock fails to open for trading, the last available price of the stock will be used to calculate the Index's settlement value. When an option expiration is moved in accordance with an Exchange holiday, the last trading day for the expiring Index options will be Wednesday, and the exercise settlement value of the Index options will be determined at the opening of the regular Thursday trading session on the TSE, even if the TSE is open on Friday. If the TSE is closed on the Friday before expiration but the Amex is not closed, the last trading day for expiring Index options will be on Wednesday and the exercise settlement value of expiring Index options will be determined at the opening of the regular Thursday trading session on the TSE.

F. Listing of Long-Term Options on the Full-Value or Reduced-Value Index

The Exchange may list series of LEAPS on the Nikkei 300 Index that expire from 12 to 36 months from the date of their issuance on either the full-value Index or a reduced-value Index computed at one-tenth of the full-value Index, subject to existing Exchange requirements applicable to full-value and reduced-value LEAPS.[12] In either event, the interval between expiration months for either a full-value or reduced-value long-term option will not be less than six months. The current and closing values for reduced-value Index LEAPS will be computed by dividing the value of the full-value Index by ten and rounding the resulting figure to the nearest one-hundredth. For example, a Nikkei 300 Index value of 299.47 would be 29.95 for the reduced-value Index LEAPS, and 299.44 would become 29.94. The reduced-value Index LEAPS will have a European-style exercise and will be subject to the same rules that govern trading of all of the Exchange's index options, including sales practices rules, margin requirements, and floor trading procedures. Strike price intervals for the reduced-value Index LEAPS will be no less than $2.50, instead of $5.00.

G. Position and Exercise Limits, Margin Requirements, and Trading Halts

Position limits for options (including Index LEAPS) on the Nikkei 300 Index will be set at no more than 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in series in the nearest expiration month.[13] Exercise limits will be set at the same level as position limits.[14] For purposes of calculating applicable position and exercise limits, positions in reduced-value options on the index will be aggregated with each other and with positions in the full-value Index options. Ten reduced-value contracts will equal one full-value contract for purposes of aggregating these positions.[15]

Exchange rules applicable to options on the Index will be identical to the rules applicable to other broad-based index options for purposes of trading rotations, halts, and suspensions,[16] and margin treatment.[17]

Finally, the Exchange proposes to utilize its Auto-Ex system for orders in Index options of up to 50 contracts.[18]

H. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Index options and Index LEAPS. The Exchange represents that the TSE has requested that a new comprehensive surveillance sharing be executed with respect to options on the Index. The Exchange expects this agreement to cover the sharing of surveillance information regarding the Index's component securities.[19]

III. Commission findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[20] Specifically, the Commission finds that the trading of options based on the Nikkei 300 Index will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with the Japanese equity market and provide a surrogate instrument for trading in the Japanese securities market.[21] The trading of options based on the Nikkei 300 Index should provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of the Japanese equity market.

In addition, the Commission believes, for the reasons discussed below, that the Amex has adequately addressed issues related to customer protection, index design, surveillance, and market impact on Nikkei 300 Index options.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as a broad-based index. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the Japanese equity market, and, among other things, contains a large number of stocks that trade in that market. First, the Index consists of 300 actively-traded stocks traded on the first section of the TSE, representing 36 different industry groups in Japan. Second, the market capitalizations of

[11] See *supra* Section II.B. The Index divisor was set to give the Index a value of 100 on its base date.

[12] See Amex Rule 903C.

[13] See Amex Rule 904C.

[14] See Amex Rule 905C.

[15] See Amex Rule 904C.

[16] See Amex Rule 918C.

[17] See Amex Rule 462(d)(2)(D)(iii).

[18] Auto-Ex is the Exchange's automated execution system which provides for the automatic execution of market and marketable limit orders at the best bid or offer at the time the order is entered. The Exchange believes that the ability to use Auto-Ex for orders of up to 50 contracts will provide customers with deep, liquid markets, as well as expeditious executions.

[19] See *Infra* Section III.C.

[20] 15 U.S.C. 78f(b)(5) (1988).

[21] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to an option that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

the stocks comprising the Index are very large. Specifically, the total capitalization of the Index, as of July 8, 1994, was US$2.47 trillion, with the market capitalizations of the individual stocks in the Index ranging from a high of US$83.8 billion to a low of US$1.03 billion, with a median value of US$3.56 billion and a mean of US$8.25 billion. Third, no one particular stock or group of stocks dominates the Index. Specifically, no single stock comprises more than 3.39 percent of the Index's total value, and the percentage weighting of the five largest issues in the Index accounts for 14.9 percent of the Index's value. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Nikkei 300 Index options (including full-value and reduced-value Index LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occurs in an environment that is designed to ensure, among other things, that (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Nikkei 300 Index options and full-value and reduced-value Nikkei 300 Index LEAPS.

C. Surveillance

As a general matter, the Commission believes that comprehensive surveillance sharing agreements between the relevant foreign and domestic exchanges are important where an index product comprised of foreign securities is to be traded in the United States. In most cases, in the absence of such a comprehensive surveillance sharing agreement, the Commission believes that it would not be possible to conclude that a derivative product, such as a Nikkei 300 Index option, was not readily susceptible to manipulation.

Although the Amex and the TSE do not yet have a written comprehensive surveillance sharing agreement that covers the trading of Nikkei 300 Index options,[22] a number of factors support approval of the proposal at this time. First, while the size of an underlying market is not determinative of whether a particular derivative product based on that market is readily susceptible to manipulation, the size of the market for the securities underlying the Nikkei 300 Index makes it less likely that the proposed Index options are readily susceptible to manipulation.[23] In addition, the Commission notes that the TSE is under the regulatory oversight of the Japanese Ministry of Finance ("MOF"). The MOF has responsibility for both the Japanese securities and derivatives markets. Accordingly, the Commission believes that the ongoing oversight of the trading activity on the TSE by the MOF will help to ensure that the trading of Nikkei 300 Index options will be carefully monitored with a view toward preventing unnecessary market disruptions.

Finally, the Commission and the MOF have concluded a Memorandum of Understanding ("MOU") that provides a framework for mutual assistance in investigatory and regulatory matters.[24] Moreover, the Commission also has a longstanding working relationship with the MOF on these matters. Based on the longstanding relationship between the Commission and the MOF and the existence of the MOU, the Commission is confident that it and the MOF could acquire information from one another similar to that which would be available in the event that a comprehensive surveillance sharing agreement were executed between the Amex and the TSE with respect to transactions in TSE-traded stocks related to Nikkei 300 Index option transactions on the Amex.[25]

Nevertheless, the Commission continues to believe strongly that a comprehensive surveillance sharing agreement between the TSE and the Amex covering Nikkei 300 Index options would be an important measure to deter and detect potential manipulations or other improper or illegal trading involving Nikkei 300 Index options. Accordingly, the Commission believes it is critical that the TSE and the Amex continue to work together to consummate a formal comprehensive surveillance sharing agreement to cover Nikkei 300 Index options and the component securities as soon as practicable.[26]

D. Market Impact

The Commission believes that the listing and trading on the Amex of Nikkei 300 Index options, including full-value and reduced-value Index LEAPS, will not adversely impact the securities markets in the United States or Japan.[27] First, as described above, the Index is broad-based and presently is comprised of 300 stocks with no one stock dominating the Index. Second, as noted above, the stocks contained in the Index. Second, as noted above, the stocks contained in the Index have large capitalizations and are actively-traded. Third, the proposed position and exercise limits of 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in series in the nearest expiration month, will serve to minimize potential manipulation and market impact concerns. Fourth, existing Amex stock index options rules and surveillance procedures will apply to options on the Index. Finally, the Commission finds that the ability to use Auto-Ex for orders of up to 50 contracts will provide customers with liquid markets and efficient executions.

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[22] The Amex and the TSE, however, currently have a surveillance sharing agreement in place that covers other derivative products traded on the Amex. That agreement has been previously amended by the Amex and the TSE to include new products such as the trading of Japan Index options. The Exchange represents that it currently is pursuing a comprehensive surveillance sharing agreement with the TSE with respect to Nikkei 300 Index options, which the Exchange expects will cover the sharing of surveillance information regarding the Index's component securities.

[23] In evaluating the manipulative potential of a proposed index derivative product, as it relates to the securities that comprise the index and the index product itself, the Commission has considered several factors, including (1) the number of securities comprising the index or group; (2) the capitalizations of those securities; (3) the depth and liquidity of the group or index; (4) the diversification of the group or index; (5) the manner in which the index or group is weighted; and (6) the ability to conduct surveillance on the product. See Securities Exchange Act Release No. 31016 (August 11, 1992), 57 FR 37012 (August 17, 1992).

[24] See Memorandum of United States Securities and Exchange Commission and the Securities Bureau of the Japanese Ministry of Finance on the Sharing of Information, dated May 23, 1986.

[25] It is the Commission's expectation that this information would include transaction, clearing, and customer information necessary to conduct an investigation.

[26] See supra note 22.

[27] In addition, the Amex and the Options Price Reporting Authority ("OPRA") have both represented that they have the necessary systems capacity to support those new series of options that would result from the introduction of Index options (including full-value and reduced-value Index LEAPS). See Letter from Edward Cook, Jr., Managing Director, Information Technology, Amex, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated July 12, 1994; Letter from Joseph P. Corrigan, Executive Director, OPRA, to Charles Faurot, Managing Director, Market Data Services, Amex, dated July 18, 1994.

E. Accelerated Approval of Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication on notice of filing thereof in the **Federal Register**. Amendment No. 2 reduces the proposed position limits with respect to Nikkei 300 Index options from 50,000 contracts on the same side of the market to 25,000 contracts (provided that no more than 15,000 contracts, as opposed to 30,000 contracts as originally proposed, are in series in the nearest expiration month). By reducing the position limits, this amendment will serve to protect investors and the public interest, and further minimize the potential for manipulation. Further, the proposal containing the higher position limits was published for the full 21-day comment period, and no comments were received. Therefore, the Commission finds that no new regulatory issues are raised by Amendment No. 2. Accordingly, the Commission believes it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 2 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the foregoing that are filed with the Commission, and all written communications relating to the foregoing between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–94–19, and should be submitted by September 8, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–Amex–94–19), as amended, is approved.

[28] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20235 Filed 8–17–94; 8:45 am]

BILLING CODE 8010–01–M

[29] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34527; File No. SR–NASD–94–35]

Self Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating To Reporting of Transactions Executed Outside Normal Market Hours

August 11, 1994.

On June 2, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change (SR–NASD–94–35) consisting of amendments to Parts X, XI, XII, and XIII of Schedule D and Section 2 of Schedule G to the NASD By-Laws.

The Commission published the proposed rule change in the Federal Register on June 23, 1994.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends the NASD By-Laws by establishing procedures for members to report electronically trade data for transactions executed outside normal business hours (9:30 a.m. to 4:00 p.m. E.T.),[3] and outside the hours of the Automated Confirmation Transaction Service ("ACT") (9:00 a.m. to 5:15 p.m.).[4] Members currently use a manually-prepared paper form, Form T, to report these transactions.[5] Instead of Form T, members will use a NASDAQ workstation unit or computer-to-computer interface to input reports for transactions executed outside normal hours in NASDAQ National Market securities, NASDAQ SmallCap securities, NASDAQ convertible debt securities ("NASDAQ convertibles"), Over-The-Counter Equity securities ("OTC Equities"), and exchange-listed securities eligible for inclusion in the Consolidated Quotation Service ("CQS issues").

The proposed rule change expands electronic reporting of transactions executed in NASDAQ National Market issues, NASDAQ SmallCap issues, NASDAQ Convertibles, and domestic OTC equities (including Canadian issues and American Depository Receipts ("ADR's")).[6] The rule change requires members to report trades executed between 8:00 a.m. and 9:30 a.m. to ACT on a real time basis and to designate such trades as T to denote execution outside normal market hours.

For trades in the above-mentioned securities executed between midnight and 8:00 a.m., the proposal requires members to report the trades to ACT on the date of the trade during the expanded .T time period (8:00 a.m. to 9:30 a.m. e.t.). These trades shall be designated .T trades to denote execution outside normal hours and be accompanied by time of execution since they are not being reported in real time.

For trades in these securities executed between 5:15 p.m. and midnight, the proposal requires members to report transactions to ACT on the next business day ("T+1") between 8:00 a.m. and 1:30 p.m. These entries shall be designated "as/of" trades to denote execution on a prior day and be accompanied by a time of execution.

The proposed rule change also expands the time period for member firms to electronically report trades executed in foreign OTC equity securities (excluding Canadian issues and ADR's). The proposal requires members to report these transactions to ACT on T+1 between 8:00 a.m. and 1:30 p.m. regardless of the time the trade was actually executed and to supply the time of execution with such trade reports.[7] Member firms currently report such trades between 9:00 a.m. and 9:30 a.m.

Finally, the proposal requires member firms to report trades executed in CQS

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 34229, 59 FR 32474 (June 23, 1994).

[3] Unless designated otherwise, all times referred to herein are Eastern Time.

[4] ACT is the NASD's post-trade comparison system that, among other things, accommodates reporting and dissemination of last sale reports in NASDAQ/National Market, NASDAQ SmallCap, and exchange listed securities.

[5] In addition to reporting trades effected outside normal business hours and ACT hours, Form T is used to report transactions that were executed during normal business hours, but not reported into ACT through inadvertence or otherwise.

[6] Currently, NASD members are required to report trades executed between 9:00 a.m. and 9:30 a.m. to ACT within 90 seconds of execution ("real time").

[7] Member firms that have the operational capability to report transactions in foreign securities (excluding ADR's and Canadian issues) within 90 seconds, between the hours of 8:00 a.m. and 5:15 p.m. Eastern Time, may do so at their option and will not be required to report the same transaction on T+1.

issues outside the hours of 9:30 a.m. and 5:15 p.m. to ACT on T+1 between 8:00 a.m. and 1:30 p.m. The proposal requires member firms to designate such trades "as of" trades and to supply a time of execution.

Because the NASD's related systems work is ongoing and will not be completed until early October, the NASD plans to implement these reporting requirements during the fourth quarter of 1994. Thereafter, the NASD will provide written notice to member firms and vendors prior to implementation.

II. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act, and in particular, with Sections 15A(b)(2), 15A(b)(6) and 11A(a)(1)(C) of the Act. Section 15A(b)(2) requires that a national securities association be appropriately organized and have the capacity to enforce member firms' compliance with all applicable provisions of the Act, the rules adopted thereunder, and the association's own rules. Section 15A(b)(6) requires that the rules of a national securities association be 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 respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 11A(a)(1)(C) sets forth the objective of ensuring the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Substituting electronic reporting of trades for manual reporting via Form T will result in greater and more timely dissemination of reliable information respecting transactions in securities executed outside normal market hours. For example, electronic reporting will enable the NASD to compile and publish comprehensive volume data for individual securities including block size and smaller round lot trades executed by NASD members. This will provide broker-dealers and investors information necessary to make informed judgments about the securities offered for purchase or sale.

The proposed rule change will also result in increased real-time trade reporting as members executing trades in NASDAQ National Market, NASDAQ SmallCap, NASDAQ convertibles, and domestic OTC Equities (including Canadian issues and ADR's) between 8:00 a.m. and 9:30 p.m. will be required to report these trades into ACT within 90 seconds. This will enable the NASD to disseminate trade reports for this category of trades (excluding trade reports in non-domestic OTC Equities) over the NASDAQ and vendor networks beginning at 8:00 a.m. e.t. on each business day. Currently, there is no mechanism available to systematically disseminate transaction data received via Form T.

Finally, the proposal will assist the NASD in performing its duty to oversee trading activity of broker-dealers. The proposal will enable the NASD to incorporate all of the reported data into its audit trail for market surveillance purposes, thereby improving the NASD's capacity to enforce member firms' compliance with the Act.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(2), 15A(b)(6) and 11A(a)(1)(C) of the Act.

It is therefore ordered, pursuant to Section 19(b)(1) of the ACT, that the proposed rule change (SR–NASD–94–35) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12) (1992).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20234 Filed 8–17–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34518; File Nos. SR–NYSE–94–20, SR–Amex–94–29, SR–NASD–94–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by New York Stock Exchange, Inc., American Stock Exchange, Inc., and National Association of Securities Dealers, Inc., Relating to the Exchanges' and Association's Rules Regarding Shareholder Voting Rights

August 11, 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 June 2, 1994, August 10, 1994, and August 5, 1994, the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange Inc. ("Amex"), and the National Association of Securities Dealers, Inc. ("NASD"), respectively,[1] filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. On July 11, 1994, and August 8, 1994, the NYSE filed Amendment Nos. 1 and 2, respectively, to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Markets are proposing to amend their respective rules governing the voting rights of shareholders of common stock listed on the Exchanges, or in the case of the NASD, included in the Nasdaq System.

A. New York Stock Exchange

The NYSE is proposing amendments to Para. 313 of its Listed Company Manual (the "Manual") to include a new NYSE Voting Rights Policy (the "Policy") for companies whose common stock is listed on the NYSE. Para. 313(A) of the Manual is entirely new, and will replace the current Para. 313(A) entitled "Rule 19c–4", although Supplementary Material .20 is based on the current Supplementary Material to Para. 313 and Supplementary Material .40 is based on current Para. 313(D) of the Manual. Para. 313(B) is proposed to be amendment, with additions *italicized* and deletions [bracketed] in that paragraph. There is no change to current Para. 313(C), and Para. 313(D) and the current supplementary material are proposed to be deleted, as those sections are now addressed in the Supplementary Material to Para. 313(A).

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[1] The NYSE, Amex, and NASD are collectively referred to herein as the "Markets". The NYSE and Amex are collectively referred to herein as the "Exchanges".

[2] *See* Amendment No. 1 to SR–NYSE–94–20 (available in full in the Commission public reference room). As originally filed, the NYSE Policy restated the current provision of Para. 313(B), which governs the issuance of non-voting stock. Among other things, that provision provides that, to be eligible for NYSE listing, non-voting common stock must have been issued in a transaction "deemed to have been permitted under Rule 19c–4." This requirement implies that the NYSE will list non-voting stock only if the original issuance of the stock had been in conformity with the Policy. In Amendment No. 1 the NYSE deleted from this paragraph the aforementioned condition.

In Amendment No. 2 the NYSE made some technical clarifications to Exhibit A of its filing regarding references to deletions and additions to its rules. See letter from Michael Simon, Milbank, Tweed, Hadley & McCloy, to Amy Bilbija, Commission, dated August 5, 1994.

The text of the changes to the Manual is as follows:

313.00 Voting Rights

(A) [Rule 19c–4] *Voting Rights Policy*

On May 5, 1994, the Exchange's Board of Directors voted to modify the Exchange's Voting Rights Policy, which had been based on former SEC Rule 19c–4. The Policy is more flexible than Rule 19c–4. Accordingly, the Exchange will continue to permit corporate actions or issuances by listed companies that would have been permitted under Rule 19c–4, as well as other actions or issuances that are not inconsistent with the new Policy. In evaluating such other actions or issuances, the Exchange will consider, among other things, the economics of such actions or issuances and the voting rights being granted. The Exchange's interpretations under the Policy will be flexible, recognizing that both the capital markets and the circumstances and needs of listed companies change over time. The text of the Exchange's Voting Rights Policy is as follows:

Voting rights of existing shareholders of publicly traded common stock under Section 12 of the Exchange Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time phased voting plans, the adoption of capped voting rights plans, the issuance of super voting stock, or the issuance of stock with voting rights less than the per share exchange offer.

SUPPLEMENTARY MATERIAL:

.10 Companies with Dual Class Structures—The restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and companies with existing dual class capital structures would generally be permitted to issue additional shares of the existing super voting stock without conflict with this Policy.

.20 Consultation with the Exchange—Violation of the Exchange's Voting Rights Policy could result in the loss of an Issuers' Exchange market or public trading market. The Policy can apply to a variety of corporate actions and securities issuances, not just super voting or so-called "time phase" voting common stock. While the Policy will continue to permit actions previously permitted under Rule 19c–4, it is extremely important that listed companies communicate their intentions to their Exchange representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the Policy. The Exchange urges listed companies not to assume, without first discussing the matter with the Exchange staff, that a particular issuance of common or preferred stock or the taking of some other corporate action will necessarily be consistent with the Policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the Policy be furnished to the Exchange for review prior to formal filing.

.30 Review of Past Voting Rights Activities—In reviewing an application for initial listing on the Exchange, the Exchange will review the issuer's past corporate actions to determine whether another self-regulatory organization ("SRO") has found any of the issuer's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, the Exchange may take any appropriate action, including the denial of the listing or the placing of restrictions on such listing. The Exchange will also review whether an issuer seeking initial listing on the Exchange has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, the Exchange will consider that fact in determining its response to any ruling or interpretation that the issuer may request on the same or similar transaction.

.40 Non-U.S. Companies—The Exchange will accept any action or issuance relating to the voting rights structure of a non-U.S. company that is in compliance with the Exchange's requirements for domestic companies or that is not prohibited by the company's home country law.

(B) Non-Voting Common Stock

The Exchange's voting rights *policy permits* [policies have been further amended to permit] the listing of the voting common stock of a company which also has outstanding a non-voting common stock as well as the listing of non-voting common stock. However, certain safeguards must be provided to holders of a listed non-voting common stock.

(1) Any class of non-voting stock that is listed on the Exchange must meet all original listing standards [and must have been issued in a transaction that was deemed to have been permitted under Rule 19c–4]. The rights of the holders of the non-voting common stock should, except for voting rights, be substantially the same as those of the holders of the company's voting common stock.

(2)–(3) [No change]

(C) Preferred Stock, Minimum Voting Rights Required

(No change)

[(D) Non-U.S. Companies]

[Deleted]

[SUPPLEMENTARY MATERIAL]

[Deleted]

B. *American Stock Exchange*

The Amex is proposing to adopt a new uniform rule, with respect to the voting rights of common stock shareholders, to be incorporated into its Company Guide.[3] Specifically, the Amex proposes to amend Section 122 of the Company Guide and that portion of the Company Guide applicable to the Amex's Emerging Company Marketplace as follows: All added material is *italicized;* all deleted material is [bracketed].

Section 122. COMMON VOTING RIGHTS—[The Exchange will not approve an application for the listing of a non-voting common stock issue. The Exchange may approve the listing of a common stock which has the right to elect only a minority of the board of directors.]

The following voting rights policy is based upon, but more flexible than, former SEC Rule 19c–4. Accordingly, the Exchange will permit corporate actions or issuances by listed companies that would have been permitted under Rule 19c–4, as well as other actions or issuances that are not inconsistent with the new Policy. In evaluating such other actions or issuances, the Exchange will consider, among other things, the economics of such actions or issuances and the voting rights being granted. The Exchange's interpretations under the Policy will be flexible, recognizing that both the capital markets and the circumstances and needs of listed companies change over time. The text of the Exchange's Voting Rights Policy is as follows:

Voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Exchange Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples

[3] Consequently, the Exchange withdraws, effective upon approval of this rule change by the Commission, SR–Amex–91–13, filed on June 11, 1991. That filing proposed a new voting rights policy for the Exchange based upon the recommendations of a Special Committee on Shareholder Voting Rights which has been appointed following the decision of the United States Court of Appeals in which former SEC Rule 29c–4 was vacated.

of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.

Commentary .01. Companies with Dual Class Structures. The above restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and companies with existing dual class capital structures would generally be permitted to issue additional shares of the existing super voting stock without conflict with this policy.

.02. Consultation with the Exchange. Violation of the Exchange's Voting Rights Policy could result in the loss of an issuers's exchange market or public trading market. The Policy can apply to a variety of corporate actions and securities issuances, not just super voting or so-called "time phase" voting common stock. While the Policy will continue to permit actions previously permitted under Rule 19c–4, it is extremely important that listed companies communicate their intentions to their Exchange representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the Policy. The Exchange urges listed companies not to assume, without first discussing the matter with the Exchange staff, that a particular issuance of common or preferred stock or the taking of some other corporate action will necessarily be consistent with the Policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the Policy be furnished to the Exchange for review prior to formal filing.

.03. Review of Past Voting Rights Activities. In reviewing an application for initial listing on the Exchange, the Exchange will review the issuer's past corporate actions to determine whether another self-regulatory organization ("SRO") has found any of the issuer's actions to have been a violation or evasion of that SRO's voting rights policy. Based on such review, the Exchange may take any appropriate action, including the denial of the listing or the placing of restrictions on such listing. The Exchange will also review whether an issuer seeking initial listing on the Exchange has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, the Exchange will consider that fact in determining its response to any ruling or interpretation that the issuer may request on the same or similar transaction.

.04. Non-U.S. Companies, the Exchange will accept any action or issuance relating to the voting rights structure of a non-U.S. company that is in compliance with the Exchange's requirements for domestic companies or that is not prohibited by the Company's home country law.

* * * * *

EMERGING COMPANY MARKETPLACE

* * * * *

OTHER

Companies listed on the Emerging Company Marketplace shall also be subject to the following sections of the Company Guide except that references to the American Stock Exchange forms, etc. shall instead apply to corresponding forms, etc. of the Emerging Company Marketplace.

Part 1

Original Listing Requirements Sections 103(e), 105 (c), *122*, 130, 141 and 144.

* * * * *

C. *National Association of Securities Dealers*

The NASD is proposing to amend Part II, Sections 1 and 2 of Schedule D to the NASD By-Laws ("Schedule D") to adopt a voting rights rule for the Regular Nasdaq segment of the Nasdaq System. The proposed rule change would also amend Parts II and III of Schedule D to adopt a Policy of the Board of Governors to be applicable to the voting rights rules in the Nasdaq National Market System segment and the Regular Nasdaq segment of the Nasdaq System. Specifically, the policy would be added to the end of Parts II and III to Schedule D to make it applicable to the voting rights rules under proposed Sections 1(c)(21) and 2(e)(20) of Part II and current Section 5(j) of Part III to Schedule D.[4] The proposed rule change also amends the title of Section 5(j) to Part III of Schedule D to the NASD By-Laws. The proposed new language is *italicized;* proposed deletions are [bracketed]:

SCHEDULE D TO THE NASD BY-LAWS

Part II

QUALIFCIATION REQUIREMENTS FOR NASDAQ

SECURITIES

Sec. 1 Qualification Requirements for Domestic and Canadian Securities

* * * * *

(c)(21) Voting Rights—Voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Exchange Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.

Sec. 2 Qualification Requirements for non-Canadian Foreign Securities and American Depository Receipts

* * * * *

(e)(20) Voting Rights—Voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Exchange Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.

* * * * *

Policy of the Board of Governors—

Voting Rights

The following voting rights policy is based upon, but more flexible than, former SEC Rule 19c–4. Accordingly, the Nasdaq System will permit corporate actions or issuances by Nasdaq System companies that would have been permitted under Rule 19c–4, as well as other actions or issuances that are not inconsistent with the new Policy. In evaluating such other actions or issuances, the Nasdaq System will consider, among other things, the economics of such actions or issuances and the voting rights being granted. The Nasdaq System's interpretations under the Policy will be flexible, recognizing that both the capital markets and the circumstances and needs of Nasdaq

[4] The inclusion requirements contained in Part II to Schedule D are applicable to Regular Nasdaq securities. The inclusion requirements contained in Parts II and III of Schedule D are applicable to Nasdaq National Market System securities.

System companies change over time. The text of the Nasdaq System's Voting Rights Policy is as follows:

Issuers with Dual Class Structures—The restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and issuers with existing dual class structures would generally be permitted to issue additional shares of the existing super voting stock without conflict with this Policy.

Consultation with the Nasdaq System—Violation of the Nasdaq System's Voting Rights Policy could result in the loss of an Issuer's Nasdaq System market or public trading market. The Policy can apply to a variety of corporate actions and securities issuances, not just super voting or so-called "time-phase" voting common stock. While the Policy will continue to permit actions previously permitted under Rule 19c–4, it is extremely important that Nasdaq System issuers communicate their intentions to their Nasdaq System representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the Policy. The Nasdaq System urges issuers of securities included in the Nasdaq System not to assume, without first discussing the matter with the Nasdaq System staff, that a particular issuance of common or preferred stock or the taking of some other corporate action will necessarily be consistent with the Policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the Policy be furnished to the Nasdaq System for review prior to formal filing.

Review of Past Voting Rights Activities—In reviewing an application for initial qualification for inclusion of a security in the Nasdaq System, the Nasdaq System will review the issuer's past corporate actions to determine whether another self-regulatory organization ("SRO") has found any of the issuer's actions to have been violation or evasion of the SRO's voting rights policy. Based on such review, the Nasdaq System may take any appropriate action, including the denial for the application or the placing of restrictions on such qualification. The Nasdaq system will also review whether an issuer seeking initial qualification for inclusion of a security in the Nasdaq System has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, the Nasdaq System will consider that fact in determining its response to any ruling or interpretation that the issuer may request on the same or similar transaction.

Non-U.S. Companies—The Nasdaq System will accept any action or issuance relating to the voting rights structure of a non-U.S. issuer that is in compliance with the Nasdaq System's requirements for domestic companies or that is not prohibited by the issuer's home country law.

* * * * *

Part III

* * * * *

Section 5. Non-Quantitative Designation Criteria for Issuers Excepting Partnerships

* * * * *

(j) [Prohibition Against Shareholder Disenfranchisement] *Voting Rights*

(The provisions under Section 5(j)[5] remain unchanged.)

* * * * *

Policy of the Board of Governors—Voting Rights

The following voting rights policy is based upon, but more flexible than, former SEC Rule 19c–4. Accordingly, the Nasaq System will permit corporate actions or issuances by Nasdaq System companies that would have been permitted under Rule 19c–4, as well as other actions or issuances that are not inconsistent with the new Policy. In evaluating such other action, or issuances, the Nasdaq System will consider, among other things, the economics of such actions or issuances and the voting rights being granted. The Nasdaq System's interpretations under the Policy will be flexible, recognizing that both the capital markets and the circumstances and needs of Nasdaq System companies change over time. The text of the Nasdaq System's Voting Rights Policy is as follows:

Issuers with Dual Class Structures—The restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and issuers with existing dual class structures would generally be permitted to issue additional shares of the existing supper voting stock without conflict with this Policy.

Consultation with the Nasdaq System—Violation of the Nasdaq System's Voting Rights Policy could result in the loss of an Issuer's Nasdaq System market or public trading market. The Policy can apply to a variety of corporate actions and securities issuances, not just super voting or so-called "time-phase" voting common stock. While the Policy will continue to permit actions previously permitted under Rule 19c–4, it is extremely important that Nasdaq System issuers communicate their intentions to their Nasdaq System representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the Policy. The Nasdaq System urges issuers of securities included in the Nasdaq System not to assume, without first discussing the matter with the Nasdaq System staff, that a particular issuance of common or preferred stock or the taking of some other corporate action will necessarily be consistent with the Policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the Policy be furnished to the Nasdaq System for review prior to formal filing.

Review of Past Voting Rights Activities—In reviewing an application for initial qualification for inclusion of a security in the Nasdaq System, the Nasdaq System will review the issuer's past corporate actions to determine whether another self-regulatory organization ("SRO") has found any of the issuer's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, the Nasdaq System may take any appropriate action, including the denial for the application or the placing of restrictions on such qualification. The Nasdaq System will also review whether an issuer seeking initial qualification of for inclusion of a security in the Nasdaq System has requested a ruling or interpretation from another SRO regarding the application of the SRO's voting rights policy with respect to a proposed transaction. If so, the Nasdaq System will consider that fact in determining its response to any ruling or interpretation that the issuer may request on the same or similar transaction.

Non-U.S. Companies—The Nasdaq System will accept any action or issuance relating to the voting rights structure of a non-U.S. issuer that is in compliance with the Nasdaq System's requirements for domestic companies or that is not prohibited by the issuer's home country law.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes

[5] Section 5(j) reflects the adoption of the substance of former SEC Rule 19c–4 for Nasdaq National Market System companies after former SEC Rule was vacated by the U.S. Court of Appeals for the D.C. Circuit in 1990.

and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the proposed Rules Changes

1. Purpose

At the suggestion of SEC Chairman Arthur Levitt, the NYSE, Amex, and NASD have each agreed to adopt a uniform policy (the "Policy") with respect to the voting rights of common stock shareholders. With respect to the NYSE, the Policy replaces current Para. 313 of the Manual, which is a codification of the former SEC Rule 19c–4. That rule was invalidated by the U.S. Court of Appeals in the case of *The Business Roundtable* v. *SEC* (905 F.2d 406 (D.C. Cir. 1990)). The NYSE is proposing the Policy for Commission consideration in conjunction with similar filings of the Amex and NASD; the Policy will not become effective until the Commission approves the filings of all three markets.

Further, in the NYSE's application of the Policy, the NYSE will "grandfather" all listed companies that have taken action inconsistent with former Rule 19c–4 since that rule was overturned. This will cover listed companies that either have issued securities contrary to the provisions of that rule or that have taken all corporate action necessary to authorize such an issuance.

With respect to the Amex, the Policy replaces the current so-called "Wang" formula which has allowed the listing of limited voting shares which satisfied certain prescribed limitations. That policy, which predated the adoption of Rule 19c–4, is still being applied by the Amex. Upon SEC approval of the Amex, NYSE and NASD proposals, the Amex will cease to apply its "Wang" formula.

With respect to the NASD, the NASD has reviewed the voting rights rule under Section 5(j) to Part III of Schedule D of the Nasdaq National Market System segment of the Nasdaq System and determined that it would further investor protections and the public interest to add a voting rights rule to the Regular Nasdaq segment of the Nasdaq System. The proposed rule change, therefore, added new Subsections 1(c)(21) and 2(e)(20) to Part II of Schedule D[6] to add a voting rights rule applicable to securities that trade on the Regular Nasdaq segment of the Nasdaq System.

The proposed rule change also replaces the current title of Section 5(j) to Part III of Schedule D, "Prohibition Against Shareholder Disenfranchisement," in the Nasdaq National Market System with the phrase "Voting Rights" in order to clarify that this Section is cornered by the Proposed Interpretation of the Board of Governors. The provisions under Section 5(j) remain unchanged.[7]

The NASD recognizes that the language of the proposed voting rights rules for Regular Nasdaq is different from the current provisions under Section 5(j) to Part III of Schedule D applicable to the Nasdaq Market System segment of the Nasdaq System. The Nasdaq System is adopting an internal policy that, regardless of the differences in the language between the voting rights rules of the Regular Nasdaq segment and the Nasdaq National Market System segment, the Nasdaq System will interpret the rules of both market segments uniformly.

As discussed later, the Nasdaq System will generally not apply the Policy retroactively to issuers that were not subject to an equivalent policy at the time of the action which might be deemed violative of the Policy.

Interpretation of the Policy

With respect to the Markets, the Policy generally would prohibit an issuer that already has publicly-traded common stock from engaging in a corporate action or issuance that disparately reduces or restricts shareholder voting rights. However, in applying the Policy, the Markets would continue to permit transactions that had been permitted under former Rule 19c–4. The NASD's policy, however would additionally continue to permit transactions that had been permitted under Part III, Section 5(j) of Schedule D.[8]

In this regard, former Rule 19c–4 contained a list of corporate actions that presumptively were not considered disenfranchising. For example, the rule did not apply to corporate action taken under state "control share acquisition statutes" that require a corporation to limit the voting rights of large shareholders. Under those statutes, a shareholder of a specified percentage of the voting stock (such as 20 percent) loses its right to vote those shares unless the "disinterested" shareholders of the company vote to grant voting rights to the "control" shareholder. These actions, as well as the other corporate actions presumptively permitted under the old rule, will continue to be presumptively permitted under the new Policy.

In addition to those specific provisions of former Rule 19c–4, in the release adopting that rule the SEC specified that the rule would not apply in certain circumstances. For example, former Rule 19c–4 did not apply to corporate action taken under state anti-takeover statutes or pursuant to other prevalent defensive shareholder rights plans, including "poison pills." These actions, as well as the other corporate actions permitted in the Rule 19c–4 adoption release, will continue to be permitted under the new Policy.

Following the initial adopting of Rule 19c–4, the Markets issued a number of policy interpretations regarding corporate action that they believed were permitted under the rule. For example, companies have been permitted to issue multiple classes of stock linked to the performance of specified business lines, with voting rights being based on the relative market values of the classes of stock. In addition, companies have been permitted to issue non-voting common stock under the old policy. These interpretations, as well as all other relevant interpretations permitting corporate actions or issuances under the old policy, would continue to apply.[9]

In certain circumstances, the Policy would also provide greater flexibility for companies initially adopting a new voting rights structure. For example, if a company is in financial distress, the company might issue preferred stock where the voting protection provided to the purchasers of the securities is viewed as necessary to protect the interests of the purchasers. Under the Policy, the Markets would evaluate such transactions on a case-by-case basis.

In addition, the Policy would provide a company with additional flexibility to issue "regular vote" stock following the issuance of lower-vote stock. For example, former Rule 19c–4 generally permitted a company to issue lower voting stock. However, once a company did so, former Rule 19c–4 limited the subsequent ability of the company to issue additional shares of its higher vote stock. Under the Policy, there would be

[6] Section 1 to Part II of Schedule D provides the qualification requirements for Regular Nasdaq Domestic and Canadian Securities. Section 2 to Part II of Schedule D provides the qualification requirements for Regular Nasdaq non-Canadian foreign securities and American Depository Receipts.

[7] See note 5, *supra*.

[8] See note 5, *supra*.

[9] The NASD would continue to apply all former Rule 19c–4 interpretations, as well as those issued under the NASD's Section 5(j) to Part III of Schedule D.

no such limitation because, at the time a person purchased the lower vote stock, the investor would understand that the company has the ability to issue additional amounts of higher vote stock.

The most significant change under the Policy would be for companies that have existing dual-class structures. For example, a company could have a dual-class structure that it implemented prior to adoption of the Policy, or could have a dual-class structure resulting from an initial public offering or the issuance of lower-vote stock. Under former Rule 19c–4, such a company generally was prohibited from issuing additional amounts of the high-vote stock unless such issuance did not further disenfranchise holders. In effect, the company's capital structure was permitted only with respect to the specific securities that were then in the market.

Under the Policy, there would be no restrictions on the ability of a dual-class company to issue additional shares of existing classes of heavy-vote stock in a capital-raising transaction, via a stock dividend, through the issuance of stock options, or even in a stock split. However, such a company would not be permitted to adopt a different capital structure that reduces or restricts voting rights, such as through a time phased voting plan or the issuance of a third class of stock with greater voting rights.

Implementation of the Policy

The Policy will become effective in the Markets upon the adoption, and Commission approval, of the same or similar policies and implementing procedures by the NYSE, Amex, and NASD.

The Markets will have primary jurisdiction to give advice to issuers in its own market. Thus, the advice given to a listed issuer by the Exchanges to their respective issuers will be controlling. Similarly, the advice given by the Nasdaq System to an issuer of a security included in the Nasdaq System will be controlling.

In its interpretations under the Policy, the Markets will be flexible, recognizing that both the capital markets and the circumstances and needs of listed and Nasdaq System issuers change over time. At the same time, the Policy will give the Markets broad discretion in reviewing past voting rights actions by companies seeking to list on the Exchanges, or qualify for inclusion in the Nasdaq System, and, subject to the foregoing, they will apply the following procedures in giving interpretations under the Policy:

NYSE:

• An issuer seeking to list its securities on the NYSE may seek advice from the NYSE with respect to a proposed transaction. In such a case, the NYSE would not give advice under the Policy if the issuer had already sought and received advice from its home market on the transaction. In that instance, the NYSE would honor the home market's interpretation.

• If another market delists (or, in the case of the NASD, deregisters) an issuer's securities for violation of the Policy, the NYSE would not subsequently list the securities.

• The NYSE will publish its interpretations under the Policy.

Amex:

• An issuer seeking to list its securities on the Amex may seek advice from the Amex with respect to a proposed transaction. In such a case, the Amex would not give advice under the Policy if the issuer had already sought and received advice from its home market on the transaction. In that instance, the Amex would honor the home market's interpretation.

• If another market delists (or, in the case of the NASD, deregisters) an issuer's securities for violation of the Policy, the Amex would not subsequently list the security.

• The Amex will publish its interpretations under the Policy.

NASD:

• An issuer seeking to qualify for inclusion in the Nasdaq System may seek advice from the Nasdaq System with respect to a proposed transaction. In such a case, the Nasdaq System would not give advice under the Policy if the issuer had already sought and received advice from its home market on the transaction. In that instance, the Nasdaq System would honor the home market's interpretation.

• If another market delists an issuer's securities for violation of the Policy, the Nasdaq System would not subsequently qualify the security for inclusion or designation.

• The Nasdaq System will publish its interpretations under the Policy.

Under the Policy, the Markets will have flexibility in reviewing the circumstances of the original issuance of any class of stock, including non-voting stock, and determining whether to list/quote such stock. For example, if a company issues stock shortly before seeking to list or qualify for inclusion, and such an issuance would have been a violation of the Policy had the issuer been listed on the exchange or included in the Nasdaq System, the Markets generally would not list/quote the stock. Similarly, if the issuer voluntarily delisted from an exchange or withdrew from the Nasdaq System in order to effect such an issuance, the Markets also generally would not list/quote the stock.

However, there are other situations in which such an issuance would not necessarily be a bar to listing on the Exchanges or qualification for inclusion in the Nasdaq System. For example, a company whose stock is traded on the NASD's "Electronic Bulletin Board" could effect such an issuance well before the issuer contemplated listing on an exchange or registering on NASDAQ, and it may be appropriate to permit the listing/quotation of such stock. To maintain necessary flexibility, the Markets prefer to leave this area open to interpretation.[10]

2. *Statutory Basis*

The proposed rule changes are consistent with the Act in general and further the objectives of Section 6(b)(5) (with respect to the Exchanges) and Section 15A(b)(6) (with respect to the NASD) in particular in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The NASD asserts additionally that the proposed rule changes would provide a uniform policy on voting rights by the three markets, and that such uniformity between markets should further investor protections and the public interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Markets believe that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchanges note that, under the Policy, they would not list an issuer's security if another market delists (or, in the case of the NASD, deregisters) an issuer's securities for violation of such market's version of the Policy. Similarly, the Exchanges would not give advice under the Policy if the issuer had already sought and received advice from its home market on the transaction. The NASD will be applying the same policies.

The Markets acknowledge that pursuant to these interpretive policies, issuers may be impeded in seeking (*i.e.*, forum shopping) more favorable interpretations of the voting rights

[10] Thus, the NYSE's Amendment No. 1 deletes the absolute prohibition against listing non-voting common stock previously issued in a manner not in conformity with the Policy. See note 2, *supra*.

policy from the three markets. However, the Markets do not believe that this is, in any way, a "burden on competition." Rather, the Markets believe that the adoption of similar voting rights policies by the major U.S. markets provides investors with the protections afforded by those policies and the benefit of knowing that issuers cannot avoid the effects of a market's voting rights policy by seeking an interpretation or a listing (or, in the case of the NASD, registration) in another market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Neither the Amex nor the NASD solicited or received written comments with respect to the proposed rule changes.

The NYSE, however, initially solicited comments from its members, member organizations, listed companies, various advisory committees and other constituents.[11] The NYSE received 146 letters in response to that solicitation. Of these letters, 93 expressed support for the proposal, 39 opposed the proposal and 14 were neutral. The negative comment letters generally opposed the proposal for the following reasons: The NYSE does not have jurisdiction in this area; the Policy is too restrictive and should permit any shareholder voting policy that shareholders ratify; the policy is too flexible and the NYSE should revert to a strict "one-share, one-vote" standard; and the policy lacked specificity, thus not providing sufficient guidance as to what voting rights structures the Policy would permit.

In response to those comments, the NYSE clearly believes that it has jurisdiction to adopt a voting rights policy. The NYSE has long had listing criteria governing such corporate governance matters as outside directors, audit committees, shareholder approval of significant stock issuances and voting rights. Indeed, the Policy reflects a continuing evolution of the NYSE's voting rights policy, which initially prohibited any voting rights structure other than a strict "one-share, one-vote."

As to the possible adoption of either a shareholder ratification policy or a strict "one-share, one-vote" policy, the NYSE considered other possible policies in its deliberations following the invalidation of Rule 19c–4. As adopted by the NYSE, the Policy is the result of compromises following discussions with its constituents. As such, the NYSE's judgment is that the Policy is a good and workable compromise, recognizing that it is impossible to adopt a policy that would be acceptable to all its constituents. The NYSE also notes that the Policy was acceptable to the vast majority of commentators.

As to the specificity of the Policy, the NYSE worked closely with its constituents to address this concern. The NYSE's original request for comment included only: (i) The one-paragraph statement of the policy; (ii) what is now included as Supplementary Material .10; and (iii) a very general description of the background to the proposal. In response to comments, the NYSE added the headnote to the Policy and the remainder of the Supplementary Material. The NYSE has also included in its filing a more detailed discussion of the manner in which it will interpret and implement the Policy. The NYSE believes that these changes fully respond to requests for greater specificity.

Shortly before the NYSE's Board of Directors meeting at which the Policy was approved, the NYSE circulated the revised draft Policy to various advisory committees. In response to that solicitation, the NYSE received 12 written comments. Of those, eight letters supported the revised draft and four letters offered various technical suggestions regarding the draft. The NYSE incorporated many of the technical suggestions in the Policy as filed with the Commission.

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 approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 NYSE. All submissions should refer to File Nos. SR–NYSE–94–20, SR–Amex–94–29, and SR–NASD–94–45, and should be submitted by September 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20236 Filed 8–17–94; 8:45 am]

BILLING CODE 8010–01–M

[11] With respect to Amendment No. 1, however, the Exchange has not solicited, and does not intend to solicit, comments. Further, the Exchange did not receive any unsolicited written comments from members or other interested parties. See note 2, *supra*.

[Release No. 34–34525; International Series Release No. 698; File No. SR–PHLX–93–13]

Self-Regulatory Organizations; Notice of Filing Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc., Relating To Modifications of the Position and Exercise Limits for Foreign Currency Options

August 11, 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 March 29, 1993, as amended on July 19, 1994, and on July 26, 1994,[1] the Philadelphia Stock

[1] On July 19, 1994, the PHLX amended its proposal to establish a foreign currency option ("FCO") position limit of 150,000 contracts for FCOs with annual trading volume of at least 4,000,000 contracts. See Letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation ("Division"), Commission, dated July 19, 1994 ("Amendment No. 1"). On July 26, 1994, the PHLX amended the proposal to provide that FCOs with annual trading volume of 3,500,000 contracts would be eligible for a position limit of 150,000 contracts and to indicate that the PHLX plans a one-time immediate review to implement the higher position limit for FCOs which meet the annual trading volume requirement. See Letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Options

Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[2] 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

Currently, PHLX Rule 1001, "Position Limits,"[3] establishes a position limit of 100,000 contracts for FCOs traded on the PHLX.[4] The PHLX proposes to amend Exchange Rule 1001 and Exchange Rule 1002, "Exercise Limits,"[5] to increase the position and exercise limits for FCOs. Specifically, under proposed Commentary .05(b) to PHLX Rule 1001, the PHLX proposes to review the previous year's volume information for all FCOs, including cross-rate FCOs,[6] at the beginning of each calendar year and to establish a position limit of 150,000 contracts for FCOs with annual trading volume of at least 3,500,000 contracts, based upon the previous year's volume. At the beginning of each calendar year, the PHLX will review FCO volume information from the previous year to determine which limit will apply; a higher limit will be effective on the date set by the Exchange, and a lower limit will take effect after the last expiration then trading. In addition, the PHLX's Market Surveillance Department plans to monitor trading volume on a monthly basis, so that FCOs will be eligible immediately for a higher position limit when annual trading volume, as measured from the beginning of the calendar year, exceeds the levels established in the proposal.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, PHLX Rule 1001 establishes a position limit of 100,000 contracts for FCOs traded on the PHLX. The PHLX proposes to amend Exchange Rules 1001 and 1002 to increase the position and exercise limits for FCOs, including cross-rate FCOs. Specifically, under proposed Commentary .05(b) to PHLX Rule 1001, the PHLX proposes to establish a position limit of 150,000 contracts for FCOs with annual trading volume of at least 3,500,000 contracts, based upon the previous year's volume. At the beginning of each calendar year, the PHLX will review FCO volume information from the previous year to determine which limit will apply; a higher limit will be effective on the date set by the Exchange, and a lower limit will take effect after the last expiration then trading. In addition, the PHLX's Market Surveillance Department plans to monitor trading volume on a monthly basis, so that FCOs will be eligible immediately for a higher position limit when annual trading volume, as measured from the beginning of the calendar year, exceeds the levels established in the proposal.

The PHLX notes that the Exchange's exercise limits are established by reference to position limits, so that any increase in position limits will also increase exercise limits. Accordingly, the PHLX proposes to amend Exchange Rule 1002 to reflect the proposed amendment to Exchange Rule 1001.

The Exchange views the current FCO position and exercise limits as too low in light of increased levels of trading activity in the underlying currency markets and the resultant growth in liquidity of PHLX FCOs in recent years. In addition, the PHLX notes the number of products (*e.g.*, long-term, month-end, American- and European-style options) that are currently aggregated to determine position limits as well as the likelihood that additional products will be aggregated in the future.

Accordingly, the PHLX's proposal is designed to identify and accommodate those active currencies where heavier trading and open interest warrant higher limits. Under this proposal, the PHLX does not anticipate that all of the limits will be increased, as only one currency currently qualifies for higher limits under the proposed standards.[7]

When FCOs began trading on the PHLX in 1982, FCO position limits were set at 10,000 contracts.[8] Since that time the position limits have been changed three times, including an increase to the current level of 100,000 contracts in 1986.[9] Since 1986, the PHLX has added several new products for which position limits are aggregated with other trading in the same underlying foreign currency.[10] As a result, many traders have recently begun to regularly accumulate positions near existing limits, especially in certain more active currencies. However, in other currencies lacking the same volume or trading interest, the current level of 100,000 contracts has proved adequate and reasonable. In those active currencies, the PHLX believes that trading interest could migrate to the over-the-counter market, hampering PHLX liquidity if large traders continue to be restricted by the current position limits.

The PHLX notes that since the time of the most recent increase in position limits, it is estimated that the size of the underlying currency market has grown

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Regulation, Division, Commission, dated July 26, 1994 ("Amendment No. 2").

[2] The PHLX also submitted information concerning the implementation and effective date of the proposal. See Letter from Edith Hallahan, Attorney, Market Surveillance, PHLX, to Richard Zack, Branch Chief, Options Branch, Division, Commission, dated July 27, 1993 ("July 27 Letter").

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls).

[4] See Securities Exchange Act Release No. 23710 (October 15, 1986), 51 FR 37691 (order approving File Nos. SR–PHLX–86–24 and SR–CBOE–86–30).

[5] Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[6] *See* July 27 Letter, *supra* note 1. Currently, the PHLX trades two cross-rate FCOs, the British pound/Deutsche mark and the Deutsche mark/Japanese yen.

[7] During 1993, only Deutsche mark options had trading volume which would qualify for the 150,000 contract limit.

[8] See Securities Exchange Act Release No. 19313 (December 8, 1982) 47 FR 56591 (order approving File No. SR–PHLX–81–4).

[9] See Securities Exchange Act Release No. 27310, *supra* note 2. See also Securities Exchange Act Release Nos. 21676 (January 18, 1985) 50 FR 3859 (order approving File No. SR–PHLX–84–18) (increasing position limits from 10,000 to 25,000 contracts); and 22479 (September 27, 1985), 50 FR 41276 (order approving File No. SR–PHLX–85–22) (increasing position limits to 50,000 contracts).

[10] See *e.g.*, Securities Exchange Act Release Nos. 24859 (August 27, 1987) 52 FR 33493 (order approving File No. SR–PHLX–87–24) (aggregating European-style contracts); 29804 (October 10, 1991) 57 FR 20546 (order approving File No. SR–PHLX–91–30) (aggregating long-term options); and 30945 (July 21, 1992) 57 FR 33381 (order approving File No. SR–PHLX–92–13) (aggregating month-end options).

exponentially.[11] For example, it is estimated that 250,000 PHLX Deutsche mark contracts would represent less than 1% of the daily international currency transaction volume in the Deutsche mark. Since 1986, average daily trading volume in PHLX FCOs has grown from 30,880 to 48,246 contracts in 1992.[12] As of February 1993, average daily volume was 61,062 contracts. Monthly volume and open interest have also increased dramatically since 1986, especially in certain FCOs. Further, the highest monthly open interest in FCOs reached 995,941 in 1986; 1,188,570 contracts in 1987; and 1,190,389 contracts in 1992. Total volume has increased from 7,905,239 contracts in 1986 to 12,158,069 contracts in 1992.

In light of these market changes, the PHLX believes that increased position and exercise limits are necessary to add depth and liquidity to the market. Because of the large size of the underlying market in foreign currencies, the PHLX does not believe that manipulative concerns would be enhanced if limits were increased. Moreover, the Exchange believes that these increases are particularly appropriate because the FCO market attracts a large number of institutional and corporate investors who have substantial hedging needs and do block[13] size transactions in FCOs.

In prior releases approving increases in FCO position limits, the PHLX notes that the Commission has stated that although position and exercise limits must be sufficient to protect the options and related markets from disruptions caused by manipulation, at the same time, the limits must not be so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[14] Although the Exchange may grant position limit exemptions in the interest of fair and orderly markets, the Exchange believes that it is more direct and logical to establish more appropriate position limits for all investors.

The PHLX believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest. The PHLX believes that the increased depth and liquidity of the FCO market should promote just and equitable principles of trade. In addition, the PHLX believes that the proposed approach to FCO position limits should ensure that the applicable limit is reasonably related to trading volume. The PHLX believes that this, in turn, should result in position limit levels that serve the purposes of protecting investors and the public interest as well as preventing unfair acts and practices, such as manipulation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20232 Filed 8–17–94; 8:45 am]

BILLING CODE 8010–01–M

[11] In 1989, total gross global foreign exchange turnover was estimated to be $932 billion per day and net global turnover was estimated to be $640 billion per day. *See* Bank for International Settlements ("BIS") Survey of Foreign Exchange Market Activity, April 1989. In 1992, total gross global foreign exchange turnover was estimated to be $1,354 billion per day, a 35% increase since April 1989. After allowing for the elimination of local and cross-border double-counting and estimated gaps in reporting (*e.g.*, exchange-traded options and futures and countries not providing counterparty information for over-the-counter transactions), global "net-net" exchange market turnover in spot, forward and derivative contracts may be estimated at $880 billion per day during April 1992. *See* BIS Central Bank Survey of Foreign Exchange Market Activity in April 1992, March 1993.

[12] Average daily volume in foreign currency options was 14,829 contracts in 1985 and 30,880 contracts in 1986.

[13] For the purposes of this proposal, the PHLX defines "block sized orders" as orders of 100 contracts or more. See July 27 Letter, *supra* note 1.

[14] See Securities Exchange Act Release No. 22479, *supra*, note 9.

[15] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20473; File No. 812–9050]

Van Kampen Merritt Trust, et al.

August 11, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Noticer of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Van Kampen Merritt Advantage Municipal Income Trust, Van Kampen Merritt Advantage Municipal Income Trust II, Van Kampen Merritt Advantage Pennsylvania Municipal Income Trust, Van Kampen Merritt California Value Municipal Income Trust, Van Kampen Merritt California Municipal Trust, Van Kampen Merritt California Quality Municipal Trust, Van Kampen Merritt Equity Trust, Van Kampen Merritt Florida Quality Municipal Trust, Van Kampen Merritt Florida Municipal Opportunity Trust, Van Kampen Merritt Intermediate Term High Income Trust, Van Kampen Merritt Investment Grade Municipal Trust, Van Kampen Merritt Limited Term High Income Trust, Van Kampen Merritt Massachusetts Value

Municipal Income Trust, Van Kampen Merritt Money Market Trust, Van Kampen Merritt Municipal Opportunity Trust II, Van Kampen Merritt Municipal Opportunity Trust, Van Kampen Merritt Municipal Income Trust, Van Kampen Merritt Municipal Trust, Van Kampen Merritt New Jersey Value Municipal Income Trust, Van Kampen Merritt New York Value Municipal Income Trust, Van Kampen Merritt New York Quality Municipal Trust, Van Kampen Merritt Ohio Quality Municipal Trust, Van Kampen Merritt Ohio Value Municipal Income Trust, Van Kampen Merritt Pennsylvania Quality Municipal Trust, Van Kampen Merritt Pennsylvania Value Municipal Income Trust, Van Kampen Merritt Pennsylvania Tax Free Income Fund, Van Kampen Merritt Prime Rate Income Trust, Van Kampen Merritt Select Sector Municipal Trust, Van Kampen Merritt Strategic Sector Municipal Trust, Van Kampen Merritt Tax Free Money Fund, Van Kampen Merritt Tax Free Fund, Van Kampen Merritt Trust for Investment Grade California Municipals, Van Kampen Merritt Trust for Investment Grade Municipals, Van Kampen Merritt Trust for Investment Grade New York Municipals, Van Kampen Merritt Trust for Insured Municipals, Van Kampen Merritt Trust for Investment Grade Florida Municipals, Van Kampen Merritt Trust for Investment Grade Pennsylvania Municipals, Van Kampen Merritt Trust for Investment Grade New Jersey Municipals, Van Kampen Merritt Trust, Van Kampen Merritt U.S. Government Trust, Van Kampen Merritt Value Municipal Income Trust (collectively, the "Funds") on behalf of themselves and any series thereof, and Van Kampen Merritt Investment Advisory Corp. (the "Adviser").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(a), 18(c), 18(f)(1), (22f), 22(g), and 23(a) of the Act and rule 2a–7 thereunder; under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1); and pursuant to section 17(d) of the Act and rule 17d–1 thereunder approving certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Funds to enter into deferred compensation agreements with certain of their trustees.

FILING DATES: The Application was filed on June 10, 1994, and amended on July 28, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 6, 1994, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Bradley W. Paulson, Staff Attorney, at (202) 942–0147 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a registered management investment company advised by the Adviser, a registered investment adviser and wholly-owned subsidiary of The Van Kampen Merritt Companies, Inc. The Funds request relief on behalf of themselves and any existing series thereof, including each applicant's successor in interest [1] and any subsequently registered investment companies advised by the Adviser or by a registered investment adviser controlling, controlled by, or under common control with the Adviser. Any relief granted from section 13(a)(3) of the Act would extend only to named applicants.

2. Trustees who are not "affiliated persons" as defined by section 2(a)(3) of the Act of the Adviser, Van Kampen Merritt, Inc., or The Van Kampen Merritt Companies, Inc. receive annual fees from the Funds for their services (the "Eligible Trustees"). Applicants propose to implement a deferred compensation plan (the "Plan") by means of a deferred fee agreement (the "Agreement") entered into between an Eligible Trustee and the respective Fund. The plan would permit an Eligible Trustee to elect to defer to a later date the receipt of all or part of the trustee's fees, so that the trustee could defer payment of income taxes on such fees or for other reasons.

3. Under the Agreement, the deferred fees payable by a Fund to a particular Eligible Trustee will be credited to a book reserve account established by the Fund (the "Deferred Fee Account"). The deferred fees will be accrued in an amount equal to that which would have been earned had such fees (and all income earned thereon) been invested and reinvested in shares of the underlying Fund or in shares of one or more other Funds that may be designated from time to time by the respective boards of trustees as eligible investments under the Plan (the "Investment Funds"). Under the Agreement, the Eligible Trustee selects from among available Investment Funds. The return on an Eligible Trustee's Deferred Fee Account will be based upon the return of the Investment Funds selected by the particular trustee, provided that, to the extent one or more of the Investment Funds selected for investment are no longer in existence, the return will be based upon a recognized measure of prevailing market interest rates (*e.g.*, the Treasury Bill rate).

4. By deferring the fees paid to its Eligible Trustees, a Fund will retain assets that it otherwise would not have if such fees were paid on a current basis. As a matter of prudent risk management, to the extent an Eligible Trustee selects Funds other than the underlying Fund, it is intended that the Fund will purchase and hold shares in amounts equal to the deemed investment in the Funds (such shares are referred to as the "Underlying Securities"). All such investments will continue to be a part of the general assets and property of the Funds. Thus, in cases where Funds purchase shares of Underlying Securities, the amount of Underlying Securities is expected to match the liability created by credits to such Deferred Fee Accounts.

5. The obligations of each Fund to make payments from the Deferred Fee Account will be general unsecured obligations of each such Fund and payments made pursuant to the Agreement will be made from such Fund's general assets and property. The Agreement provides that the Fund is under no obligation to purchase, hold, or dispose of any investments; and if the Fund chooses to purchase securities to cover its obligation under the Plan, then

[1] The term "successors in interest" is limited to entities resulting from a reorganization into another jurisdiction or a change in the type of business organization.

all such securities will continue to be part of the general assets and property of the Fund. In addition, the Plan does not obligate any Fund to retain a trustee in such capacity, nor does it obligate any Fund to pay any particular level of fees to any trustee.

6. Under the Agreement, deferred trustees' fees (including earnings accrued thereon) will generally become payable in cash in equal annual installments over a period of five years upon the Eligible Trustee's retirement or disability. In the event of the Eligible Trustee's death, amounts payable to the trustee under the Agreement will be paid to such trustee's designated beneficiary or estate. The Eligible Trustee's right to receive payments will not be transferable.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act to exempt applicants from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) of the Act and rule 2a–7 thereunder to the extent necessary to permit the Funds to offer certain deferred compensation Plans; sections 6(c) and 17(b) to exempt applicants from section 17(a)(1) to permit the Funds to sell securities issued by them to participating Funds; and section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to effect certain joint transactions incident to such Plans. The finding required by section 17(b)(2) is predicated on the assumption that relief is granted from section 13(a)(3).

2. Sections 18(a) and 18(c) restrict the ability of a registered closed-end investment company to issue senior securities. Section 18(f)(1) restricts the ability of a registered open-end investment company to issue senior securities. Section 13(a)(2) requires that an investment company obtain shareholder authorization before issuing any senior securities not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact these sections. Applicants believe that the Agreement would not induce speculative investments or provide opportunities for manipulative allocation of the expenses and profits of any Fund, affect control of any Fund, confuse investors, convey a false impression of safety, or be inconsistent with the theory of mutuality of risk. All liabilities created by credits to the Deferred Fee Account are expected to be offset by essentially equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. All such restrictions would be clearly set forth in the Agreement.

4. Sections 22(g) and 23(a) prohibit registered open-end investment companies and registered close-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. These provisions are primarily concerned with the dilutive effect on the equity and voting power that can result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan will not have this effect, but merely provides for deferral of payment of fees and not for payment in securities for services.

5. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Each Fund has adopted an investment policy regarding the purchase of shares of other investment companies, which policy could prohibit or restrict the Fund from purchasing shares of other investment companies. Applicants state that it is appropriate to grant an exemption from section 13(a)(3) to enable the Funds to invest in Underlying Securities without a shareholder vote to achieve the matching of Underlying Securities with the deemed investment of the Deferred Fee Accounts. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of a Fund, and will match the value of the Fund's obligations to pay deferred fees. Because investment companies that might exist in the future could establish fundamental policies that would accommodate purchases of shares of investment companies in connection with the Plan, the relief requested from section 13(a)(3) would extend to named applicants only.

6. Rule 2a–7 requires a registered investment company to limit its portfolio to securities meeting certain standards of maturity, quality, and diversification as a condition to adopting the term "money market" as part of its name and holding itself out to investors as a money market fund. Rule 2a–7 limits the extent to which the net asset value of a money market fund as determined pursuant to a method prescribed in rule 2a–7 can deviate from its net asset value as determined by the mark-to-market method. The rule imposes conditions that reduce the likelihood that a money market fund will hold securities that will substantially decline in value and cause such fund's net asset value to deviate from one dollar per share. Any money market Fund that values its assets using a method prescribed by rule 2a–7 will buy and hold Underlying Securities in an amount that would achieve an exact match between the Fund's liability to pay deferred fees and the assets that offset that liability.

7. Section 17(a)(1) prohibits an affiliated person of a registered investment company from selling any security to such company, except in limited circumstances. Each Fund may be an affiliate of each other Fund. Section 17(a)(1) was designated to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated. Applicants believe that the Funds' purchase and sale of Underlying Securities pursuant to the Plan does not implicate these concerns, but merely facilitates the matching of the Fund's liabilities.

8. Section 17(d) of the Act prohibits affiliated persons from participating in joint transactions with a registered investment company in contravention of rules and regulations prescribed by the SEC. Rule 17d–1 under the Act prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the SEC has granted an order permitting such transaction. Deferral of an Eligible Trustee's fees in accordance with the Plan essentially would maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Any money market Fund that values its assets in accordance with a method prescribed in rule 2a–7 will buy and hold any Underlying Securities that determine performance of the Deferred Fee Accounts to achieve an exact match between such Fund's liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchase shares issued by an affiliated Fund, the Fund will vote such shares in the same proportion as the votes of all other shareholders of such affiliated fund.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20233 Filed 8–17–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34495; File No. SR–NASD–94–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Examination Specifications and Study Outline for the Direct Participation Programs Limited Principal (Series 39) Examination

August 5, 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 July 26, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to the examination specifications and study outline for the Direct Participation Programs Limited Principal ("Series 39") qualifications examination. The amendments revise materials pertaining to new products, and include new material pertaining to recently effective regulations affecting direct participation programs. The number of questions per examination and the examination time are unaffected by the amendments.

The above-described amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD periodically reviews the content of its qualification examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations. The amendments to the Series 39 examination are designed to reflect recent changes in the products offered in the industry and to reflect changes in the rules and regulations affecting direct participation programs.

The NASD is requesting that the proposed rule change be effective within 45 days of SEC approval.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(g)(3) of the Act in that the proposed changes to the examination are to ensure persons seeking registration in the securities industry have attained the requisite levels of knowledge and competence.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

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, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–43 and should be submitted by September 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20313 Filed 8–17–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34494; File No. SR-NASD–94–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment to the Examination Specifications and Study Outline for the Direct Participation Programs Limited Representative (Series 22) Examination

August 5, 1944.

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 July 26, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Associaton") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, II, and III blow, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 17 CFR 200.30–3(a)(12)

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to the examination specifications and study outline for the Direct Participation Programs Limited Representative ("Series 22") qualifications examinations. The amendments revise materials pertaining to taxation, and include new material pertaining to recently effective regulations affecting direct participation programs. The number of questions per examination and the examination time are unaffected by the amendments.

The above-described amendments do not result in any textual change to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the purpose rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A) (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD periodically reviews the content of its qualifications examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examination. The amendments to the Series 22 examination are designed to reflect recent changes in the products offered in the industry and to reflect changes in the rules and regulations affecting direct participation programs.

The NASD is requesting that the proposed rule change be effective within 45 days of SEC approval.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(g)(3) of the Act in that the proposed changes to the examination are to ensure persons seeking registration in the securities industry have attained the requisite levels of knowledge and competence.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–41 and should be submitted by September 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20314 Filed 8–17–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34515; File No. SR–NASD–94–38]

Self-Regulatory Organizations; Notice of Filing of proposed rule Change by The National Association of Securities Dealers, Inc. Adding Listing Requirements To Prohibit Immediate Delistings of Units on Nasdaq

August 10, 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 July 28, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] 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

Pursuant to the provisions of Section 19(b)(1) of the Act, the NASD is filing a proposed rule change related to the listing requirements in Parts II and III of Schedule D to the NASD By-Laws that would require that: (1) An issuer of units included for quotation on Nasdaq maintain the listing for a minimum period of 30 days; (2) an issuer provide the NASD with notice of delisting of the units at least 15 days prior to such action; and (3) an issuer disclose in the prospectus any intention to immediately delist the units. Below is the text of the proposed rule change. Proposed new language is italicized.

Schedule D

Part II

Sec. 1(c)(10(a) * * *

(b) in the case of units, the minimum period for inclusion of the unites shall be 30 days from the first day of inclusion, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw units from inclusion must provide

[1] The proposed rule change was originally filed on June 21, 1994, and was amended twice; once on July 22, 1994, and again on July 28, 1994. Both amendments are available for inspection in the Commission's Public Reference Room.

the Association with notice of such intent at least 15 days prior to withdrawal.

* * * * *

Sec. 1(c) *(21) The issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the Federal securities laws and the rules and regulations thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period.*

* * * * *

Part III

Sec. 5.

(1) Units

(1) Minimum Inclusion Period and Notice of Withdrawal

In the case of units, the minimum period for inclusion of the units shall be 30 days from the first day of inclusion, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Issuers and underwrites seeking to withdraw units from inclusion must provide the Association with notice of such intent at least 15 days prior to withdrawal.

(2) Disclosure Requirements for Units

Each Nasdaq/NM issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period.

II. Self-Regulatory Organizations's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the new listing requirements for units is to address concerns that Nasdaq has experienced related to issuers listing and then almost immediately thereafter withdrawing units from inclusion after trading has commenced. In several instances, certain issuers of units have included such units for quotation on Nasdaq combining as a unit common stock previously quoted on Nasdaq with previously quoted or newly-issued warrants for the same common stock. Shortly after the units are listed and trading has commenced, these issuers, without any prior disclosure of their intention or advance notice to investors, market makers, or Nasdaq, delist the units. Because active trading in these securities has commenced with the expectation that the units will continue to be listed on Nasdaq, the sudden withdrawal from quotation significantly and adversely affect both market markers and investors who have traded in these securities.

The practice of immediate delisting without adequate disclosure clearly poses harm to traders and investors in those securities and adversely affects the integrity of the Nasdaq Stock Market. The practice causes investor confusion because investors who have purchased the units no longer have a liquid market in which to trade these securities. Additionally, the sudden withdrawal may cause difficulties for investors and market makers alike who have established short positions in the units. These traders may be unable to cover their short positions after the delisting has occurred, and are likely to be required to cover these short positions by purchasing the components of the unit separately, frequently at a premium to the price originally being quoted prior to the delisting. Indeed, in those situations where warrants have been issued separately from the unit, it may be impossible to cover the short position.

The NASD is also concerned because the practice of immediate delisting of units appears to raise serious regulatory issues regarding proper disclosure of the issuers' intentions regarding the units and it poses questions about manipulative practices in the market for the units. For example, if the prospectus contains no information regarding the issuer's intention or contemplation of delisting immediately or shortly after trading commences, it is reasonable to question whether adequate disclosure of the issuer's plans was made. Moreover, if they lead underwriter involved in the offering also dominates or controls the market in the units, concerns regarding manipulation of the security arise if the intention is to force short selling investors to cover their short positions at a premium to the unit prices.

To address these concerns and to promote and enhance the integrity of the Nasdaq Stock Market, the NASD is proposing three changes to its inclusion criteria for units. As noted, for both Nasdaq SmallCAP℠ units and National Market units, the NASD proposes to impose a minimum 30-day period within which the units may not be delisted, absent a legitimate regulatory interest in so doing. In addition, the NASD believes that the issuer and its advisors should provide the NASD with adequate notice of their intention to delist, so that the NASD may provide adequate notice to investors and market makers before the delisting occurs. Because it is important that investors be provided with sufficient time to obtain the information and assess its effect on their positions, the NASD is proposing that the issuer provide such notice to the NASD at least 15 days before the delisting is to occur.

In addition, the NASD is concerned that issuers of units may need to take additional steps to ensure that adequate disclosure of their intentions regarding delisting is made to investors prior to the offering of the units. It would appear to be a reasonable implication that an issuer that delists within a short period, *i.e.*, a matter of days, after the initial inclusion on Nasdaq should reasonably have anticipated that such an event was intended or likely to occur. Therefore, the NASD proposes to require that issuers make adequate disclosure of their delisting intentions in their prospectuses.

As noted in a recent Commission release regarding Nasdaq Stock Market listing requirements,[2] the NASD has the authority to preserve and strengthen the quality of and public confidence in its market. Nasdaq inclusion criteria are intended to promote investor confidence and support the country's capital formation process. Accordingly, inclusion of a security in the Nasdaq Stock Market should carry with it the confidence that the security will continue to be available for trading once listed, unless regulatory issues with the security arise. These proposed changes address concerns regarding the trading and listing process for Nasdaq securities and enhance the integrity of Nasdaq listings. With the minimum listing requirement of 30 days for units, the NASD enhances the likelihood that an orderly trading market in these securities will exist. Similarly, the 15 day advance notice of delisting and adequate disclosure of an issuer's intent to delist promotes proper disclosure of material information of use to investors and to market makers. Consequently, the NASD believes that the proposed rule change is consistent with Section 15A(b)(6) in that these proposed changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

[2] Securities Exchange Act Release No. 34151 (June 3, 1994), 59 FR 29843 (June 9, 1994).

principles of trade, to facilitate transactions in these securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. In particular, the Commission invites the written views of interested persons concerning any hardship encountered by members or other persons due to the unforeseen delisting of units and whether the proposed rule change will provide effective protection against such hardship. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–38 and should be submitted by September 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20315 Filed 8–17–94; 8:45am]

BILLING CODE 8010–01–M

[Rel. No. IC–20474; 812–9012]

Delaware Group Trend Fund, Inc., et al.; Notice of Application

August 12, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Delaware Group Trend Fund, Inc., Delaware Group Decatur Fund, Inc., Delaware Group Delaware Fund, Inc., Delaware Group DelCap Fund, Inc., Delaware Group Value Fund, Inc., Delaware Group Premium Fund, Inc., Delaware Group Global & International Funds, Inc., Delaware Pooled Trust, Inc. (collectively, the "Non-Daily Dividend Funds"); and Delaware Group Tax-Free Fund, Inc., Delaware Group Government Fund, Inc., Delaware Group Delchester High-Yield Bond Fund, Inc., Delaware Group Treasury Reserves, Inc., Delaware Management Company Tax-Free Income Trust-PA, Delaware Group Cash Reserve, Inc., and Delaware Group Tax-Free Money Fund, Inc. (collectively, the "Daily Dividend Funds") (the Non-Daily Dividend Funds and the Daily Dividend Funds are collectively referred to herein as the "Funds"); and Delaware Management Company, Inc., and Delaware International Advisers Ltd. (together, the "Advisers"), and Delaware Distributors, Inc. (the "Distributor"). (The Advisers, Distributor, Non-Daily Dividend Funds, and Daily Dividend Funds are collectively referred to herein as the "Applicants".)

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the Non-Daily Dividend Funds to issue an unlimited number of classes of shares representing interests in the same portfolio of securities. This aspect of the order would supersede a prior multi-class order (the "1992 Order") that permits the Non-Daily Dividend Funds to issue two classes of shares.[1] The order also would permit the Funds to assess, and under certain circumstances waive or reduce, a contingent deferred sales charge ("CDSC"). This aspect of the order would supersede a prior CDSC order (the "Existing CDSC Order") by consolidating the CDSC arrangement for the Funds.[2]

FILING DATES: The application was filed on May 23, 1994 and amended on July 14, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 2, 1994 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One Commerce Square, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. The Advisers provide investment advisory and administrative services to each of the

[3] 17 CFR 200.30–3(a)(12).

[1] Investment Company Act Release No. 19086 (Nov. 9, 1992).

[2] Investment Company Act Release No. 19440 (Apr. 27, 1993).

Funds. The Distributor acts as principal underwriter for the Funds.

2. Under the 1992 Order, the Non-Daily Dividend Funds may offer two classes of shares: one with a front-end sales load and a rule 12b–1 plan, and another without a front-end sales load or a rule 12b–1 plan. The requested order is intended to supersede the 1992 Order to permit a contemplated third class of shares as well as an unlimited number of future classes of shares.

3. Most of the applicants are also parties to the Existing CDSC Order, which permits the imposition of a CDSC. In order to consolidate the obligations of the applicants, the requested order is intended to supersede the Existing CDSC Order for all Funds in the Delaware Group, both those which declare a dividend daily and those which do not.

Multiple-Class Representations

1. The Non-Daily Dividend Funds, on behalf of themselves and future investment companies for which the Advisers, or any person controlled by or under common control with the Advisers, may serve as investment adviser, or for which the underwriter, or any person controlled by or under common control with the underwriter, may serve as principal underwriter, request an order to permit the Non-Daily Dividend Funds to issue multiple classes of shares. The Non-Daily Dividend Funds propose to establish a multiple-class system to enable each of the Non-Daily Dividend Funds to offer investors the option of purchasing shares either (a) with a conventional front-end load and a rule 12b–1 fee ("Class A shares"), (b) without a front-end load or a rule 12b–1 fee ("Class B shares"), or (c) subject to a CDSC and a higher rule 12b–1 fee ("Class C shares"). In addition, the Non-Daily Dividend Funds may from time to time create one or more additional classes of shares, the terms of which may differ from the classes currently offered.

2. The terms of the future classes may differ from Class A, Class B, and Class C shares only in the following respects: (a) Any such class may bear different distribution and servicing fees in conjunction with a rule 12b–1 plan; (b) any such class may be offered in conjunction with a non-rule 12b–1 shareholder services plan; (c) any such class may bear different designations; (d) any such class will have exclusive voting rights with respect to any rule 12b–1 plan adopted exclusively with respect to such class, except as provided in the conditions below; (e) any such class may have different conversion and/or exchange features; and (f) any such class may bear any of the expenses, listed in multiple-class condition 1, attributable specifically to such class ("Class Expenses").

3. All expenses incurred by a Non-Daily Dividend Fund will be allocated among the various classes of shares based on the net assets of the Non-Daily Dividend Fund attributable to each such class, except that each class's net asset value and expenses will reflect the expenses associated with that class's rule 12b–1 plan (if any), expenses associated with a shareholder services plan (if any), and any Class Expenses. Expenses of a fund allocated to a particular class of shares of that fund will be borne on a *pro rata* basis by each outstanding share of that class.

4. A Non-Daily Dividend Fund may also permit one class of shares ("Purchase Class") to convert to another class of shares ("Target Class") after expiration of a certain period. Such Purchase Class shares (except those purchased through the reinvestment of dividends and other distributions) would automatically convert to Target Class shares at the relative net asset values of each of the classes, and would thereafter be subject to a lower rule 12b–1 fee.

5. All Purchase Class shares in a shareholder's account that were purchased through the reinvestment of dividends and other distributions paid in respect of purchase Class (and which have not converted to Target Class) would be considered to be held in a separate sub-account. Each time any Purchase Class shares in the shareholder's account (other than those in the sub-account) convert to Target Class shares, a *pro rata* portion of the Purchase Class shares then in the sub-account also would convert to Target Class shares.

Multiple-Class Legal Analysis

1. Applicants request an exemption under section 6(c) of The Act to the extent that the proposed issuance of multiple classes of shares representing interests in the Non-Daily Dividend Funds might be deemed: (1) To result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(b)(1) of the Act; and (2) to violate the equal voting provisions of section 18(i) of the Act. The multiple-class distribution system for the Non-Daily Dividend Funds does not involve borrowings and does not affect the integrity of the funds, existing assets or reserves, or the interests of existing shareholders. The proposed arrangement will not increase the speculative character of the shares of the funds, since all such shares will participate *pro rata* in all of a fund's appreciation income and expenses (with the exception of the different fees associated with the various rule 12b–1 and shareholder services plans and Class Expenses).

Multiple-Class Conditions

Applicants agree that the order granting the request relief with respect to multiple classes of shares shall be subject to the following conditions:

1. Each class of shares of a Non-Daily Dividend Fund will represent interests in the same portfolio of investments and be identical in all respects, except as set forth below. The only differences among the classes of shares will relate solely to: (a) Different expenses which the board of directors or trustees of a Non-Daily Dividend Fund determines to allocate to a specific class, which are limited to; (i) transfer agent fees; and (ii) other expenses that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated unless and until approved by the SEC pursuant to an amended order; (b) expenses assessed to a class pursuant to a rule 12b–1 plan (if any), or shareholder service plan (if any); (c) the fact that classes will vote separately with respect to the Non-Daily Dividend Fund's 12b–1 plan and shareholder services plan, except as provided in CDSC condition 3 below; (d) the fact that only certain classes will have a conversion feature; (e) the different exchange privileges of the classes of shares; and (f) the designation of each class of shares of the Non-Daily Dividend Fund.

2. The directors of the Non-Daily Dividends Funds, including a majority of the independent directors, have approved the multiple-class distribution system. The minutes of the meetings of the directors of each of the Non-Daily Dividend Funds regarding the deliberations of the director with respect to the approvals necessary to implement the multiple-class distribution system will reflect in detail the reasons for the directors' determination that the multiple-class distribution system is in the best interest of both the Non-Daily Dividend Fund and its shareholders.

3. On on ongoing basis, the directors of the Non-Daily Dividend Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Non-Daily Dividend Fund for the existence of any material conflicts among the interests of the classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any

such conflicts that may develop. The Advisers and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Advisers and the Distributor, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of directors including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Non-Daily Dividend Fund to meet Class Expenses shall provide to the board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. The directors will receive quarterly and annual statements concerning the amounts expended under any shareholder services plans and any 12b–1 plans complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any rule 12b–1 plan or shareholder services plan fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

6. If any class will be subject to a shareholder services plan, such shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. Dividends paid by a Non-Daily Dividend Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that expenditures associated with any rule 12b–1 plan or shareholder servicing plan relating to a particular class will be borne exclusively by the affected class and any designated Class Expenses will be borne exclusively by the affected class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses among the classes have been reviewed by an Independent Examiner (the "Independent Examiner"). The Independent Examiner has rendered a report to the Non-Daily Dividends Funds, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Non-Daily Dividend Fund that the calculations and allocations are being made properly. The reports of the Independent Examiner will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Non-Daily Dividend Funds (which the Non-Daily Dividend Funds agree to provide), will be available for inspection by the SEC staff upon written request to the Non-Daily Dividend Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrator or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Report on Policies and Procedures Placed in Operation" and the ongoing reports will be "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness" as defined and described in SAS No. 70 of the American Institute of Certified Public Accounts ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (8) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants will take immediate corrective action if this representation is not concurred in by the Independent Examiner or appropriate substitute Independent Examiner.

10. The prospectus of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Non-Daily Dividend Fund shares may receive different compensation with respect to one particular class of shares over another in a Non-Daily Dividend Fund.

11. The distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Non-Daily Dividend Funds to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors with respect to the multiple-class distribution system will be set forth in guidelines which will be furnished to the directors.

13. The Non-Daily dividend Funds will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Non-Daily Dividend Funds will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to a Non-Daily Dividend Fund as a whole generally and not on a per class basis. Each Non-Daily Dividend Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Non-Daily Dividend Fund. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Non-Daily Dividend Fund, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such Non-Daily Dividend Fund. The information provided by applicants for publication in any newspaper or similar listing of a Non-Daily dividend Fund's net asset value or public offering price

will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization of or acquiescence in any particular level of payments that the Non-Daily Dividend Funds may make pursuant to any distribution plan or shareholder services plan in reliance on the exemptive order.

CDSC Representations

1. In order to consolidate the rights and obligations of the Funds in the Delaware Group with respect to the imposition of a CDSC, any order granted in connection with this application will supersede the Existing CDSC Order and will apply to any Fund. Any CDSC will not be imposed on redemptions of shares which were purchased more than a certain designated time period prior to the redemptions (the "CDSC Period") or on shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of a shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. The amount of any applicable CDSC will be calculated by multiplying the applicable percentage charge by the lesser of (1) the net asset value of the shares at the time of purchase, and (2) the net asset value of the shares at the time of redemption. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions, and then of other shares held by the shareholder for the longest period of time. This should result in the charge, if any, being imposed at the lowest possible rate. The sum of any CDSC, front-end sales charge, and asset-based sales charge will not exceed the maximum sales charge permissible under Article III, Section 29(d) of the National Association of Securities Dealers Rules of Fair Practice.

2. Applicants request relief to permit each Fund to waive or reduce the CDSC in certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 of the Act. Applicants also intend to credit the time during which a shareholder held redeemed shares, if a CDSC is paid in connection with a redemption of shares followed by a reinvestment effected within ninety days after redemption pursuant to the Fund's reinstatement privilege.

3. If the directors of a Fund, which has been waiving or reducing its CDSC in a specific situation, determine that such Fund not waive or reduce such CDSC any longer, the disclosure in that Fund's prospectus will be appropriately revised. Also, any shares purchased prior to the termination of such waiver or reduction would be able to have the CDSC waived or reduced as provided in a Fund's prospectus at the time of the purchase of such shares.

CDSC Legal Analysis

1. Applicants request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder to assess a CDSC on certain redemptions of shares of a Fund and to permit the Funds to waive or reduce the CDSC with respect to certain types of redemptions. Applicants believe that the imposition of the CDSC on certain classes of the Funds is fair and in the best interests of their shareholders.

CDSC Conditions

Applicants agree that the order granting the requested relief with respect to the imposition of a CDSC shall be subject to the following conditions:

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

2. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

3. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-Rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class Shares under the plan, existing Purchase Class Shares will stop converting into Target Class Shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The directors shall take such action as is necessary to ensure that existing Purchase Class Shares are exchanged or converted into a new class of shares (the "New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the directors to implement the foregoing, such action may include the exchange of all existing Purchase Class Shares for a new class (the "New Purchase Class"), identical to existing Purchase Class Shares in all material respects except that New Purchase Class Shares will convert to New Target Class Shares. The New Target Class and New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the directors reasonably believe will not be subject to federal taxation. In accordance with Multiple-Class Condition 3, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the Advisers and the Distributor. The Purchase Class Shares sold after the implementation of the proposal may convert into Target Class Shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class Shares are disclosed in an effective registration statement.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20311 Filed 8–17–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (MEDIQ/PRN Life Support Services, Inc., 11⅛% Senior Secured Notes Due 1999); File No. 1–11286

August 12, 1994.

MEDIQ/PRN Life Support Services, 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, its Board of Directors (the "Board") unanimously

adopted a resolution on July 19, 1994, to withdraw the Company's securities from listing on the Amex. The decision of the Board was based upon the following reasons:

(1) The trading of the Securities on the Exchange has been very limited since listing with most transactions conducted through several market makers in the over-the-counter market;

(2) The holders of the Securities will continue to receive annual audited financial reports from the Company under terms of the Indenture (within 120 days after each fiscal year), without the additional burden and costs of compliance by the Company with the proxy and reporting requirements of the Act, including the filing of reports of Forms 10–K and 10–Q;

(3) Procedural requirements which restrict communications between the Company and the holders of the Securities can be eliminated, providing increased flexibility for the Company in the management of its affairs and enabling the Company and the holders of the Securities to communicate on a basis more comparable to that of the Company's other lenders;

(4) As of July 14, 1994, there were only 22 holders of record of the Securities, and, pursuant to information available to the Company from public and other sources, the Company believes there are less than 100 beneficial owners of the Securities;

(5) Continued listing on the Exchange and registration under the Act imposes additional costs and expenses on the Company; and

(6) The Company is not obligated under the Indenture (pursuant to which the Securities were listed) to list the Securities on the Exchange or any other national securities exchange or trading market.

Any interested person may, on or before August 26, 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. 94–20312 Filed 8–17–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26104]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 12, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 6, 1994, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70–7903)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed a declaration under Sections 6(a) and 7 of the Act.[1]

By order dated September 20, 1991 (HCAR No. 25380), Columbia was authorized to enter into a secured revolving credit agreement ("Agreement") to issue and sell its promissory notes in an aggregate principal amount of up to $275 million at any one time outstanding, prior to September 30, 1993, under a debtor in possession financing facility ("Credit Facility").[2] Subsequently, by order dated June 11, 1993 (HCAR No. 25825), Columbia was authorized to amend the Agreement to reduce the overall commitment under the Credit Facility to $100 million, of which: (1) $100 million would be available for the making of loans; and (2) $50 million would be available for the issuance of letters of credit ("LOC") in an aggregate face amount not to exceed $50 million, through December 31, 1994.[3]

Because Columbia's current cash reserves are sufficient to meet projected requirements without the need for borrowing under the Credit Facility, it now proposes to amend the Agreement further to convert the Credit Facility solely to a LOC facility for the issuance of LOC in an aggregate face amount not to exceed $25 million ("Proposed Facility"). The Proposed Facility would permit the issuance of LOC by Chemical Bank ("Chemical") at any time until December 31, 1995, or such later date as may be from time-to-time agreed to by Columbia and Chemical to extend the Proposed Facility until Columbia's Plan of Reorganization becomes effective. The Court must and is expected to approve the terms of the Proposed Facility.

The fees to be charged under the Proposed Facility would include a LOC fee of 1% per annum of the face amount of each LOC, a commitment fee of ½ of 1% of the unused portion of the commitment, and an amendment fee of ¼ of 1% of the commitment, payable at closing. Under the Proposed Facility, Chemical would provide the entire commitment and act as the sole issuing bank with respect to the LOC.

Indiana Michigan Power Company (70–8439)

Indiana Michigan Power Company ("I&M"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed an application-declaration under Sections 9(a), 10 and 12(d) of the Act and Rule 44 thereunder

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[1] Columbia and its wholly owned subsidiary company, Columbia Gas Transmission Corporation, filed for protection with the Bankruptcy Court for the District Court of Delaware ("Court") on July 31, 1991. The cases have been consolidated for procedural purposes and are jointly administered under the caption: *The Columbia Gas System, Inc. and Columbia Gas Trans. Corp.*, No. 91–803.

[2] By order dated September 10, 1991, the Court issued an order authorizing the proposed financing.

[3] By order dated May 11, 1993, the Court approved the amendments to the Credit Facility.

in connection with a proposed sale of utility assets.

I&M intends to lend through December 31, 1996 up to $15 million to Steel Dynamics, Inc. ("SDI"), an Indiana corporation, to assist SDI in the construction of a 345kv–34.5kv electric substation ("Substation"). The substation will be used to take I&M power for an SDI manufacturing plant in I&M's service territory and will be used solely to provide power for SDI's own needs. SDI has entered into a construction agreement ("Construction Agreement") with an outside contractor for the construction of the substation. Under the terms of a Substation Facilities Agreement ("Facilities Agreement") dated as of June 1st, 1994 with I&M, SDI has transferred its rights in the Construction Agreement to I&M, which will pay for the construction of the substation.

Once the Commission has authorized I&M to advance funds to SDI and to sell the substation, I&M will transfer its rights in the Construction Agreement and title to the substation to SDI. In exchange, SDI will deliver a promissory note ("Note") to I&M and will transfer a first priority security interest in the substation to secure its obligations to repay the funds spent by I&M under the Facilities Agreement.

The principal amount of the Note will equal the construction costs of the substation, plus interest at 8% per annum on funds paid by I&M to the contractor before the substation is transferred to SDI, but will in no case exceed $15 million. The Note will bear a fixed rate of interest at 8% per annum and will be repayable in equal installments for fifteen years, commencing with the earlier of the date the substation goes into operation or December 31, 1996. However, in no case will any payments be due under the Note until a transmission line to serve the substation has been put into service.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20310 Filed 8–17–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 99000138]

Eos Partners SBIC, L.P.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) by Eos Partners SBIC, L.P., 520 Madison Avenue, New York, N.Y. 10022 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et. seq.*), and the Rules and Regulations promulgated thereunder. Eos Partners SBIC, L.P. is a limited partnership formed under Delaware law. While the applicant may seek opportunities throughout the U.S., it expects that most of its investments will be in businesses located in New York, New Jersey, Pennsylvania, Massachusetts, Maryland, California, Florida, Georgia, Illinois, Michigan, and Texas.

The proposed SBIC will be managed by Eos Management, Inc., a Delaware corporation which is wholly-owned by the limited partnership which is providing most of the equity capital to be invested in the applicant. The following partners will own 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
B. Young, Family & Trust, c/o Eos Partners, L.P., 520 Madison Avenue, New York, NY 10022	29.17
Onex Eos Holding, Inc., c/o Eos Partners, L.P., 520 Madison Avenue, New York, NY 10022	24.60
S. Friedman, Family & Trust, c/o Eos Partners, L.P., 520 Madison Avenue, New York, NY 10022	19.45

The applicant will begin operations with a minimum capitalization of $2.650 million. Investments will be made in a diversified portfolio of growth oriented companies. While not exclusive, the applicant has identified a number of industries with attractive opportunities, including information services, health care, telecommunications, and media.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, N.Y.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: August 9, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–20265 Filed 8–17–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0308]

First Commerce Capital, Inc.; Notice of Issuance of a Small Business Investment Company License

On June 15, 1994, a notice was published in the **Federal Register** (59 FR 30828) stating that an application had been filed by First Commerce Capital, Inc., 821 Gravier Street, Suite 1027, New Orleans, Louisiana 70119, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business July 15, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06–0308 on July 29, 1994, to First Commerce Capital, Inc. to operate as a small business investment company.

The Licensee will be wholly owned by First Commerce Corp, a $2.6B bank holding company located in Louisiana, and will have $5 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 8, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–20266 Filed 8–17–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended August 12, 1994. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49709.

Date filed: August 9, 1994.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex 024f—Local Currency Fare Changes/Hungary.

Proposed Effective Date: October 1, 1994.

Docket Number: 49710.

Date filed: August 9, 1994.

Parties: Members of the International Air Transport Association.

Subject: Comp Reso/P 0980 dated August 9, 1994; Composite Expedited Resolutions.

r-1—002r r-3—024d r-5—152a
r-2—02li r-4—024j r-6—210

Proposed Effective Date: Expedited September 1, 1994.

Docket Number: 49714.

Date filed: August 11, 1994.

Parties: Members of the International Air Transport Association.

Subject: Comp Telex 033f-Local Currency Rate Changes/Hungary.

Proposed Effective Date: September 1, 1994.

Docket Number: 49715.

Date filed: August 11, 1994.

Parties: Members of the International Air Transport Association.

Subject: Telex TC3 Mail Vote 701—Japan-China fares.

r-1—043i r-4—06311 r-7—092f
r-2—0531 r-5—076t r-8—092v
r-3—0631 r-6—085hh r-8—092v

Proposed Effective Date: September 4, 1994.

Docket Number: 49716.

Date filed: August 11, 1994.

Parties: Members of the International Air Transport Association.

Subject: Comp Telex Mail Vote 702—Suriname Rates.

Proposed Effective Date: September 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–20298 Filed 8–17–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Fort Worth Meacham Airport; Fort Worth, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Fort Worth, Texas, for Fort Worth Meacham Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Forth Worth Meacham Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before February 7, 1995.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is August 11, 1994. The public comment period ends October 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mike Nicely, DOT/FAA, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, TX 76193–0653. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Fort Worth Meacham Airport are in compliance with applicable requirements of part 150, effective August 11, 1994. Further, FAA is reviewing a proposed noise compatibility program for the airport which will be approved or disapproved on or before February 7, 1995. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Forth Worth submitted to the FAA on August 4, 1994 noise exposure maps, descriptions and other documentation which were produced from November 1991 to July 1994 during the development of the Fort Worth Meacham Airport FAR Part 150 Airport Noise Compatibility Plan. It was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Forth Worth. The specific maps under consideration are Exhibits 10.1 and 10.2 in the submission. The FAA has determined that these maps for Fort Worth Meacham Airport are in compliance with applicable requirements. This determination is effective on August 11, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure maps submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the

provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Par 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Forth Worth Meacham Airport, also effective on August 11, 1994. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 7, 1995.

Th FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Texas Airport Development Office, Suite 697, 2601 Meacham Boulevard, Fort Worth, TX 76193–0653

Mr. A.M. Rivera, Director of Airport Systems, City of Fort Worth, 4201 North Main Street, Fort Worth, TX 76106–2736

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Forth Worth, Texas, on August 11, 1994.

Otis T. Welch,

Manager, Texas Airport Development Office.

[FR Doc. 94–20303 Filed 8–17–94; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Fort Worth Alliance Airport; Fort Worth, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Fort Worth, Texas, for Fort Worth Alliance Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Fort Worth Alliance Airport under Part 150 is conjunction with the noise exposure map, and that this program will be approved or disapproved on or before February 7, 1995.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is August 11, 1994. The public comment period ends October 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mike Nicely, DOT/FAA, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, TX 76193–0653. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Fort Worth Alliance Airport are in compliance with applicable requirements of Part 150, effective August 11, 1994. Further, FAA is reviewing a proposed noise compatibility program for this airport which will be approved or disapproved on or before February 7, 1995. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), and airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission on such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Fort Worth submitted to the FAA on August 4, 1994 noise exposure maps, descriptions and other documentation which were produced from November 1991 to July 1994 during the development of the Fort Worth Alliance Airport FAR Part 150 Airport Noise Compatibility Plan. It was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Forth Worth. The specific maps under consideration are Exhibits 10.1 and 10.2 in the submission. The FAA has determined that these maps for Fort Worth Alliance Airport are in compliance with applicable requirements. This determination is effective on August 11, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map

submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Fort Worth Alliance Airport, also effective on August 11, 1994. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but the further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 7, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Texas Airport Development Office, Suite 697, 2601 Meacham Boulevard, Fort Worth, TX 76193–0653

Mr. A.M. Rivera, Director of Airport Systems, City of Fort Worth, 4201 North Main Street, Fort Worth, TX 76106–2736

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, on August 11, 1994.

Otis T. Welch,

Manager, Texas Airport Development Office.

[FR Doc. 94–20304 Filed 8–17–94; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Little Rock Regional Airport, Little Rock, AR

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Little Rock Airport Commission for Little Rock Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Little Rock Regional Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before February 7, 1995.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is August 11, 1994. The public comment period ends October 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ron Hess, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193–0630, (817) 222–5634. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Little Rock Regional Airport are in compliance with applicable requirements of Part 150, effective August 11, 1994. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before February 7, 1995. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposed for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Little Rock Airport Commission submitted to the FAA on November 10, 1993, noise exposure maps, descriptions and other documentation which were produced during development of the Little Rock Regional Airport F.A.R. Part 150 Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Little Rock Airport Commission. The specific maps under consideration are Exhibit 1, 1993 Noise Exposure Map, and Exhibit 2, 1998 Noise Exposure Map in the submission.

The FAA has determined that these maps for Little Rock Regional Airport are in compliance with applicable requirements. This determination is effective on August 10, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures

contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Little Rock Regional Airport, also effective on August 11, 1994. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 7, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 2601 Meacham Boulevard, Airports Division, ASW-630, Fort Worth, Texas 76137-4298

Little Rock Regional Airport, #1 Airport Drive, Little Rock, Arkansas 72202-4489

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, August 11, 1994.

Faye S. Nedderman,

Manager, Arkansas/Louisiana, Airport Development Office.

[FR Doc. 94-20301 Filed 8-17-94; 8:45 am]

BILLING CODE 4910-13-M

Extension of Comment Period for Draft Environmental Impact Statement, and Section 4(f) Evaluation—The Port Authority of New York and New Jersey's Airport Access Program, LaGuardia—John F. Kennedy International Airports (DEIS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FAA, acting as "Lead Agency" and the New York State Department of Transportation (NYSDOT), acting as "Joint Lead Agency" prepared and distributed a Draft Environmental Impact Statement and Section 4(f) Evaluation for the Port Authority of New York and New Jersey's Airport Access Program, LaGuardia—John F. Kennedy International Airports. The availability of the DEIS was previously announced by the Environmental Protection Agency in the June 24, 1994 **Federal Register**. The comment period was to have closed on August 8, 1994 but has been extended to September 30, 1994.

DATES: In order for written comments to be considered, they must be received by Mr. Anthony P. Spera, Federal Aviation Administration, Airports Division AEA-610, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430, (718) 553-1250 on or before September 30, 1994. Questions concerning the DEIS may also be directed to Mr. Spera.

Issued in Jamaica, New York on August 11, 1994.

Anthony P. Spera,

Acting Manager, Safety and Standards Branch, Airports Division, Federal Aviation Administration, Eastern Region Office, Jamaica, New York.

[FR Doc. 94-20305 Filed 8-17-94; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-94-30]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 2, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7470.

This notice is published to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 10, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27602.

Petitioner: Air Canada.

Sections of the FAR Affected: 14 CFR 91.715.

Description of Relief Sought: To allow Air Canada to operate its aircraft in the United States under a special ferry flight permit issued by Transport Canada.

Docket No.: 27675.

Petitioner: Christian Air Relief.

Sections of the FAR Affected: 14 CFR 21.191(d)

Description of Relief Sought: To permit Christian Air Relief to operate a non-Federal Aviation Administration (FAA)-certificated aircraft (an Antonov AN–2) between a U.S. port of entry (Houma Terrebonne Louisiana airport) and destinations outside the United States (the Gulf of Mexico and Central and South America).

Docket No.: 27816.

Petitioner: Darton International, Inc.,

Sections of the FAR Affected: 14 CFR 21.195 and 91.319 (a)(1) and (a)(2).

Description of Relief Sought: To permit Darton International, Inc., to conduct professional flight training in an experimental aircraft, a former military T–28, for compensation or hire.

Docket No.: 27818.

Petitioner: Experimental Aircraft Association.

Sections of the FAR Affected: 14 CFR 91.319 (a)(1) and (a)(2).

Description of Relief Sought: To permit flight training for compensation or hire in experimental aircraft (i.e., former military aircraft) when that instruction is provided in accordance with a Federal Aviation Administration (FAA)-approved training program.

Docket No.: 27819.

Petitioner: FFV Aerotech, Inc.

Sections of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought: To permit FFV, Inc., to assign Inspection procedures Manuals to key individuals within each department and functionally an adequate number of manuals for access by all other employees.

Docket No.: 27822.

Petitioner: Milwaukee General Aviation, Inc.

Sections of the FAR Affected: 14 CFR 91.119

Description of Relief Sought: To permit Milwaukee General Aviation, Inc., to conduct flights at approximately 800 feet above ground level as necessary, due to the prevailing meteorological conditions, for the purpose of conducting its aerial traffic observation.

Docket No.: 27825.

Petitioner: Emery Worldwide Airlines.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To allow Emery Worldwide Airlines to use the services of Bob Massa as co-pilot after his 60th birthday and to allow Mr. Massa to serve as co-pilot for Emery Worldwide Airlines after he has reached his 60th birthday.

Docket No.: 27826.

Petitioner: McDonnell Douglas Corporation.

Sections of the FAR Affected: 14 CFR 21.325(b)(1).

Description of Relief Sought: To permit Douglas Aircraft Company (DAC) to complete production assembly, issue airworthiness certificates, and deliver newly manufactured DAC aircraft from Matrix Aeronautica in Tijuana, Baja California, Mexico, to DAC's airline customers located in various countries throughout the world.

Docket No.: 27827.

Petitioner: Mr. Bert M. Yetman.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To allow Mr. Yetman to act as a pilot in Part 121 operations after reaching his 60th birthday.

Dispositions of Petitions

Docket No.: 20583.

Petitioner: Tenneco, Inc.

Sections of the FAR Affected: 14 CFR 61.57 (c) and (d) and 61.58(c)(1).

Description of Relief Sought: To permit pilotsemployed by Tenneco, Inc., to complete their entire 24-month pilot-in-command check in a Federal Aviation Administration (FAA)-approved simulator.

Grant, August 2, 1994, Exemption No. 3106G

Docket No.: 21605.

Petitioner: Alaska Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.574(a) (1) and (3).

Description of Relief Sought/Disposition: To extend Exemption No. 3850, as amended, which permits Alaska Airlines, Inc., (ASA) to carry and operate oxygen storage and dispensing equipment for medical use by patients requiring emergency medical or continuing medical attention while being carried as passengers by ASA. The equipment shall be furnished and maintained by the hospital treating the patient.

Grant, July 22, 1994, Exemption No. 3850E

Docket No.: 22822.

Petitioner: T.B.M., Inc.

Sections of the FAR Affected: 14 CFR 91.611.

Description of Relief Sought/Disposition: To allow T.B.M., Inc., and its subsidiary, Butler Aircraft Company, to continue to conduct ferry flights with one engine inoperative on their McDonnell Douglas DC–6 and DC–7 series aircraft without obtaining a special flight permit for each flight.

Grant, July 27, 1994, Exemption No. 5204B

Docket No.: 24761.

Petitioner: Executive Jet Aviation, Inc.

Sections of the FAR Affected: 14 CFR 91.511(a)(2) and 135.165(b).

Description of Relief Sought/Disposition: To allow Executive Jet Aviation, Inc., to operate its turbojet-powered aircraft equipped with a single long-range navigation system (LRNS) and a single high-frequency (HF) communication radio in extended overwater operations.

Grant, July 20, 1994, Exemption No. 4709D

Docket No.: 26095.

Petitioner: Cochise Community College.

Sections of the FAR Affected: 14 CFR 141.65.

Description of Relief Sought/Disposition: To permit Cochise Community College to recommend graduates of its approved certification course for flight instructor-airplane single engine certificates and associated rating without taking the Federal Aviation Administration's practical test in accordance with the provision of subpart D of Part 141.

Grant, July 22, 1994, Exemption No. 5225B

Docket No.: 26214.

Petitioner: Epps Air Service, Inc.

Sections of the FAR Affected: 14 CFR 135.165(b).

Description of Relief Sought/Disposition: To allow Epps Air Service, Inc., to operate certain airplanes equipped with one long-range navigation system (LRNS) and one high-frequency (HF) communication system in extended overwater operations.

Grant, July 20, 1994, Exemption No. 5252B

Docket No.: 26845.
Petitioner: University of North Dakota.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/Disposition: To permit the University of North Dakota to recommend graduates of its approved certification course for flight instructor certificates and ratings without taking the Federal Aviation Administration's practical test.

Grant, July 21, 1994, Exemption No. 5546A

Docket No.: 26888.
Petitioner: Artez Flying Service, Inc.
Sections of the FAR Affected: 14 CFR 141, appendix A, paragraph (5).
Description of Relief Sought/Disposition: To permit Artez Flying Service, Inc., to administer Stage II checks before a student's first solo cross-country flight.

Grant, July 21, 1994, Exemption No. 5529A

Docket No.: 26896.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/Disposition: To allow Boeing Commercial Airplane Group to issue export airworthiness approvals for Class II and Class III products that are U.S.-manufactured by Boeing and exported from its facilities located in other countries.

Grant, July 18, 1994, Exemption No. 5942

Docket No.: 27416.
Petitioner: JetSun Aviation Centre.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Airways Service to operate without a TSO–C112 (Mode S) transponder installed on its Beechcraft Bonanza, N35BK. [On February 1, 1994, Airways Service changed its name to Aviators Anonymous, Inc., d.b.a. JetSun Aviation Centre, while keeping address and staffing the same. This exemption reflects this amendment, as well as extending the expiration date until July 31, 1996.]

Grant, July 21, 1994, Exemption No. 5808A

Docket No.: 27452.
Petitioner: Parker Hannifin Corporation.
Sections of the FAR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/Disposition: To allow Parker Hannifin Corporation (PHC) to issue export airworthiness approvals for Class II and Class III products that are U.S.-manufactured by PHC, and exported from its facilities located in other countries.

Grant, July 18, 1994, Exemption No. 5491

Docket No.: 27577.
Petitioner: Aviall.
Sections of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To allow Aviall to keep one set of repair station procedures manuals in one central location, in each of its certificated battery repair stations. The manuals would be available for review by all supervisor and inspection personnel, in lieu of providing a copy to each individual as required by the FAR.

Grant, July 15, 1994, Exemption No. 5940

Docket No.: 27758.
Petitioner: Pacific States Charter Services.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/Disposition: To allow pilots employed by Pacific States Charter Services to remove and reinstall the left rear seat in its Piper PA–34–200T aircraft.

Grant, July 20, 1994, Exemption No. 5943

Docket No.: 27784.
Petitioner: Deutsche Aerospace Airbus GmbH.
Sections of the FAR Affected: 14 CFR 25.785(d), 25.813(b), 25.857(e), and 25.1447 (c)(1) and (c)(3)(ii).
Description of Relief Sought/Disposition: To allow carriage, in a Model A310–203 passenger-to-freighter airplane, the carriage of up to four supernumeraries on the main deck in addition to the maximum four flight deck occupants, with a total occupancy of eight.

Grant, July 13, 1994, Exemption No. 5938

[FR Doc. 94–20299 Filed 8–17–94; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice NO. PE–94–29]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 2, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 10591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 10, 1994.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 25748.
Petitioner: Popular Rotorcraft Association, Inc.
Sections of the FAR Affected: 14 CFR 91.319(a) (1) and (2).
Description of Relief Sought: To amend Exemption No. 5209, as amended, which permits Popular Rotorcraft Association and its number flight instructors to conduct pilot and

flight instructor training in an experimental gyroplane for compensation or hire. The amendment, if granted, would extend the exemption to include Certified Flight Instructor Certificates and Commercial Certificates and check rides for these certificates.

Docket No.: 27346.

Petitioner: Fairchild Aircraft.

Sections of the FAR Affected: 14 CFR 91.531(a)(3).

Description of Relief Sought: To amend Exemption No. 5367, which allows Fairchild Aircraft's type rated company pilots to conduct production and experimental test flights in the SA227–CC and SA227–DC airplanes without a second in command. It also permits all operators of Fairchild Aircraft commuter category airplanes (SA227–CC, SA227–DC, and other airplanes on the same type certificate) to conduct flight operations without a designated second-in-command pilot, provided the airplane is type certificated for single-pilot operations and the airplane is carrying 9 or fewer passengers. The amendment, if granted, would recognize the current version of the petitioner's Flight Operations Procedures Manual, dated February 14, 1992, and would remove the restriction in condition 4d of the exemption, which limits passenger carriage to Fairchild Aircraft employees.

Docket No.: 27396.

Petitioner: Northwest Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.440.

Description of Relief Sought: To amend Exemption No. 5815, which allows Northwest Airlines, Inc., (NWA) to combine recurrent flight and ground training and proficiency checks for its pilots-in-command, seconds-in-command, and flight engineers in a single annual training and proficiency session. The amendment, if granted, would permit NWA to meet the line-check requirements of § 121.440 through an alternative line-check program.

Docket No.: 27832.

Petitioner: Mr. John L. Geitz.

Sections of the FAR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought: To permit Mr. Geitz to conduct recurrent flight training in Beech Bonanza, Baron, and Travel Air type aircraft as well as recurrent flight training in simulated instrument conditions in Beech Baron and Travel Air type aircraft, when these aircraft are equipped with a functioning throwover control wheel.

Docket No.: 27845.

Petitioner: Learjet, Inc.

Sections of the FAR Affected: 14 CFR 25.571(e)(1).

Description of Relief Sought: To permit Learjet to demonstrate that the Learjet Model 45 airplane is capable of successfully completing a flight during which likely structural damage occurs as a result of impact with a 4-pound bird at which ever true airspeed is greater: Vc at sea level, or .85 Vc at 8000 feet.

Dispositions of Petitions

Docket No.: 26048.

Petitioner: National Test Pilot School.

Sections of the FAR Affected: 14 CFR 91.319(a)(1) and (2).

Description of Relief Sought/Disposition: To amend Exemption No. 5778, which permits the National Test Pilot School (NTPS) to operate aircraft having an experimental certificate to train flight test students through the demonstration and the practice of flight test techniques, and teach students flight test data acquisition methods for compensation. The petition seeks to amend condition Nos. 3, 6, and 9 of the current exemption.

Grant, August 2, 1994, Exemption No. 5778A

Dispositions of Petitions

Docket No.: 27224.

Petitioner: Victor Aviation Corporation.

Sections of the FAR Affected: 14 CFR 135.225

Description of Relief Sought/Disposition: To allow Victor Aviation Corporation to initiate instrument approaches into airports that do not have weather reporting facility operated by the U.S. National Weather Service (USNWS), a source approved by the USNWS, or a source approved by the Administrator.

Denial, August 2, 1994, Exemption No. 5944

Docket No.: 27267.

Petitioner: AMR Combs, Inc.

Sections of the FAR Affected: 14 CFR 135.303; 135.337(a)(2) and(3); and 135.339(c).

Description of Relief Sought/Disposition: To permit specifically approved check airmen to conduct the flight checks required by §§ 135.293(a)(1) and 135.299 without requiring these airmen to complete the appropriate training for the aircraft or the appropriate proficiency or competency checks require to serve as a pilot-in-command (PIC) in operations under part 135..

Denial, August 2, 1994, Exemption No. 5945

Dispositions of Petitions

Docket No.: 27801.

Petitioner: Mr. Steven G. Albert.

Sections of the FAR Affected: 14 CFR 63.37.

Description of Relief Sought/Disposition: To allow Mr. Albert to receive a turboprop class rating on his Federal Aviation (FAA-issued flight engineer certificate without being required to pass a practical test administered by the FAA or an FAA-designated examiner, based on his successful completion of U.S. Air Force flight engineer training and the FAA-administration written test; your designation from the Air Force as a functional flight engineer; and your fulfillment of the aeronautical experience requirements of § 63.37.

Denial, August 8, 1994, Exemption No. 5946

[FR Doc. 94–20300 Filed 8–17–94; 8:45 am]

BILLING CODE 4910–13–M

[Docket 49706]

Office of Hearings; Belize Air International, Ltd.; Notice of Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge John J. Mathias. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M–50, Room 9228, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone: (202) 366–2142.

Dated: August 11, 1994.

John J. Mathias,

Chief Administrative Law Judge.

[FR Doc. 94–20239 Filed 8–17–94; 8:45 am]

BILLING CODE 4610–62–M

DEPARTMENT OF THE TREASURY

Customs Service

Eligibility of Certain Jewelry Under General Note 3(a)(iv) Harmonized Tariff Schedule of the United States (HTSUS)

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Change of Practice; discussion of comments.

SUMMARY: This document changes the practice regarding the eligibility of certain jewelry from the United States Virgin Islands for duty-free treatment. Customs previously has ruled that attaching United States-origin metal spring clips to otherwise finished earrings substantially transforms those articles into "products of" the Virgin Islands. Under the change set forth

herein, the addition of fasteners, closures, clasps, etc., to otherwise finished articles of jewelry would not effect a substantial transformation of that jewelry into "products of" a United States insular possession.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Burton Schlissel, Special Classification Branch, Office of Regulations and Rulings (202) 482-6980.

SUPPLEMENTARY INFORMATION:

Background

In Headquarters Ruling Letter (HRL) 094018 dated January 17, 1963, individually strung or linked glass and plastic beads, in varying lengths, were imported into the United States Virgin Islands from several foreign countries. Metal findings consisting of clasps and hooks were attached to the strung beads, resulting in necklaces and bracelets.

Additionally, glass and plastic beads strung and fastened to metal screens and back findings to form earrings were imported into the United States Virgin Islands from foreign countries. Metal clips were imported from the United States.

Customs held that attaching United States clasps to the foreign strung length of beads by inserting hooks into eyes in the metal findings and bending the hooks closed, thereby forming necklaces and bracelets, and fastening United States metal spring clips to foreign earrings substantially transformed those imported articles into "products of" the United States Virgin Islands within the meaning of section 301, Tariff Act of 1930, as amended (19 U.S.C. 1301a) (repealed effective August 31, 1963).

Under the provisions of 19 U.S.C. 1301a, all articles imported from an insular possession of the United States, except Puerto Rico, were dutiable at the same rate as were importations from foreign countries, except that those which (1) were of native growth, or (2) were manufactured or produced in such possession and did not contain foreign materials to the value of more than 50 per centum of their appraised value in the United States, and came into the United States directly from the insular possession, or (3) were articles previously imported into the United States with payment of all applicable duties and taxes which were shipped from the United States without remission, refund, drawback of such duties and taxes, directly to the possession from which they were being returned by direct shipment, were entitled to free entry.

General Note 3(a)(iv), Harmonized Tariff Schedule of the United States (HTSUS) (formerly General Headnote 3(a), Tariff Schedules of the United States), which replaced 19 U.S.C. 1301(a), provides for the duty-free treatment of goods imported from a United States insular possession if they: (1) are the growth or "product of" the possession; (2) meet certain value-content requirements; and (3) come directly to the customs territory of the United States from the possession.

To comply with the requirements of General Note 3(a)(iv), an imported article first must qualify as a "product of" a United States insular possession. See *Yuri-Fashions* v. *United States*, 632 F. Supp. 41, 46 (CIT 1986); T.D. 90-17 dated February 23, 1990. Where materials are imported into the insular possession, they must be substantially transformed into a product of that insular possession for the product to receive duty-free treatment under General Note 3(a)(iv), HTSUS.

A substantial transformation occurs when a material is used "in the manufacture of a new article having a new name, character, and use * * *." See *United States* v. *Gibson-Thomsen Co., Inc.*, 27 CCPA 267, 273 (1940).

It is Customs position that adding a closure, clasp, or fastener to otherwise completed articles of jewelry (i.e., bracelet, necklace, earring) does not change the essence of the jewelry which is dedicated to use as such and has the fundamental character of such jewelry. This position is consistent with Customs rulings issued under the Generalized System of Preferences (GSP) and Country of Origin Marking statutes, 19 U.S.C. 2461–2465 and 19 U.S.C. 1304, respectively, which utilize the substantial transformation test, for determining whether an article is the "product of" a country for purposes of those statutes. See HRL 556624 dated July 31, 1992 (adding clasps and spring rings to chains is a simple combining operation for which duty-free treatment under the GSP is not allowed); HRL 734350 dated April 9, 1992 (soldering a bar-pin clasp to a completed brooch is not a substantial transformation; soldering a metal clip to completed barrettes is not a substantial transformation; gluing stainless steel posts to completed earrings is not a substantial transformation).

The proposed position with respect to the ineligibility of the described jewelry for duty-free treatment under General Note 3(a)(iv), HTSUS, is in conflict with HRL 094018 dated January 17, 1963. Therefore, Customs proposed in a document published in the **Federal Register** (58 FR 36512), on July 7, 1993, that the addition of fasteners, closures, clasps, etc., to otherwise finished articles of jewelry would not effect a substantial transformation of that jewelry into "products of" a United States insular possession.

Discussion of Comments

Two comments were received in response to the published proposal. Both comments were in opposition to the proposed change of practice.

The first commenter, a jewelry company in the Virgin Islands, states that due to the depressed economy and competition from low wage producers in Czechoslovakia, the added cost (i.e., Customs duties) to its U.S. customers may cause the company to lose its competitive position in the U.S. market and force it to shut down operations in the Virgin Islands. This commenter also states that such a development would seriously impair its ability to liquidate certain loans granted or guaranteed by the Small Business Administration (SBA).

The second commenter, representing the Government of the Virgin Islands, states that the failure of the first commenter's business would result in loss of employment to 10-30 workers. Further, this commenter believes that the proposal would impede its efforts to attract other jewelry producers to the Virgin Islands. The commenter is also of the opinion that the SBA loans made to the first commenter was based on the company's financial condition at the time, and that as matter of public policy, a Customs Service ruling should not be the cause of a default by the company on its obligations to the SBA. If the proposed change in position is made, the commenter urges that the jewelry company be "grandfathered" so that the change would not be applicable to the company.

The comments received do not touch upon the legal basis for the proposed change in practice, and any unfavorable economic consequences are beyond the scope of this document.

Conclusion

After careful consideration of the comments received and further review of this matter, it has been determined that the change in practice as proposed should be adopted.

Approved: August 1, 1994.

Samuel H. Banks,

Acting Commissioner of Customs.

[FR Doc. 94–20308 Filed 8–17–94; 8:45 am]

BILLING CODE 4820–02–P

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and location of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on September 23, 1994 in Seattle, Washington. The meeting will be held at the Sorrento Hotel, 900 Madison Street, Seattle, Washington 98104–9742, Tel.: (206) 343–6158. The meeting will be held in the Penthouse Room and will commence at approximately 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: The preliminary agenda to be considered during the meeting on September 23, 1994 is as follows:

1. Customs reorganization implementation.
2. Customs budget cycle and process.
3. Customs automation redesign plans.
4. Regulatory implementation overview.
   a. Rules of origin.
   b. North American Free Trade Agreement.
   c. Customs Modernization Act.
5. Other new business.

The agenda is subject to modification prior to the meeting date. The meeting is open to the public. However, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the meeting, contact Ms. Theresa Manning at (202) 622–0220 no later than September 16, 1994.

Dated: August 12, 1994.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory Tariff and Trade Enforcement).

[FR Doc. 94–20272 Filed 8–17–94; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Veteran's Application for Increased Compensation Based on Unemployability, VA Form 21–8940

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 273–7011.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 19, 1994.

Dated: August 10, 1994.

By direction of the Secretary.

Donald L. Neilson,

Director, Records Management Service.

Extension

1. Veteran's Application for Increased Compensation Based on Unemployability, VA Form 21–8940
2. The form is used by veterans for the sole purpose of making a claim for increased VA disability compensation based on unemployability. The information is used to determine entitlement to the unemployability benefits.
3. Individuals or households
4. 18,000 hours
5. 45 minutes
6. On occasion
7. 24,000 respondents

[FR Doc. 94–20275 Filed 8–17–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 159
Thursday, August 18, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–19794.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 18, 1994, 10:00 a.m. Meeting Open to the Public.

The following item was deleted from the agenda:

MCFL Rulemaking: Summary of Comments and Draft Final Rules.

The following item was added to the agenda:

Job Recommendations from Elected Officials and Political Party Officials.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–20454 Filed 8–16–94; 2:38 pm]

BILLING CODE 6715–01–M

AGENCY HOLDING THE MEETING: BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to the Federal Register on Friday, August 12, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, August 22, 1994.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposals concerning Federal Reserve System Benefits.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204.

Dated: August 16, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20445 Filed 8–16–94; 1:57 pm]

BILLING CODE 6210–01–P

federal register

Thursday
August 18, 1994

Part II

Department of Education

34 CFR Part 685

Federal Direct Student Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

Federal Direct Student Loan Program

RIN 1840–AC05

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to amend the Federal Direct Student Loan (Direct Loan) Program regulatory policies and procedures which apply to loans under the Federal Direct Stafford Loan Program, the Federal Direct Unsubsidized Stafford Loan Program, the Federal Direct PLUS Program, and the Federal Direct Consolidation Loan Program, collectively referred to as the Direct Loan Program. These proposed regulatory policies and procedures would streamline the loan application and disbursement processes, provide ease in school administration of the loans, ensure program integrity, and protect the Federal fiscal interest.

DATES: Comments must be received on or before October 3, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Rachel Edelstein, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4100, ROB–3), Washington, DC 20202–5257. (Internet address: direct loans@ed.gov). All comments will be available for public review on the Department's Direct Loan bulletin board. The access number for the bulletin board for individuals with communications software and modems is 1–800–429–9933. In addition, Internet users may access the bulletin board by using the TCP/IP telenet command facility at the above Internet address.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Edelstein, telephone: (202) 708–9406. (Internet address: direct loans@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Student Loan Reform Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under the Higher Education Act of 1965, as amended (HEA). See Subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders.

The Direct Loan Program provides borrowers with a streamlined application process, flexible repayment options, and a simplified collection process. Direct Loan Program student borrowers apply for a loan at the same time that they apply for other title IV student financial assistance. No additional forms are required. Further, under the Direct Loan Program borrowers will be eligible for a variety of new repayment plans, including an extended repayment plan, a graduated repayment plan with an extended term, an income contingent repayment plan, and an alternative repayment plan. These repayment plans allow borrowers to tailor their loan repayment to their individual circumstances. The new repayment plans also give borrowers the opportunity to enter into lower-paying service careers while making reasonable payments on their educational debt. The income contingent repayment plan will reduce the incidence of default, because borrowers are required to repay only what they can reasonably afford. In addition, repayment procedures will be easier for borrowers under the Direct Loan Program than under the Federal Family Education Loan (FFEL) Program because the borrower will interact with only one servicer at a time throughout the life of the loan, rather than with multiple loan holders.

The HEA directed the Secretary to consult with members of the higher education community and to publish a notice of standards, criteria, and procedures for the program's first year (July 1, 1994 to June 30, 1995) in lieu of issuing regulations using the Department's usual procedures. In compliance with that requirement, the Secretary published three sets of rules for the first year. The first of these rules was published on September 10, 1993, and contained standards for school participation and loan origination criteria. The second was published on January 4, 1994, and included most of the policies and procedures relating to schools and borrowers in the Direct Loan Program. The third set of rules was published on July 1, 1994, and governed the repayment plans available to Direct Loan borrowers, including an income contingent repayment plan, and standards and procedures relating to Federal Direct Consolidation Loans.

The HEA also directed the Secretary, to the extent practicable, to develop proposed rules for the Direct Loan Program through a negotiated rulemaking process for the second and subsequent years of the program (1995–1996 and beyond). With two exceptions, negotiated rulemaking was used to develop these proposed rules. The standards for school participation in the Direct Loan Program for the 1995–1996 academic year, which were published on February 17, 1994, and the criteria schools would need to meet to originate student loans in the Direct Loan Program in the 1995–1996 academic year, which were published on April 26, 1994, were discussed with members of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee. In many cases, the results of those discussions were incorporated into those standards and criteria. The timely implementation of the Direct Loan Program for the 1995–1996 academic year did not permit the solicitation of further comment on those rules, and they were published in final form.

The negotiated rulemaking process for the development of this notice of proposed rulemaking began in January of 1994. The Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee (the negotiators) met for several days each month from January through June and for one day in July. The goal of the negotiations was to reach consensus on a full notice of proposed rulemaking (NPRM) with consensus being defined as an absence of dissent from any of the negotiators. While consensus on an NPRM was not attained, substantive agreement was reached on most of the issues addressed by the regulations.

Provisions Proposed

These proposed regulations include policies and procedures necessary for borrowers and schools to participate in the Direct Loan Program for the 1995–1996 and subsequent academic years, including provisions relating to repayment of Direct Loans. Provisions relating to school participation and loan origination in this document are proposed for the 1996–1997 and subsequent academic years.

The policies and procedures in these proposed regulations have been selected to promote the statutory mandate that the Secretary make loans under the Direct Loan Program available to all eligible students attending participating institutions and their parents. For the 1996–1997 academic year, the Secretary estimates that 50 percent of all new loans made under the Department of Education's two major student loan programs will be made to students and

their parents participating in the Direct Loan Program. Thus, over three million recipients will benefit from this program during the 1996–1997 academic year, and millions more will benefit in future years. Due to the size and importance of this program, the proposed regulatory policies and procedures in this document have been chosen because they would streamline the loan application and disbursement processes, provide ease in school administration of the loans, ensure program integrity, and protect the Federal fiscal interest. Meeting Summaries of each meeting of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee contain a fuller description of the considerations that were taken into account in the preparation of these proposed regulations. Copies of the Meeting Summaries will be available for public inspection with the comments submitted in response to the proposed rules.

In certain sections where Direct Loan provisions are different from (FFEL) Program provisions, the Secretary will propose comparable changes to FFEL Program regulations in a separate Notice of Proposed Rulemaking to be published shortly. Anticipated changes to the FFEL program are noted in the following discussion. The Secretary expects that the comment period end dates and effective dates for the final FFEL Program and Direct Loan Program regulations will coincide.

Summary of Contents

Subpart A—Purpose and Scope

§ 685.100 The Federal Direct Student Loan Program.

This section contains a general description of the program and lists the following components of the Federal Direct Student Loan Program:

(1) The Federal Direct Stafford Loan Program;

(2) The Federal Direct Unsubsidized Stafford Loan Program;

(3) The Federal Direct PLUS Loan Program; and

(4) The Federal Direct Consolidation Loan Program.

§ Section 685.101 Participation in the Direct Loan Program.

This section authorizes colleges, universities, graduate and professional schools, vocational, and proprietary schools selected by the Secretary to participate in the Direct Loan Program and allows the Secretary to permit a school to participate in both the FFEL Program and the Direct Loan Program simultaneously. A school may participate in both loan programs under such terms as it determines would best serve the needs of its students, subject to the agreement of the Secretary. For example, a school could make the Direct Loan Program available to its first-time borrowers only and the FFEL Program available to its other students, or it could choose to participate in the Federal Direct Stafford Loan Program, the Federal Direct Unsubsidized Stafford Loan Program, and the Federal PLUS Program. In the latter example, a student could receive a Direct Loan while the student's parent could receive an FFEL loan.

§ Section 685.102 Definitions.

This section identifies the definitions in this notice of proposed rulemaking that are found in other Department regulations, *i.e.*, in the Student Assistance General Provisions regulations (34 CFR Part 668), in the Institutional Eligibility regulations (34 CFR Part 600), and in the FFEL Program regulations (34 CFR Part 682), and also defines terms that are specific to these proposed rules. In several of these definitions the Secretary has incorporated revisions suggested by one or more of the negotiators.

Under the proposed definition of the term "estimated financial assistance", Federal Perkins Loan Program and Federal Work-Study Program aid that the student does not accept is not considered estimated financial assistance. Some negotiators criticized this proposal on the ground that it takes discretion away from the financial aid administrator. However, the financial aid administrator retains discretion in certifying the loan application. Under § 685.301(a)(5), an aid administrator may reduce the borrower's determination of need on a case-by-case basis, including a case in which a reduction in need is warranted even though the borrower has declined campus-based aid; the reason for the reduction must be documented in the student's file. The negotiators did not reach agreement on the definition for "estimated financial assistance".

The definition for "repayment period", contained in the regulations for the first year of the program, has been deleted from these proposed regulations because information that was provided in that definition (on which the negotiators disagreed) is included in other provisions.

The definition of the term "estimated cost of attendance" in the first-year regulations has also been deleted from these proposed regulations and will likewise be proposed to be deleted from FFEL Program regulations. A definition of this term will be proposed in forthcoming General Provisions regulations.

§ 685.103—Applicability of Subparts

This section states in general terms the content of each subpart of this notice of proposed rulemaking. Subpart A addresses the purpose and scope of the document. Subpart B addresses borrower provisions. Subpart C addresses school requirements. Subpart D contains standards for the participation of schools in the program and the criteria for determining a school's role in the loan origination process.

Subpart B—Borrower Provisions

§ 685.200 Borrower Eligibility.

This section lists the eligibility requirements for a student borrower in paragraph (a) and for a parent borrower in paragraph (b). Currently, a borrower whose previous loan was cancelled due to total and permanent disability is not eligible for a new loan unless he or she reaffirms the prior debt and receives a certification from a physician that the borrower's condition has improved. Based on comments from a number of the negotiators, these proposed regulations would eliminate those requirements. The borrower would need to obtain a certification from a physician that the borrower is able to engage in substantial gainful activity (but not that the borrower's condition has improved). The Secretary intends to propose identical changes for the FFEL Program. The Secretary invites comments on how to define "substantial gainful activity" for this purpose. The negotiators did not reach agreement on the requirement in § 685.200(a)(1)(iv)(A) that a student reaffirm previous loans that were discharged in bankruptcy to qualify for a Direct Loan or on the requirement in § 685.200(b)(7)(i)(C) that a parent document extenuating circumstances if he or she has an adverse credit history and wants to receive a Direct PLUS Loan.

This section also requires, in paragraph (c), that a borrower who is currently in default on a FFEL loan or a Direct Loan must make satisfactory repayment arrangements on the defaulted loan to be eligible to borrow under the Direct Loan Program. This requirement does not apply to defaulted borrowers who consolidate their loans and agree to repay under the income contingent repayment plan. Finally, paragraph (d) lists the loans that may be used to replace a student's expected family contribution.

§ 685.201. Obtaining a Loan.

Paragraph (a) of this section describes the requirement for a student who

wishes to obtain a Direct Student Loan to complete a Free Application for Federal Student Aid and the school's responsibility to perform certain functions to process that loan application. A school's responsibilities are differentiated depending on the procedures it follows to originate loans, or whether it uses the services of an alternative originator. Paragraph (b) describes the process a parent borrower uses to apply for a Direct PLUS Loan and also describes the school's responsibilities according to the procedures it follows to originate or assist in the origination of PLUS Loans. Paragraph (c) describes the process for obtaining a Direct Consolidation Loan. The negotiators did not reach agreement on the application procedures for a Direct Consolidation Loan in § 685.201(c).

§ 685.202 Charges for Which Direct Loan Program Borrowers are Responsible.

This section specifies the charges that a borrower may incur in the Direct Loan Program. The loan interest rates applicable to various types of loans are listed in paragraph (a), and the rules on when unpaid interest is capitalized are detailed in paragraph (b). Based on comments from many of the negotiators, the Secretary has specified when the capitalization of interest will occur. Interest on a Direct Unsubsidized Loan will not be capitalized until the borrower enters repayment. If a borrower is in a deferment period on a Direct Unsubsidized Loan, or in a forbearance period on any loan, the Secretary will capitalize interest that has accrued at the expiration of the deferment or forbearance. If a borrower has agreed to make payments of interest when payments of principal are not due and becomes past due on those interest payments, the Secretary will capitalize the unpaid interest, after notification to the borrower, in order to keep that borrower from defaulting on those interest payments. Finally, with certain exceptions referred to in § 685.202(b)(5), if a borrower is making payments on a loan that do not cover all of the accruing interest, the Secretary will capitalize the remaining interest on an annual basis.

Loan fees, late charges, and collection charges (both before and after default) are addressed in paragraphs (c), (d), and (e) of this section, respectively. The section specifies the Secretary's authority to assess certain charges but does not require the Secretary to do so. The maximum fees and charges that could be charged in the Direct Loan Program are the same as those authorized for the FFEL Program. The negotiators did not reach agreement on late charges and collection charges in § 685.202 (d) and (e).

§ 685.203 Loan Limits.

This section contains the statutory loan limits, both annual and aggregate amounts (and prorated amounts for programs that are less than an academic year), for various classes of students and for the various Direct Loans. The amount available for a Direct Subsidized Loan to an undergraduate student in the first year of his or her program is determined by the length of the program in comparison to the academic year. An undergraduate student in subsequent years of his or her program is eligible for increasingly higher loan amounts, but those amounts are prorated for that portion of the program less than an academic year in length that remains after the student completes one or more academic years of study. For example, an undergraduate student in the second year of his or her program has a loan limit of $3,500 for an academic year of study. However, if that student has less than a full academic year of study remaining in the program, that loan limit would be prorated based on the number of hours for which the student enrolls (see §§ 685.203(a) (2), (3) and 685.301(a)(4)(ii)). If this borrower needed nine semester hours but was enrolled for 12 semester hours (which is one-half of an academic year) the borrower would qualify for a $1,750 loan.

Students may also be eligible to borrow Direct Unsubsidized Loans. The loan limits are the same as for Direct Subsidized Loans, minus the amount of any Direct Subsidized Loan amount borrowed. For example, if the limit is $3,500 and the borrower received a $2,000 Direct Subsidized Loan, that borrower may receive a $1,500 Direct Unsubsidized Loan. Independent, graduate and professional students, and certain dependent students may borrow additional amounts of Direct Unsubsidized Loans.

Paragraphs (d) and (e) describe the aggregate loan limits for Direct Subsidized and Direct Unsubsidized Loans. The aggregate amount a dependent undergraduate could receive under these programs is $23,000; an independent undergraduate could receive $46,000. A graduate student could receive $138,500, including any loans for undergraduate study. Paragraphs (f) and (g) discuss loan limits for PLUS Loan borrowers. For both annual and aggregate PLUS limits, the total amount of the loan may not exceed the cost of attendance minus other estimated financial assistance for that student.

§ 685.204 Deferment.

This section lists the conditions under which a Direct Loan Program borrower is eligible for deferment of payments. For Direct Unsubsidized, Direct Subsidized, and Direct PLUS Loans, the conditions for deferment are limited to the conditions listed in the statute for Direct Loans. However, the statute provides the Secretary with latitude in setting the terms, conditions, and benefits (including deferment provisions) for Federal Direct Consolidation Loans. In order to establish comparable deferment provisions under both the Direct Loan and FFEL Programs, the proposed regulations provide that Direct Loan borrowers with outstanding FFEL loans as of June 30, 1993, who consolidate their FFEL loans or their Direct Loans, or both, into a Direct Consolidation Loan are eligible for deferments under the provisions that were in effect prior to the recent reauthorization of the Higher Education Act. Thus, these borrowers maintain the same deferment benefits for which they would have been eligible under the FFEL Program and are eligible for the deferments that are available to other Direct Loan borrowers if they consolidate into the Direct Loan Program.

A Direct Loan borrower is eligible for an economic hardship deferment under the same standards that apply under the FFEL Program. This deferment is available for periods of up to one year at a time that, collectively, do not exceed three years if the borrower (1) Has been granted an economic hardship deferment under either the FFEL or the Federal Perkins Loan Programs; (2) is receiving payment under a Federal or State public assistance program; (3) is working full-time and earning a total monthly gross income that does not exceed the greater of the minimum wage or the poverty level for a family of two; or (4) is not receiving total monthly gross income that exceeds twice the minimum wage or the poverty level for a family of two, and, after deducting monthly payments on Federal postsecondary loans, the remaining amount does not exceed the minimum wage or the poverty level for a family of two. See § 682.210(s)(6) of the FFEL Program regulations.

§ 685.205 Forbearance.

This section defines forbearance (the temporary cessation of payments, an extension of time for making payments, or making smaller payments than originally scheduled) and lists the reasons for which the Secretary grants forbearance. Paragraph (a) lists five reasons for which the borrower may

request forbearance: (1) The borrower's inability to make payments; (2) payment of principal is being deferred and payment of interest is not subsidized; (3) certain medical and dental internships and residencies; (4) national service under the National and Community Service Trust Act of 1993; and (5) title IV loan payment amounts are equal to or greater than 20 percent of total monthly gross income. The borrower must provide documentation to support the request for forbearance.

The Secretary grants administrative forbearance in a number of circumstances, examples of which are listed in paragraph (b). Documentation from the borrower is not required for administrative forbearance.

§ 685.206 Borrower responsibilities and defenses.

Paragraph (a) of this section lists the information a borrower must provide in order to start the origination process for a Direct Loan. Paragraph (b) requires the borrower to notify the Secretary of changes in certain personal information, such as name and address. Paragraph (c) describes certain defenses a borrower may raise against repayment. A Direct Loan borrower may request that the Secretary exercise his long-standing authority to relieve the borrower of his or her obligation to repay a loan on the basis of an act or omission of the borrower's school. This paragraph lists several types of proceedings (including but not limited to a tax refund offset proceeding, a wage garnishment proceeding, a salary offset proceeding (for Federal employees), and a credit bureau reporting proceeding) in which a borrower may assert a defense. Paragraph (c) also states the relief that the Secretary grants to the borrower (beyond relief from the obligation to repay the loan) if the defense against repayment is successful. The paragraph further states that the Secretary may initiate an appropriate proceeding to require the school to pay the amount of the loan to which a successful defense applies. Under the proposed rules, the Secretary does not initiate such a proceeding after the period during which the school is required to retain records unless the school receives actual notice of the borrower's claim during that period.

This proposed rule relating to borrower defenses to repayment of a loan is intended to be effective for the 1995–1996 academic year only. After the publication of this proposed rule, the Secretary will work with interested parties to develop regulations for borrower defenses that would apply to both the Direct Loan Program and the FFEL Program. When published in final form, the new regulations would apply to the 1996–1997 and subsequent academic years.

Sections 685.207–685.211

During negotiations concerning repayment provisions, the Department and the community each made major compromises and reached agreement on many repayment issues in, but not all of the terms of, §§ 685.207 through 685.211. The Department incorporated many of the suggestions made by the negotiators relating to the repayment provisions, including extending the number of years of repayment under the graduated repayment plan and making extensive changes to the income contingent repayment plan (ICRP).

The Secretary believes that these repayment plans, as proposed, provide a broad array of options that allow borrowers to repay their loans in the ways that best suit their needs. Moreover, borrowers can change repayment plans as their financial circumstances change. The Secretary has determined that the proposed repayment plans are cost-neutral for the Federal government; that is, the repayment plans as a whole would not exceed the cost of the standard repayment plan. Under the ICRP, the Secretary proposes that interest no longer be capitalized once the principal loan balance reaches one and one-half times the amount owed by the borrower when the borrower enters repayment. This proposal would allow borrowers who cannot make loan payments in some years because of low incomes, but can repay in other years when their incomes are higher, to do so while limiting the increase in the amount owed due to capitalization. The Secretary seeks comments from the public relating to the repayment provisions, especially the ICRP. The Secretary believes that the proposed rules in the ICRP would provide students at various income levels the opportunity to obtain further education and choose career paths without being limited by the amount of their student loan debt. The plan would also ensure that borrowers repay their loans if they are able to do so.

The Secretary particularly seeks comments on whether the proposed percentage of income required to be paid under the ICRP is too high and on whether the proposed length of the repayment periods should be longer. The Secretary also seeks comments on the limits on capitalization and the repayment amounts for low-income borrowers. The Secretary intends to review the ICRP formula for borrowers whose first Direct Loan is entering repayment each year and make any necessary changes based on the experience of the program.

§ Section 685.207 Obligation to repay.

This section contains provisions relating to a borrower's obligation to repay a Direct Loan that generally parallel provisions applicable to the FFEL program. On the basis of consultations with members of the higher education community, the Secretary has included clarifying provisions concerning (1) the collection costs for which a borrower is responsible (in paragraph (a)) and (2) the borrower's obligations upon re-enrolling in school after a loan has entered repayment (in paragraph (b)(1)).

§ Section 685.208 Repayment Plans.

This section describes the various repayment plans available to Direct Loan borrowers under section 455(d)(1) of the HEA. These repayment plans offer borrowers flexible alternatives and allow borrowers to determine the type of repayment that best suits their individual financial situations. Although the negotiators did not reach agreement on this section, it reflects many suggestions made by negotiators. The Secretary requests comments on the proposed provisions of the repayment plans.

To simplify the administration of the program, paragraph (a)(4) requires that all Direct Loans obtained by a borrower be repaid together under the same repayment plan. The sole exception to this requirement is that Direct PLUS Loans (which are the only loans that may not be repaid under the income contingent repayment plan) may be repaid separately.

The features of the standard repayment plan, described in paragraph (b), are comparable to the standard repayment plan under the FFEL Program. Generally, a borrower must repay the loan by making fixed monthly payments for ten years. Under the extended repayment plan described in paragraph (c), a borrower must repay the loan by making fixed monthly payments within an extended period of time of 12 to 30 years that varies with the borrower's debt level. The repayment period under this plan is the same as the period for repayment of a consolidation loan under the FFEL Program.

Under the graduated repayment plan described in paragraph (d), a borrower must repay the loan by making monthly payments at two or more levels within the same period of time as under the extended repayment plan. The Secretary believes that making the repayment

period under the graduated repayment plan equal to the repayment period under the extended payment plan offers flexibility and enables a borrower to assess the relative benefits of the various repayment plans. This section provides that the Secretary may adjust the number of payments or the monthly payment amount under the standard, extended, and graduated repayment plans to reflect changes in the variable interest rate identified in § 685.202(a).

The income contingent repayment plan is summarized in paragraph (f) and described in detail in § 685.209 and Appendix A. Under this plan, a borrower may choose to repay Direct Loans in one of two ways described in § 685.209. A borrower's monthly repayment amount generally varies with the Adjusted Gross Income (AGI) reported by the borrower, the amount of the borrower's Direct Loan debt, and family size. However, a borrower would have the option of never making a monthly repayment under ICRP that is greater than the amount the borrower would repay over 12 years using standard amortization. Specific provisions in § 685.209 apply in the case of a married couple who wish to repay their Direct Loans jointly. Payments under the income contingent repayment plan increase progressively with debt to discourage excessive borrowing and to ensure that most borrowers repay their loans within the 25-year period allowed by the statute. The borrower is not required to repay any amount that remains outstanding at the end of the repayment period. Under current tax law, any amount not repaid is considered taxable income.

The Secretary intends to review periodically the method for calculating monthly repayment amounts under the income contingent repayment plan. However, if the Secretary amends the regulations governing that method, the regulations in effect when a borrower's first Direct Loan enters repayment determine the monthly repayment amount for all the borrower's Direct Loans unless the borrower requests otherwise.

The alternative repayment plan provisions in paragraph (g) implement the Secretary's statutory authority to provide an alternative plan, on a case-by-case basis, to a borrower who can demonstrate that none of the other available plans can accommodate the borrower's exceptional circumstances.

Under these proposed regulations, PLUS borrowers are eligible for repayment periods of up to 30 years under the extended and graduated repayment plans, depending on their debt levels. The Secretary requests comments concerning whether the 30-year repayment period is appropriate for PLUS borrowers or whether the maximum repayment periods for these borrowers should be shorter.

§ 685.209 Income contingent repayment plan.

This section contains provisions governing the two options available for repayment of Direct Loans under the income contingent repayment plan (ICRP). The ICRP is designed to be attractive to a broad range of borrowers. Although the negotiators did not reach agreement on this section, it reflects many of their suggestions. The plan provides reasonable monthly repayment amounts for borrowers with varying amounts of debt and income and ensures that most borrowers repay their loans in a reasonable amount of time. The plan also addresses excessive borrowing through a payback rate that rises as debt increases. Examples of the calculation of monthly repayment amounts under both options, together with a table showing the repayment amounts for borrowers at various income and debt levels, are included in Appendix A to the regulations. Borrowers may change between the two ICRP options one time each year. There are no limits on the number of times a borrower who is not in default may switch among repayment plans.

Option 1. Calculation of the monthly payment under Option 1 of the ICRP is described in paragraph (b). In general, the borrower's annual repayment obligation is the borrower's AGI multiplied by a "payback rate" that is based on the borrower's debt. The monthly payment is the annual repayment obligation divided by 12, minus an adjustment for family size. The "payback rate" varies from four to 15 percent, calculated as described in paragraph (b)(2). The family size adjustment is seven dollars per dependent for up to five dependents. If the calculated monthly payment is less than $25, the borrower is not required to make a payment. When a borrower is not required to make a payment or the payment does not fully cover interest, any unpaid interest on the principal accrues and is capitalized until the limitation on capitalization of interest is reached.

Option 2. Calculation of the monthly payment under Option 2 of the ICRP is described in paragraph (c). In general, under this option, a borrower's monthly payment is the same as under Option 1 except that no payment exceeds the monthly amount the borrower would repay over 12 years using standard amortization. If a borrower chooses this option: (1) The borrower's payments do not exceed the 12-year standard amortization amount regardless of the borrower's income; (2) the borrower's repayment period may be extended beyond the repayment period under Option 1 (but not beyond the 25-year maximum repayment period described in § 685.209(d)(2)(i); and (3) interest accrues throughout the repayment period and is capitalized until the limitation on capitalization of interest is reached.

Joint repayment by married borrowers. This section includes provisions for joint repayment of Direct Loans by married borrowers. A step-by-step calculation of a combined amount is included as Example 2 in Appendix A.

Repayment period. Provisions governing the repayment period under the ICRP are contained in paragraph (d)(2). The maximum period is 25 years, excluding periods of authorized deferment and forbearance under §§ 685.204 and 685.205, respectively, and periods in which the borrower made payments under another repayment plan. The Secretary believes the exclusion of repayment periods under other plans is needed to prevent abuses through which a borrower might be able to avoid repaying a portion of the loan by shifting from one plan to another as the borrower's income changed.

If a borrower repays more than one loan under the ICRP and the loans enter repayment at different times, a separate repayment period for each loan begins when the loan enters repayment. This approach ensures that no loan will be repaid under the ICRP for more than 25 years. If multiple loans enter repayment at the same time, a single repayment period applies.

To encourage borrowers to begin repaying their loans and to limit negative amortization at the beginning of the repayment period, a borrower must make monthly payments of accrued interest until the Secretary calculates the borrower's monthly payment on the basis of the borrower's income. A borrower who is unable to make monthly payments of accrued interest or qualify for a deferment under § 685.204 may request forbearance under § 685.205 or may request an alternative repayment plan under § 685.208(g).

Limit on capitalization of interest. The Secretary believes that the proposed limit on the amount of interest that is added to principal (the capitalization of interest) reflects an appropriate balance between ensuring that a borrower repays, if he or she can, and extending

the opportunity for students to invest in themselves. This limit on capitalization is desirable to prevent an excessive increase in a borrower's debt when the borrower's income is insufficient to cover accruing interest, while maintaining the program's cost-neutrality for the Federal government. Paragraph (d)(3) permits capitalization of unpaid interest until the outstanding principal amount increases to one and one-half times the amount owed by the borrower when the borrower enters repayment. Thereafter, unpaid interest accrues but is not capitalized. For example, if a Direct Unsubsidized Loan borrower owes $10,000 upon entering repayment (after interest that accrued during the in-school period is capitalized), interest will no longer be capitalized if the borrower's principal balance increases to $15,000.

Consent to disclosure of tax return information. In order to repay a Direct Loan under the ICRP, a borrower must consent, on a form provided by the Secretary, to the disclosure of certain tax return information by the Internal Revenue Service to agents of the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan. The information subject to disclosure is taxpayer identity information as defined in 26 U.S.C. 6103(b)(6) (including such information as name, address, and social security number), tax filing status, and AGI. Paragraph (d)(5) describes the procedures for providing written consent and requires that consent be provided for a period of five years. If a borrower selects the ICRP but fails to provide or renew consent, or withdraws consent without selecting a different repayment plan, the Secretary designates the ten-year standard repayment plan for the borrower.

§ 685.210 Choice of Repayment Plan.

This section governs a borrower's initial selection of a repayment plan and the borrower's ability to change plans thereafter. Before a Direct Loan enters repayment, the Secretary sends the borrower a description of the available repayment plans and requests the borrower to select one. If the borrower does not select a plan within 45 days, the Secretary designates the standard repayment plan for the borrower.

To accommodate the many changes in life circumstances that a borrower may experience over the life of a loan, the Secretary has placed no limit on the number of times a borrower may change plans, other than limits on a borrower who is repaying a defaulted loan under the ICRP. Such a borrower must demonstrate a consistent pattern of repayment and obtain the Secretary's approval before changing repayment plans. Under § 685.209(a)(2), a borrower may change options under the ICRP no more frequently than once a year.

A borrower may change to the ICRP at any time, but may not change to any other plan if that plan has a maximum repayment period of less than the period the loan has already been in repayment. For example, a borrower who makes payments for 12 years under the extended repayment plan may not change to the standard repayment plan, which has a ten-year repayment period. The repayment period under the new plan is calculated from the date the loan initially entered repayment, except in the case of the ICRP (see § 685.209(d)(2)). Thus, a borrower who repays a loan under the extended repayment plan for three years and then changes to the standard repayment plan has seven more years to repay the loan. The negotiators did not reach agreement on this section.

§ 685.211 Miscellaneous Repayment Provisions.

This section governs an assortment of topics relating to the repayment of Direct Loans. Paragraph (a) permits a borrower to prepay all or part of a loan at any time and states how a prepayment is applied. Negotiators disagreed, in particular, on the order in which the Secretary applies payments to accrued charges and collection costs, outstanding interest, and outstanding principal on loans in § 685.211(a)(1). Paragraph (b) states how the Secretary applies a refund due to a borrower from a school and provides that the Secretary notifies the borrower of the refund. Paragraph (c) describes the effects of a borrower's default on a Direct Loan. Paragraph (d) sets out the standards by which the Secretary determines that a borrower is ineligible for some or all of a Direct Loan and describes how the Secretary seeks repayment of the loan. Paragraph (e) contains the conditions under which a defaulted Direct Loan is rehabilitated and states that the Secretary then instructs any credit bureau to which the default was reported to remove the default from the borrower's credit history.

§ 685.212 Discharge of a Loan Obligation.

This section provides for the Secretary's discharge of the obligation of a borrower and any endorser to repay a loan if (1) the borrower (or the student on whose behalf a parent borrowed) has died; (2) the borrower has become totally and permanently disabled, as described in paragraph (b); (3) the borrower's obligation to repay is discharged in bankruptcy; (4) the borrower meets the criteria in § 685.213, relating to closed schools; or (5) the borrower meets the criteria in § 685.214, relating to false certification or unauthorized disbursement.

§ 685.213 Closed School Discharge.

This section provides for the discharge of the obligation of a borrower and any endorser to repay a loan if the borrower (or student on whose behalf the parent borrowed) did not complete the program of study for which the loan was made because the school closed. The provisions of this section are modeled on provisions for the FFEL Program published on April 29, 1994 (59 FR 22462), in order to provide borrowers with comparable protection under both programs. The qualifications for discharge under this section are set out in paragraphs (c) through (e). Among other requirements, a borrower must cooperate with the Secretary in any judicial or administrative proceeding to recover amounts discharged or to take related enforcement action. The Secretary will request only the reasonable cooperation of the borrower. Negotiators disagreed, in particular, on the requirement for a student to have withdrawn from a school within 90 days (or longer in exceptional circumstances) of the school's closure in order for the student to qualify for a closed-school discharge of his or her loan in § 685.213(c)(1)(ii). The discharge procedures used by the Secretary are described in paragraph (f).

§ 685.214 Discharge for False Certification of Student Eligibility or Unauthorized Payment.

This section provides for the discharge of the obligation of a borrower and any endorser to repay a loan if (1) a school falsely certifies the loan eligibility of the borrower (or the student on whose behalf a parent borrowed), or (2) the school endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer without authorization. The provisions of this section are modeled on the April 29, 1994 FFEL Program provisions. During negotiations, some negotiators expressed concern that § 685.214(a)(1) could be read to encourage loans to students who could not meet the basic requirements for employment in the occupation for which they were being trained. To address this concern, a new paragraph (a)(1)(iii) has been added. The Secretary emphasizes (1) that this paragraph is not intended to affect the application of any Federal or State statute that prohibits discrimination,

including the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*), and (2) that this section pertains to the discharge of a borrower's obligation to repay a Direct Loan and does not address school liability.

The qualifications for discharge under this section are set out in paragraph (c) and include the requirements in § 685.213 relating to cooperation with the Secretary in enforcement actions and transfers to the Secretary of any rights to a loan refund.

The Secretary will request only the reasonable cooperation of the borrower. The discharge procedures used by the Secretary are described in paragraph (d). The negotiators disagreed on the eligibility of a student for loan discharge due to false certification or unauthorized payment by the school under § 685.214.

§ 685.215 Consolidation.

This section contains provisions governing the consolidation of certain Federal education loans into Federal Direct Consolidation Loans.

Eligible loans. The types of loans that may be consolidated under this section are listed in paragraph (b) and include all loans made under the Federal Family Education Loan (FFEL) Program, the Direct Loan Program, and the Federal Perkins Loans Program, as well as certain loans made under the Public Health Service Act. The Secretary has included consolidation loans made under the FFEL Program to permit virtually all FFEL borrowers to participate in the income contingent repayment plan that is available only under the Direct Loan Program.

Types of Federal Direct Consolidation Loans. There are three types of Federal Direct Consolidation Loans—subsidized, PLUS, and unsubsidized consolidation loans. The loans that may be consolidated into each type of consolidation loan are listed in paragraph (c). Subsidized consolidation loans allow borrowers to continue to be free of the obligation to pay interest during authorized periods of deferment. PLUS consolidation loans are available for loans made to parents on behalf of students. Unsubsidized consolidation loans are available for all other eligible types of loans.

Borrower eligibility. The eligibility requirements that a borrower must meet to obtain a Federal Direct Consolidation Loan are stated in paragraph (d). In the second year of the program, a borrower attending a Direct Loan school will be able to consolidate both FFEL and Direct Loan Program loans during the in-school period. If a borrower does so, the borrower receives a six-month grace period on the Direct Consolidation Loan. Direct Loan borrowers and FFEL loan borrowers may consolidate their loans under the Direct Loan Program if they meet the requirements of paragraph (d). With the exception of provisions taken from statute concerning FFEL loans that may be consolidated into a Direct Loan, most of the requirements parallel requirements for the FFEL Program.

The Secretary has included provisions that prevent consolidation by (1) a borrower who is in default, unless the borrower has made satisfactory arrangements to repay the defaulted loan or agrees to repay the consolidation loan under the ICRP; and (2) a PLUS loan borrower with an adverse credit history at the time of consolidation, unless the borrower obtains an endorser or provides evidence of extenuating circumstances. Married borrowers may consolidate their loans jointly if they agree to be held jointly and severally liable on the consolidation loan and meet the other requirements of paragraph (d)(2).

Loan application and origination. A single application for one or more consolidation loans is permitted under paragraph (e). That paragraph also permits a borrower to add eligible loans upon request within 180 days after the date of the consolidation loan's origination. Provisions in paragraph (f) govern origination of consolidation loans. Paragraph (f)(1) provides that, in making a consolidation loan, the Secretary pays the holder of a consolidated loan the amount necessary to discharge the loan. The amount paid to the holder of a loan not in default is the amount of the unpaid principal, accrued interest, and allowable charges. In the case of a loan that is in default, and on which the holder may have submitted a claim for reinsurance, the Secretary is considering how to determine the appropriate amount to be paid to discharge the loan and invites comments on the question.

In addition, regarding defaulted loans that are consolidated into a Direct Consolidation Loan, paragraph (f)(1) limits collection costs for which the borrower is responsible to no more than those authorized under the FFEL Program (currently 18½ percent of the consolidated loan). This paragraph also provides that the Secretary may establish new lower reasonable limits on the amount of collection costs paid to the holder of the defaulted loan, such as the actual cost incurred by the note holder. The Secretary specifically invites comments on how reasonable limits on these costs should be established.

Interest rates. The Secretary has decided to apply to Federal Direct Consolidation Loans the same variable interest rates that apply to other Direct Loans. The Secretary believes these rates will be beneficial to most borrowers.

Repayment and refunds. As provided in paragraph (h), a borrower may repay a Federal Direct Consolidation Loan under any of the Direct Loan repayment plans, except that certain restrictions apply to defaulted borrowers, and the ICRP is not available to a PLUS consolidation loan borrower. The Secretary has included the exception for PLUS borrowers to provide consistency with the statutory prohibition against repayment of Direct Loans by parents under the ICRP. The provisions of paragraphs (i) and (j), relating to repayment periods and repayment schedules, respectively, are taken from the FFEL Program, as are provisions in paragraph (k), relating to a lender's obligations upon receiving a refund from a school on a loan that has been consolidated.

Joint consolidation loans. If two married borrowers obtain a joint consolidation loan, special provisions apply under paragraph (l). This paragraph provides that both borrowers must meet the requirements of the applicable section in order to obtain a deferment under § 685.204 or forbearance under § 685.205. To obtain a discharge under § 685.212, each spouse must qualify for one of the types of discharge described in that section. The Secretary discharges a portion of the loan if one spouse meets the requirements of § 685.212 (d) or (e).

Subpart C—Requirements, Standards, and Payments for Direct Loan Program Schools

§ 685.300 Agreements between an eligible school and the secretary for participation in the direct loan program.

Paragraph (a) of this section states the requirements for a school to participate in the Direct Loan Program. First, the school must meet the requirements for eligibility under the HEA and applicable regulations. Second, the school must enter into a written program participation agreement with the Secretary. Under the agreement, the school agrees to comply with the HEA and applicable regulations, and paragraph (b) lists several specific provisions of the program participation agreement. Paragraph (c) states the requirement that a school or a consortium of schools enter into a supplemental agreement if the school or consortium originates loans in the Direct Loan Program.

§ 685.301 Certification of a loan by a Direct Loan Program school.

This section states the requirement that a school participating in the Direct Loan Program provide accurate information to the Secretary in connection with the origination of a loan and details other provisions relating to the determination of borrower eligibility and loan amount. Paragraph (b) addresses the procedures the school must follow in disbursing the loan. Paragraph (c) requires that a school that originates a loan provide a promissory note to the Secretary.

§ 685.302 Schedule requirements for courses of study by correspondence.

This section contains requirements relating to the enrollment status of students in schools that offer programs of study by correspondence, including the requirement that the school establish a schedule for the submission of lessons and provide it to prospective students.

§ 685.303 Processing loan proceeds and counseling borrowers.

This section establishes requirements for a school's processing a borrower's Direct Loan and counseling borrowers. The purpose of this section is stated in paragraph (a). Standards regarding the timing, amount, and procedures for the disbursement of funds to a borrower are set out in paragraphs (b) through (d). These standards vary according to the type of school, year of the borrower's program of study, and the school's mode of origination. Paragraph (b)(3) states the obligations of a school when a student does not attend school during the loan period.

A number of the restrictions that are proposed in this section, such as the limitation that a school may not credit a student's account more than 21 days prior to the first day of the period of enrollment, or that the school may not pay the student directly more than 10 days prior to the first day of the period of enrollment, are limitations that currently exist in the administration of the other title IV programs. The negotiators did not reach agreement on the requirements in § 685.303(c)(1)(i) and (iii) that a school credit a student's account and make available the remaining proceeds to the borrower in a specified number of days.

While these procedures are being proposed in this document for the Direct Loan Program, the Secretary intends to study these and other related "cash management" issues (*e.g.*, excess cash and allowable charges to a student's account) further. In the near future, the Secretary intends to propose a set of regulations that addresses cash management issues in all title IV programs and that will replace the proposals in this document.

Paragraph (c)(3) of this section provides that a school, as a fiduciary for the benefit of the student, may retain loan proceeds for the student in order to assist that student in managing loan funds. The school need not hold the funds in a separate bank account. Rather, the school may maintain these funds in a separately-designated subsidiary account under its general bank account. Funds in this account must be restricted for use by students. The Secretary intends to propose comparable changes for the FFEL Program.

Paragraph (d) specifies the requirements for late disbursements. In general, a school may not make any late disbursement beyond the 60th day after the loan period, or after the student ceases to be enrolled at the school on at least a half-time basis, as applicable. However, a school may make a disbursement within 30 days after the applicable period in documented exceptional circumstances, such as a student's serious, unexpected illness. The Secretary intends to propose a comparable provision for the FFEL Program. Negotiators did not reach agreement on the restrictions on late disbursements in § 685.303(d).

Counseling requirements for schools are found in paragraphs (e) and (f) of this section. The procedures to be used and the information to be provided by the school to the student for both initial and exit counseling are specified in detail. The Secretary will provide materials to schools to assist them in providing entrance and exit counseling. These proposed regulations require that schools provide entrance counseling to most first-time borrowers. They do not require entrance counseling for transfer students who have already borrowed under the FFEL or Direct Loan Program. The procedures and information relating to the exit counseling are, for the most part, required by section 485(b) of the HEA. However, the initial counseling requirements are not specified by the statute. The Secretary proposes to allow schools to follow the initial counseling requirements in these regulations or to develop an alternative plan for initial counseling as part of their quality assurance plans. Under an alternative plan for initial counseling, the school must ensure that most first-time borrowers receive written counseling materials. An alternative plan must also be designed to target students most likely to default and provide them more intensive counseling and support services. Finally, such a plan must include performance indicators, *e.g.*, the effect of the plan on the number of students in default.

The Secretary specifically invites comments on alternative approaches to initial counseling and what performance indicators should be used to evaluate alternative approaches. The Secretary intends to develop performance standards to be used in evaluating success in initial counseling. When those standards are established, the Secretary may require schools to use them as part of their quality assurance plans. The Secretary may review a school's alternative plan at any time and may require the school to change from its alternative plan to the procedures provided under this section. The Secretary intends to propose comparable changes for initial counseling requirements in the FFEL Program. In addition, the Secretary may provide additional loan counseling to Direct Loan borrowers. The negotiators did not reach agreement on the provisions on initial counseling in § 685.303(e).

Finally, paragraph (g) contains requirements that apply to schools in the treatment of excess loan proceeds.

§ 685.304 Determining the date of a student's withdrawal.

This section states that, for purposes of the Direct Loan Program, a school must determine the date of a student's withdrawal by following the procedures in 34 CFR 668.22(i).

Those procedures govern such a determination for all of the title IV student assistance programs and indicate that a student's withdrawal date generally is the date the student notifies the school of his or her withdrawal, or the date specified by the student, whichever is later. However, if the student drops out without notifying the school or takes an approved leave of absence, the last recorded date of class attendance becomes the withdrawal date. For students in correspondence courses, the date the student submitted his or her last lesson generally becomes the student's withdrawal date.

A school is required to determine a student's withdrawal date within 30 days of the expiration of the student's period of enrollment, academic year, or educational program, whichever is earliest.

§ 685.305 Payment of a refund to the secretary.

Paragraph (a) of this section states that, by applying for a Direct Loan, a borrower authorizes the school to pay that portion of the borrower's refund

that is allocable to a Direct Loan to the Secretary. The school is required to do that and to notify the borrower when it does. Paragraph (b) states that, in determining the portion of the refund that is allocable to a Direct Loan, the school must follow the procedures in 34 CFR 668.22. Those procedures list the order in which a refund must be applied to the various title IV programs, and state that a school shall pay a refund within 30 days of the student's withdrawal date if the student officially withdraws or is expelled. If the student unofficially drops out, the school must pay the refund within 30 days of the date the school determines the student dropped out, the expiration of the academic term in which the student withdrew, or the expiration of the period of enrollment for which the student has been charged, whichever is earliest. The negotiators did not reach agreement on refund procedures in § 685.305(b).

§ 685.306 Withdrawal procedure for schools participating in the Direct Loan Program.

This section allows a school to withdraw from the Direct Loan Program by giving 60 days written notice to the Secretary. The effective date of such a withdrawal is the later of 60 days after the school provides that notice or the date set by the school, unless the Secretary approves an earlier date.

§ 685.307 Remedial actions.

This section describes the remedial actions that the Secretary may take against a school for violation of applicable Federal statutory or regulatory requirements. Paragraph (a) states the circumstances under which the school may be required to repay funds and purchase loans made to its students. Paragraph (b) references the procedures in 34 CFR part 668, Subpart H, which the Secretary follows in requiring the repayment of funds and the purchase of loans in connection with an audit or program review. Paragraph (c) states that the Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the Direct Loan Program using the procedures in 34 CFR part 668, subpart G.

§ 685.308 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

Paragraph (a) of this section requires a participating school to maintain proper administrative and fiscal procedures and records as set forth in the Direct Loan Program regulations and in 34 CFR part 668, and to submit all reports required by those regulations. Paragraph (b) details the procedures a school must follow in filing its student status confirmation reports with the Secretary, including the time constraints associated with those reports. A school will receive these reports in either paper or electronic format from the Secretary at least semi-annually. However, beginning with the 1995–1996 academic year, the Secretary will offer schools the option of receiving these reports as often as every 60 days.

The length of time that a school is required to keep records is set forth in paragraph (c), as is the school's responsibility to provide for the retention of those records (and access to them) in the event of such changes in the school's status as closure, loss of eligibility, or change in ownership. The school may keep these records in a number of machine readable formats.

The specific loan record requirements for the program are set forth in paragraph (d). The general inspection requirements, including the types of access required, for these loan records (and all other required records) are addressed in paragraph (e). Paragraph (f) requires the school to provide to the Secretary, upon request, certain information, such as the borrower's name and address, and to notify the Secretary of a borrower's change in permanent address when such a change is discovered.

Paragraph (g) requires the school to establish certain accounting records, maintained in accordance with generally-accepted accounting principles, and paragraph (h) requires the school to establish a separate account as trustee for the Secretary and the borrower for Direct Loan Program funds. Any interest earned on those funds must be returned to the Secretary.

Paragraph (i) states that a school is required to divide the functions of authorizing payment and disbursing funds to borrowers between different offices. Paragraph (j) states that Direct Loan Program funds may be used only to make Direct Loans to eligible borrowers; however, funds received under section 452(b)(1) of the HEA may be used to offset the costs of loan origination.

Subpart D—School Participation and Loan Origination in the Direct Loan Program

§ 685.400 School participation requirements for academic year 1996–1997 and beyond.

On February 17, 1994, the Secretary published standards for participation in the Direct Loan Program for the academic year beginning July 1, 1995. Under those standards, a school must: (1) Meet the eligibility requirements in section 435(a) of the HEA and (2) have a cohort default rate of less than 25 percent for one of the two most recent years for which default rates are available at the time of the first selection decision following its application (subject to waiver in certain circumstances).

The Secretary is proposing to modify the standards for participation for the academic years beginning July 1, 1996. The Secretary proposes that a school must meet the following standards: (1) Meet the eligibility requirements in section 435(a) of the HEA, including the statutory requirement relating to default rates and (2) not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the HEA. The second standard applies to initial eligibility to participate. Once a school is participating, it will not automatically become ineligible due to a proposed or final limitation, suspension, or termination action.

The Secretary proposes these standards for two reasons. First, the Secretary believes that the benefits of the Direct Loan Program should not be available to a school that has lost its eligibility to participate in the FFEL Program. Second, it would not be sound business practice to admit a school into the Direct Loan Program when evidence exists that the school has had problems administering another Federal student aid program.

§ 685.401 Selection criteria and process for academic years 1996–1997 and beyond.

The Secretary proposes two goals for selecting schools to participate in the Direct Loan Program. The first goal is that, to the extent possible, selected schools should be reasonably representative of the schools participating in the FFEL Program on the basis of several listed characteristics. The second goal is that in order to ensure an expeditious but orderly transition from the FFEL Program to the Direct Loan Program, selected schools should make the transition as smooth as possible.

§ 685.402 Criteria for schools to originate loans for academic years 1996–1997 and beyond.

This section sets out the initial criteria participating schools must meet to originate loans. Three types of origination are defined in Subpart A: Standard origination, school origination option 1, and school origination option

2. A discussion of these types of origination follows.

The Department contracts with organizations to assist schools in the origination and servicing of Direct Loans. While these entities may perform both origination and servicing functions, in the proposed regulations they are referred to as "alternative originators" when they perform origination functions for schools and as "servicers" when they perform servicing functions.

Under standard origination, an alternative originator provides a number of services to participating schools. The alternative originator manages both the promissory note and funds management processes for these schools. The alternative originator generates the promissory note based on data transmitted by the school. The alternative originator also sends the promissory note to the borrower and subsequently initiates the transfer of funds to the school prior to the anticipated loan disbursement date.

Under school origination option 1, a participating school is assisted by the Servicer primarily in the management of funds. Under this option, a school is responsible for transmitting completed and signed promissory notes to the Servicer. The Servicer initiates the transfer of funds to the school prior to the anticipated loan disbursement date.

Under school origination option 2, a participating school is responsible for funds management as well as promissory note functions. Under this option, a school is responsible for transmitting completed and signed promissory notes to the Servicer. An option 2 school also requests and obtains loan funds from the Secretary using a process similar to the process for drawing down funds for other Department of Education programs. An option 2 school transmits to the Secretary a specific Direct Loan funding request that is separate from its funding requests for other programs and is based on immediate disbursement needs. Direct Loan capital is tracked separately and cannot be used for purposes other than making Direct Loans. The funds received by an option 2 school that are intended for specific borrowers but are not disbursed to those borrowers may be used for other borrowers. After the first disbursement is made, the school records the actual disbursed amount and the date of the disbursement in the loan origination record and transmits the completed record and promissory note (if not previously submitted) to the Servicer.

Schools participating under origination option 2 will have greater funds management responsibility than schools participating under origination option 1. Because of this greater responsibility, a school participating under option 2 will receive a higher administrative fee for each borrower than a school participating under option 1. Similarly, schools participating in Direct Loans under options 1 and 2 perform more promissory note functions than schools participating under standard origination. The HEA does not allow schools participating under standard origination to receive administrative fees.

Schools choosing to participate in the Direct Loan Program under either option 1 or 2 will have more control over funds management or promissory note functions, or both, than schools participating under standard origination. However, these options also require schools to assume greater responsibility than those participating in standard origination. Therefore, some schools may choose to participate under standard origination even if they qualify to participate under option 1 or 2. Because of the greater responsibility that schools assume under option 1 or 2, paragraph (a) establishes stricter criteria for originating schools than for schools participating in standard origination. The criteria are intended to be predictive of an institution's ability to perform the necessary functions to operate as an originator; therefore, many of the criteria pertain to the financial operations of institutions.

Paragraph (a)(2)(iii) requires that originating schools, in the Secretary's opinion, have no severe performance deficiencies for any of the programs under title IV of the HEA, including deficiencies demonstrated by the most recent audit or program review. The Secretary will consider whether performance deficiencies demonstrated in audits or program reviews would affect the school's ability to comply with origination requirements. Examples of severe performance deficiencies that may disqualify a school from origination include, but are not limited to, the school's failure to make title IV refunds, falsification of student records or financial data, improperly disbursed loans resulting in a significant liability to the school, misuse of title IV funds, and failure to meet relevant regulatory standards of administrative capability (such as failure to maintain adequate fiscal records of title IV disbursements). In determining whether schools have severe title IV performance deficiencies, the Secretary will allow schools to demonstrate that past problems have been corrected.

Paragraph (a)(2)(v) states that to be eligible to participate under option 1 or 2, a school must be current on program and financial reports and audits required under title IV of the HEA for the 12-month period immediately preceding its application to participate in the program. Program reports referred to here would include the Institutional Payment Summary (IPS) and the Fiscal Operations Report and Application to Participate (FISAP). Similarly, paragraph (a)(2)(vi) states that, to be eligible to participate under option 1 or 2, a school must be current on Federal cash transaction reports required under title IV for the same 12-month period. These reports include the ED Payment Management System Form 272.

Paragraph (b)(1) permits the Secretary, on a case-by-case basis, to allow a school to originate loans under option 1 or 2 notwithstanding its failure to meet the criteria. Paragraph (b)(2)(i) provides that a school may request to change from option 2 to option 1 or to standard origination, or from option 1 to standard origination, at any time. This provision allows schools that choose to decrease their administrative responsibilities to take advantage of additional assistance from the Servicer or the alternative originator. In addition, paragraph (b)(3) provides that, after one full year of participation in its initial origination status, a school that wishes to increase its administrative responsibilities may apply to move from option 1 to option 2, or from standard origination to option 1 or 2. In reviewing these applications, the Secretary intends to apply criteria and performance standards, including those enumerated in paragraph (b)(3)(iii).

Paragraph (c) provides that, at any time after the determination of a school's initial origination status, the Secretary may require a school to change its origination status if such a change is necessary to ensure program integrity or if the school fails to meet criteria and performance standards established by the Secretary. The Secretary may require a school to convert from origination option 2 to option 1 or standard origination, or from origination option 1 to standard origination.

In evaluating a school's origination performance, the Secretary intends to consider the eligibility criteria listed in § 685.402(a)(2) and additional performance measures. To establish additional performance measures, the Secretary requests input from the community, particularly from schools participating in the Direct Loan Program in academic year 1994–1995. For all schools, the Secretary is considering

developing standards based upon such considerations as the percentage of errors on origination and disbursement records, as well as the timeliness of the submission of such documents. For option 1 and 2 schools, the Secretary is considering additional performance standards based upon the percentage of errors on promissory notes and the timeliness of the submission of these documents. For option 2 schools, the Secretary is considering developing quantitative measures of funds management performance, based on the amount of a school's excess cash and the timeliness and accuracy of a school's drawdown request.

Paragraph (e) of this section provides that a school may request a change in the Servicer performing origination or servicing functions. The Secretary would grant a school's request if the Secretary determined that the school's claim of unsatisfactory performance by its current Servicer was accurate and substantial and the change could be accommodated by the Servicer requested by the school. Examples of a substantial claim include a pattern of failure to process promissory notes in a timely manner, significant and repeated errors in handling and reviewing school transmissions of student data, repeated late billing of borrowers, inability to process payments in a timely fashion, and inability to track the status of borrower accounts. The Secretary recognizes that high quality servicing will be a key factor in the success of the Direct Loan Program. Therefore, the Secretary is committed to promoting high-quality servicing and to including institutional choice in servicing arrangements if institutions receive unsatisfactory Servicer performance. To meet these goals, the Secretary intends to encourage competition among servicers. To that end, the Secretary will solicit proposals and attempt to award contracts to more servicers than would be immediately necessary to handle servicing volumes. This will allow the flexibility necessary to terminate contracts due to poor performance. The origination contractor will be encouraged to propose methods that will allow for similar competition among subcontractors or origination sites.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the title IV, HEA programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are explained elsewhere in this preamble under the heading of *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs. A further discussion of the benefits and costs of the proposed regulations is contained in the summary of the provisions proposed.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the title IV, HEA programs.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 685.200 *Borrower eligibility.*) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in the understanding of the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 5125 FOB–6), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are institutions of higher education. Many provisions of the proposed regulations repeat statutory requirements. Certain reporting, recordkeeping, and compliance requirements are imposed by the regulations. However, these requirements are modeled on existing regulations for other Federal student financial aid programs. Institutions of higher education are therefore familiar with these requirements, and the regulations would not have a significant additional impact on these institutions.

Paperwork Reduction Act of 1980

Sections 685.204, 685.206, 685.209, 685.213, 685.214, 685.215, 685.301, 685.302, 685.303, 685.308 and 685.401 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These proposed regulations affect students who apply for Federal student financial assistance authorized by title IV of the Higher Education Act of 1965, as amended, and postsecondary institutions administering the Direct Loan Program. Annual public reporting burden for this collection of information is estimated to average 29 minutes for each of the estimated 2,483,906 individuals providing information regarding eligibility for a loan, deferment, income-contingent repayment, or a Direct Consolidation Loan (or 1,200,554 hours total) and 12 minutes for a postsecondary institution for each of the estimated 4,068,121 responses relating to postsecondary institutions' administration of a student loan program (or 813,624 hours total) including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4624, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To expedite ED's review and response, comments should be identified by specific sections of the NPRM and presented sequentially.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.268, Federal Direct Student Loan Program)

Dated: August 1, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to revise part 685 of title 34 of the Code of Federal Regulations to read as follows:

PART 685—FEDERAL DIRECT STUDENT LOAN PROGRAM

Subpart A—Purpose and Scope

Sec.

685.100 The Federal Direct Student Loan Program.
685.101 Participation in the Direct Loan Program.
685.102 Definitions.
685.103 Applicability of subparts.

Subpart B—Borrower Provisions

685.200 Borrower eligibility.
685.201 Obtaining a loan.
685.202 Charges for which Direct Loan Program borrowers are responsible.
685.203 Loan limits.
685.204 Deferment.
685.205 Forbearance.
685.206 Borrower responsibilities and defenses.
685.207 Obligation to repay.
685.208 Repayment plans.
685.209 Income contingent repayment plan.
685.210 Choice of repayment plan.
685.211 Miscellaneous repayment provisions.
685.212 Discharge of a loan obligation.
685.213 Closed school discharge.
685.214 Discharge for false certification of student eligibility or unauthorized payment.
685.215 Consolidation.

Subpart C—Requirements, Standards, and Payments for Direct Loan Program Schools

685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.
685.301 Certification of a loan by a Direct Loan Program school.
685.302 Schedule requirements for courses of study by correspondence.
685.303 Processing loan proceeds and counseling borrowers.
685.304 Determining the date of a student's withdrawal.
685.305 Payment of a refund to the Secretary.
685.306 Withdrawal procedure for schools participating in the Direct Loan Program.
685.307 Remedial actions.
685.308 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

Subpart D—School Participation and Loan Origination in the Direct Loan Program

685.400 School participation requirements for academic years 1996–1997 and beyond.
685.401 Selection criteria and process for academic years 1996–1997 and beyond.
685.402 Criteria for schools to originate loans for academic years 1996–1997 and beyond.

Appendix A—Income Contingent Repayment Examples of the Calculation of Monthly Repayment Amounts

Authority: 20 U.S.C. 1087a *et seq.*

Subpart A—Purpose and Scope

§ 685.100 The Federal Direct Student Loan Program.

(a) Under the Federal Direct Student Loan Program (Direct Loan Program), the Secretary makes loans to enable a student or parent to pay the costs of the student's attendance at a postsecondary school. This part governs the Federal Direct Stafford Loan Program, the Federal Direct Unsubsidized Stafford Loan Program, the Federal Direct PLUS Program, and the Federal Direct Consolidation Loan Program. The Secretary makes loans under the following program components:

(1) Federal Direct Stafford Loan Program, which provides loans to undergraduate, graduate, and professional students. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

(2) Federal Direct Unsubsidized Stafford Loan Program, which provides loans to undergraduate, graduate and professional students. The borrower is responsible for the interest that accrues during any period.

(3) Federal Direct PLUS Program, which provides loans to parents of dependent students. The borrower is responsible for the interest that accrues during any period.

(4) Federal Direct Consolidation Loan Program, which provides loans to borrowers to consolidate certain Federal educational loans.

(b) The Secretary makes a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan only to a student or a parent of a student enrolled in a school that has been selected by the Secretary to participate in the Direct Loan Program.

(c) The Secretary makes a Direct Consolidation Loan only to—

(1) A borrower with a loan made under the Direct Loan Program; or

(2) A borrower with a loan made under the Federal Family Education Loan Program who is not able to receive—

(i) A Federal Consolidation Loan; or

(ii) A Federal Consolidation Loan with income-sensitive repayment terms that are satisfactory to the borrower.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.101 Participation in the Direct Loan Program.

(a)(1) Colleges, universities, graduate and professional schools, vocational, and proprietary schools selected by the Secretary may participate in the Direct Loan Program. Participation in the Direct Loan Program enables an eligible student or parent to obtain a loan to pay for the student's cost of attendance at the school.

(2) The Secretary may permit a school to participate in both the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR Part 600, and the Direct Loan Program. A school permitted to participate in both the FFEL Program and the Direct Loan Program may certify loan applications under the FFEL Program according to the terms of its agreement with the Secretary.

(b) An eligible student who is enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct Stafford Loan and

Federal Direct Unsubsidized Stafford Loan Programs. An eligible parent of an eligible dependent student enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct PLUS Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.102 Definitions.

(a)(1) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Campus-based programs
Dependent student
Eligible program
Eligible student
Enrolled
Federal Consolidation Loan Program
Federal Direct Student Loan Program (Direct Loan Program)
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal State Student Incentive Grant Program
Federal Supplemental Educational Opportunity Grant Program
Federal Work-Study Program
Independent student
One-third of an academic year
Parent
State
Two-thirds of an academic year
U.S. citizen or national

(2) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR Part 600:

Accredited
Clock hour
Educational program
Eligible institution
Federal Family Education Loan (FFEL) Program
Institution of higher education
Nationally recognized accrediting agency or association
Preaccredited
Program of study by correspondence
Secretary

(3) The following definitions are set forth in the regulations for the Federal Family Education Loan Program (FFEL) Program, 34 CFR Part 682:

Act
Endorser
Expected family contribution
Federal Insured Student Loan (FISL) Program
Federal Stafford Loan Program
Foreign school
Full-time student
Graduate or professional student
Guaranty agency
Holder
Legal guardian
Lender
Totally and permanently disabled
Undergraduate student

(b) The following definitions also apply to this part:

Alternative originator: An entity under contract with the Secretary that originates Direct Loans to students and parents of students who attend a Direct Loan Program school that does not originate loans.

Consortium: For purposes of this part, a consortium is a group of two or more schools that interacts with the Secretary in the same manner as other schools, except that the communication between the Secretary and the schools is channeled through a single point. Each school in a consortium shall sign a Direct Loan Program participation agreement with the Secretary and be responsible for the information it supplies through the consortium.

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement: (1) Except for a Direct Consolidation Loan, the delivery by a school of an installment of a loan to a borrower. The disbursement date is the earliest date when the proceeds are applied to a student's account or when the proceeds are made available to the borrower.

(2) For a Direct Consolidation Loan, disbursement is the payment by the Secretary to the holder or holders of the underlying loans and occurs when the Direct Consolidation Loan is made.

Estimated financial assistance: (1) The estimated amount of assistance that a student will receive from Federal, State, institutional, or other sources for a period of enrollment. Types of assistance include scholarships, grants, financial need-based employment, or loans, such as—

(i) Benefits paid under section 156 of title 42 of the United States Code (formerly Social Security Benefits);

(ii) Veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(iii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iv) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(v) Benefits paid under Public Law 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(vi) Benefits paid under Public Law 96–342, section 903: Educational Assistance Pilot Program;

(vii) Any educational benefits paid because of enrollment in a postsecondary education institution;

(viii) The estimated amount of other Federal student financial aid, including but not limited to a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Federal Pell Grant, and campus-based aid;

(ix) In the case of a Direct PLUS Loan, the estimated amount of other Federal student financial aid, including but not limited to, a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Federal Pell Grant, and campus-based aid; and

(x) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior Federal or non-Federal student loan was received, the amount of loan proceeds withheld by the Secretary, lender, or guaranty agency making or insuring the loan if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

(2) Estimated financial assistance does not include—

(i) Those amounts used to replace the expected family contribution, including—

(A) Direct PLUS Loan amounts;

(B) Direct Unsubsidized Loan amounts; and

(C) Non-Federal loan amounts; and

(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined.

Federal Direct Consolidation Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to borrowers who consolidate certain Federal educational loans, and one of the components of the Direct Loan Program. Loans made under this program are referred to as Direct Consolidation Loans. There are three types of Direct Consolidation Loans:

(1) Direct Subsidized Consolidation Loans. Subsidized title IV education loans may be consolidated into a Direct Subsidized Consolidation Loan. Interest is not charged to the borrower during in-school and deferment periods.

(2) Direct Unsubsidized Consolidation Loans. Certain Federal education loans may be consolidated into a Direct Unsubsidized Consolidation Loan. The

borrower is responsible for the interest that accrues during any period.

(3) Direct PLUS Consolidation Loans. Parent Loans for Undergraduate Students, Federal PLUS, Direct PLUS, and Direct PLUS Consolidation Loans may be consolidated into a Direct PLUS Consolidation Loan. The borrower is responsible for the interest that accrues during any period.

Federal Direct PLUS Program: A loan program authorized by title IV, part D of the Act that provides loans to parents of dependent students attending schools that participate in the Direct Loan Program, and one of the components of the Direct Loan Program. The borrower is responsible for the interest that accrues during any period. Loans made under this program are referred to as Direct PLUS Loans.

Federal Direct Stafford Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period. Loans made under this program are referred to as Direct Subsidized Loans.

Federal Direct Unsubsidized Stafford Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The borrower is responsible for the interest that accrues during any period. Loans made under this program are referred to as Direct Unsubsidized Loans.

Grace period: A six-month period that begins on the day after a Direct Loan Program borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Half-time student: A student who is not a full-time student and who is enrolled in a school participating in the FFEL Program or the Direct Loan Program and is carrying an academic workload that is at least one-half the workload of a full-time student, as determined by the school. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Interest rate: The annual interest rate that is charged on a loan, under title IV, part D of the Act.

Loan fee: A fee, payable by the borrower, that is used to help defray the costs of the Direct Loan Program.

Period of enrollment: The period for which a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan is intended. The period of enrollment must coincide with one or more academic terms established by the school (such as semester, trimester, quarter, academic year, and length of the program of study), for which institutional charges are generally assessed. The period of enrollment is also referred to in this part as the loan period.

Satisfactory repayment arrangement. The making of six consecutive, voluntary, on-time, full monthly payments on a defaulted loan to regain further eligibility for student aid under title IV of the Act. The required monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. "On-time" means a payment made within 15 days of the scheduled due date, and voluntary payments are those payments made directly by the borrower, regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax offset, garnishment, or income or asset execution.

School origination option 1: The process by which a school creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer initiates the drawdown of funds for schools participating in school origination option 1.

School origination option 2: The process by which a school creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, determines funding needs, initiates the drawdown of funds, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis.

Servicer: An entity that has contracted with the Secretary to act as the Secretary's agent in providing services relating to the origination or servicing of Direct Loans.

Standard origination: The process by which a school creates a loan origination record, transmits the record to the alternative originator, receives the funds electronically, disburses funds, creates a disbursement record, transmits the disbursement record to the alternative originator, and reconciles on a monthly basis. The alternative originator prepares the promissory note, obtains a completed and signed promissory note from a borrower, and initiates the drawdown of funds for schools participating in standard origination.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.103 Applicability of subparts.

(a) Subpart A contains general provisions regarding the purpose and scope of the Direct Loan Program.

(b) Subpart B contains provisions regarding borrowers in the Direct Loan Program.

(c) Subpart C contains certain requirements regarding schools in the Direct Loan Program.

(d) Subpart D contains provisions regarding school eligibility for participation and origination in the Direct Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart B—Borrower Provisions

§ 685.200 Borrower eligibility.

(a) *Student borrower.* (1) A student is eligible to receive a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a combination of these loans, if the student meets the following requirements:

(i) The student is enrolled in a school that participates in the Direct Loan Program.

(ii) The student meets the requirements for an eligible student under 34 CFR Part 668.

(iii) In the case of an undergraduate student who seeks a Direct Subsidized Loan or a Direct Unsubsidized Loan at a school that participates in the Federal Pell Grant Program, the student has received a determination of Federal Pell Grant eligibility for the period of enrollment for which the loan is sought.

(iv)(A) The student reaffirms any FFEL Program or Direct Loan Program debt that previously was discharged in bankruptcy.

(B) For purposes of paragraph (a)(1)(iv)(A) of this section, a reaffirmation is an acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower's—

(*1*) Signing a new promissory note or repayment schedule; or

(*2*) Making a payment on the loan.

(v) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, the student—

(A) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity; and

(B) Signs a statement acknowledging that the Direct Loan the borrower receives cannot be cancelled in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates.

(vi) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, the student—

(A) Has passed an independently administered examination approved by the Secretary; or

(B) Has been determined to have the ability to benefit from the program in accordance with a State process approved by the Secretary.

(2)(i) A Direct Subsidized Loan borrower must demonstrate financial need in accordance with title IV, part F of the Act.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(C)(*1*) Directs the member to pursue the course of study; or

(*2*) Provides subsistence support to its members.

(b) *Parent borrower.* A parent is eligible to receive a Direct PLUS Loan if the parent meets the following requirements:

(1) The parent is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student under 34 CFR Part 668.

(2) The parent provides his or her and the student's social security number.

(3) The parent meets the requirements pertaining to citizenship and residency that apply to the student under 34 CFR 668.7.

(4) The parent meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7.

(5) The parent complies with the requirements for submission of a Statement of Educational Purpose that apply to the student under 34 CFR Part 668, except for the completion of a Statement of Selective Service Registration Status.

(6) The parent meets the requirements that apply to a student under paragraphs (a)(1)(iv) and (v) of this section.

(7)(i) The parent—

(A) Does not have an adverse credit history;

(B) Has an adverse credit history but has obtained an endorser who does not have an adverse credit history; or

(C) Has an adverse credit history but documents to the satisfaction of the Secretary that extenuating circumstances exist.

(ii) For purposes of paragraph (b)(7)(i) of this section, an adverse credit history means that as of the date of the credit report, the applicant—

(A) Is 90 or more days delinquent on any debt; or

(B) Has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under title IV of the Act during the five years preceding the date of the credit report.

(c) *Defaulted FFEL Program and Direct Loan borrowers.* Except as noted in § 685.215(d)(1)(ii)(E), in the case of a student or parent borrower who is currently in default on an FFEL Program or a Direct Loan Program Loan, the borrower shall make satisfactory repayment arrangements on the defaulted loan. The definition of a satisfactory repayment arrangement is provided in 34 CFR 685.102.

(d) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a Direct Unsubsidized Loan, a Direct PLUS Loan, a State-sponsored loan, or another non-Federal loan obtained for a loan period to replace the expected family contribution for that loan period.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.201 Obtaining a loan.

(a) *Application for a Direct Subsidized Loan or a Direct Unsubsidized Loan.* (1) To obtain a Direct Subsidized Loan or a Direct Unsubsidized Loan, a student shall complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the school in which the student is enrolled shall perform the following functions:

(i) A school participating under school origination option 2 shall create a loan origination record, obtain a completed promissory note from the student, draw down funds, and disburse the funds.

(ii) A school participating under school origination option 1 shall create a loan origination record, obtain a completed promissory note from the student, and transmit the record and promissory note to the Servicer. The Servicer initiates the drawdown of funds, and the school disburses the funds.

(iii) If the student is attending a school participating under standard origination, the school shall create a loan origination record and transmit the record to the alternative originator, which prepares the promissory note and sends it to the student and receives the completed promissory note from the student. The Servicer initiates the drawdown of funds, and the school disburses the funds.

(b) *Application for a Direct PLUS Loan.* To obtain a Direct PLUS Loan, the parent shall complete the application/promissory note and submit it to the school at which the student is enrolled. The school shall complete its portion of the application/promissory note and submit it to the Servicer, which makes a determination as to whether the parent has an adverse credit history. A school participating under school origination option 2 shall draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

(c) *Application for a Direct Consolidation Loan.* (1) To obtain a Direct Consolidation Loan, the applicant shall complete the application/promissory note and submit it to the Servicer. The application/promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Servicer. The Servicer answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

(2) Once the applicant has submitted the completed application/promissory note to the Servicer, the Secretary makes the Direct Consolidation Loan under the procedures specified in § 685.215.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) *Interest*—(1) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans.* (i) For Direct Subsidized Loans and Direct

Unsubsidized Loans in repayment, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(ii) For Direct Subsidized Loans and Direct Unsubsidized Loans prior to the beginning of the repayment period or during the period of deferment under § 685.204, the interest rate during any twelve-month period beginning on July 1 and ending on June 30, is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1; plus 2.5 percentage points, but does not exceed 8.25 percent.

(2) *Interest rate for the Direct PLUS Loans.* The interest rate on a Direct PLUS Loan during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(b) *Capitalization.* (1) The Secretary may add accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called "capitalization."

(2) For a Direct Unsubsidized Loan, the Secretary capitalizes the interest that accrues on the loan when the borrower enters repayment.

(3) For a Direct Loan not eligible for interest subsidies during periods of deferment, and for all Direct Loans during periods of forbearance, the Secretary capitalizes the interest that has accrued on the loan upon the expiration of the deferment or forbearance.

(4) If a borrower is in a period of deferment, forbearance, or the in-school or grace period on a Direct Loan and agrees to monthly or quarterly payments of interest, the Secretary notifies the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that accrues through the remainder of that period. The Secretary capitalizes the interest that has accrued on the loan upon the expiration of that period.

(5) Except as provided in § 685.209(d)(3) and in the case of a Direct Unsubsidized Loan borrower who has not entered repayment, is in deferment, or in forbearance, the Secretary annually capitalizes interest payable by the borrower when the borrower does not make payments sufficient to cover the interest that has accrued on the loan.

(c) *Loan fee for Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans.* The Secretary—

(1) Charges a borrower a loan fee of four percent of the principal amount of the loan on a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan;

(2) Deducts the loan fee from the proceeds of the loan;

(3) In the case of a loan disbursed in multiple installments, deducts a pro rated portion of the fee from each disbursement; and

(4) Applies to a borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to a disbursement of the loan that is repaid within 120 days of disbursement or that should have been repaid within that period by the school.

(d) *Late charge.* (1) The Secretary may require the borrower to pay a late charge of up to six cents for each dollar of each installment or portion thereof that is late under the circumstances described in paragraph (d)(2) of this section.

(2) The late charge may be assessed if the borrower fails to pay all or a portion of a required installment payment within 30 days after it is due.

(e) (1) *Collection charges before default.* Notwithstanding any provision of State law, the Secretary may require that the borrower or any endorser pay costs incurred by the Secretary or the Secretary's agents in collecting installments not paid when due. These charges do not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (*e.g.*, local and long-distance telephone calls).

(2) *Collection charges after default.* If a borrower defaults on a Direct Loan, the Secretary assesses collection costs on the basis of 34 CFR 30.60.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.203 Loan limits.

(a) *Direct Subsidized Loans.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $2,625 for a program of study of at least a full academic year in length.

(ii) $1,750 for a program of study of at least two-thirds but less than a full academic year in length.

(iii) $875 for a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $3,500 for a program of study of at least a full academic year in length.

(ii) If the student is enrolled in a program of study with less than a full academic year remaining, an amount that bears the same ratio to $3,500 as the number of semester, trimester, quarter, or clock hours for which the student enrolls bears to one academic year.

(3) In the case of an undergraduate student who has successfully completed the first and second year of a program of study of undergraduate education but has not successfully completed the remainder of the program, or in the case of a student in a program who has an associate or baccalaureate degree which is required for admission into the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $5,500 for a program of study of at least an academic year in length.

(ii) For a student enrolled in a program of study with less than a full academic year remaining, an amount that bears the same ratio to $5,500 as the number of semester, trimester, quarter, or clock hours for which the student enrolls bears to one academic year.

(4) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program in combination with the Federal Stafford Loan Program may not exceed $8,500.

(b) *Direct Unsubsidized Loans.* The total amount a student may borrow under any period of study for the Federal Direct Unsubsidized Loan Program and the Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford Loan Program or the Federal Stafford Loan Program.

(c) *Additional eligibility for Direct Unsubsidized Loans.* (1)(i) An independent undergraduate student, graduate or professional student, and certain dependent undergraduate students may borrow amounts under the Federal Direct Unsubsidized Loan Program in addition to any amount borrowed under paragraph (b) of this section.

(ii) In order for a dependent undergraduate student to receive this additional loan amount, the financial aid administrator must determine that the student's parents likely will be precluded by exceptional circumstances from borrowing under the Federal Direct PLUS Program or the Federal PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. The financial aid administrator shall base the determination on a review of the family financial information provided by the student and consideration of the student's debt burden and shall document the determination in the school's file.

(iii) "Exceptional circumstances" under paragraph (c)(1)(ii) of this section include but are not limited to circumstances in which the student's parent receives only public assistance or disability benefits, the parent is incarcerated, the parent has an adverse credit history, or the parent's whereabouts are unknown. A parent's refusal to borrow a Federal PLUS Loan or Direct PLUS Loan does not constitute "exceptional circumstances."

(2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Federal Direct Unsubsidized Loan Program and the Federal Unsubsidized Stafford Loan Program, for any academic year of study may not exceed the following:

(i) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education—

(A) $4,000 for enrollment in a program of study of at least a full academic year in length;

(B) $2,500 for enrollment in a program of study of at least two-thirds but less than a full academic year in length; and

(C) $1,500 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(ii) In the case of a student who has successfully completed the first and second year of an undergraduate program but has not completed the remainder of the program of study—

(A) For a student enrolled in a program of study of at least a full academic year, $5,000; and

(B) For a student enrolled in a program of study with less than a full academic year remaining, an amount that bears the same ratio to $5,000 as the number of semester, trimester, quarter, or clock hours for which the student enrolls bears to one academic year.

(iii) In the case of a graduate or professional student, $10,000.

(d) *Federal Direct Stafford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Federal Stafford Loans made to a student may not exceed the following:

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level.

(2) $65,500 in the case of a graduate or professional student, including loans for undergraduate study.

(e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Federal Unsubsidized Stafford Loans, and Federal SLS Loans may not exceed the following:

(1) For a dependent undergraduate student, $23,000 minus any Direct Subsidized Loan and Federal Stafford Loan amounts, unless the student qualifies under paragraph (c) of this section for additional eligibility or qualified for that additional eligibility under the Federal SLS Program.

(2) For an independent undergraduate or a dependent undergraduate who qualifies for additional eligibility under paragraph (c) of this section or qualified for this additional eligibility under the Federal SLS Program, $46,000 minus any Direct Subsidized Loan and Federal Stafford Loan amounts.

(3) For a graduate or professional student, $138,500 including any loans for undergraduate study, minus any Direct Subsidized Loan, Federal Stafford Loan, and SLS Program loan amounts.

(f) *Direct PLUS Loans annual limit.* The total amount of all Direct PLUS Loans that a parent or parents may borrow on behalf of each dependent student for any academic year of study may not exceed the cost of attendance minus other estimated financial assistance for that student.

(g) *Direct PLUS Loans aggregate limit.* The total amount of all Direct PLUS Loans that a parent or parents may borrow on behalf of each dependent student for enrollment in an eligible program of study may not exceed the student's cost of attendance minus other estimated financial assistance for that student for the entire period of enrollment.

(h) *Loan limit period.* The annual loan limits apply to an academic year.

(i) *Treatment of Direct Consolidation Loans and Federal Consolidation Loans.* The percentage of the outstanding balance on Direct Consolidation Loans or Federal Consolidation Loans counted against a borrower's aggregate loan limits is calculated as follows:

(1) For Direct Subsidized Loans, the percentage equals the percentage of the original amount of the Direct Consolidation Loan or Federal Consolidation Loan attributable to the Direct Subsidized and Federal Stafford Loans.

(2) For Direct Unsubsidized Loans, the percentage equals the percentage of the original amount of the Direct Consolidation Loan or Federal Consolidation Loan attributable to the Direct Unsubsidized, SLS, and Federal Unsubsidized Stafford Loans.

(j) *Maximum loan amounts.* In no case may a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) In the case of a Direct Subsidized Loan, the borrower's expected family contribution for that period.

(Authority: 20 U.S.C. 1087*a et seq.*)

§ 685.204 Deferment.

(a)(1) A Direct Loan borrower whose loan is eligible for interest subsidies and who meets the requirements described in paragraph (b) of this section is eligible for a deferment during which periodic installments of principal and interest need not be paid.

(2) A Direct Loan borrower whose loan is not eligible for interest subsidies and who meets the requirements described in paragraph (b) of this section is eligible for a deferment during which periodic installments of principal need not be paid but interest does accrue and is capitalized or paid by the borrower.

(b) Except as provided in paragraph (d) of this section, a Direct Loan borrower is eligible for a deferment during any period during which the borrower meets any of the following requirements:

(1)(i) The borrower—

(A) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending;

(B) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(C) Is pursuing a rehabilitation training program, approved by the Secretary, for individuals with disabilities; and

(ii) The borrower is not serving in a medical internship or residency program, except for a residency program in dentistry.

(2)(i) The borrower is seeking and unable to find full-time employment.

(ii) For purposes of paragraph (b)(2)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to the inability to find full-time employment using the standards and procedures set forth in 34 CFR 682.210(h) with references to the lender understood to mean the Secretary.

(3)(i) The borrower has experienced or will experience an economic hardship.

(ii) For purposes of paragraph (b)(3)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to an economic hardship using the standards and procedures set forth in 34 CFR 682.210(s)(6) with references to the lender understood to mean the Secretary.

(c) No deferment under paragraphs (b)(2) or (3) of this section may exceed three years.

(d) If, at the time of consolidation, a Direct Consolidation Loan borrower has an outstanding balance on an FFEL Program loan that was made prior to July 1, 1993, the borrower is eligible for a deferment during—

(1) The periods described in paragraph (b) of this section; and

(2) The periods described in 34 CFR 682.210(b), including those periods that apply to a "new borrower" as that term is defined in 34 CFR 682.210(b)(7).

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.205 Forbearance.

(a) *General.* "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. If payments of interest are forborne, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and—

(1) The Secretary determines that, due to poor health or other acceptable reasons, the borrower or endorser is currently unable to make scheduled payments;

(2) The borrower's payments of principal are deferred under § 685.204 and the Secretary does not subsidize the interest benefits on behalf of the borrower.

(3) The borrower is in a medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service, or the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(4) The borrower is serving in a national service position for which the borrower or endorser is receiving a national service educational award under the National and Community Service Trust Act of 1993; or

(5) For not more than three years, the borrower or endorser—

(i) Is currently obligated to make payments on loans under title IV of the Act; and

(ii) The sum of these payments each month (or a proportional share if the payments are due less frequently than monthly) is equal to or greater than 20 percent of the borrower or endorser's total monthly gross income.

(b) *Administrative forbearance.* In certain circumstances, the Secretary grants forbearance without requiring documentation from the borrower. These circumstances include but are not limited to—

(1) A properly granted period of deferment for which the Secretary learns the borrower did not qualify;

(2) The period for which payments are overdue at the beginning of an authorized deferment period;

(3) The period beginning when the borrower entered repayment until the first payment due date was established;

(4) The period prior to a borrower's filing of a bankruptcy petition;

(5) A period after the Secretary receives reliable information indicating that the borrower (or the student in the case of a Direct PLUS Loan) has died, or the borrower has become totally and permanently disabled, until the Secretary receives documentation of death or total and permanent disability;

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under § 685.213;

(ii) Under § 685.214; or

(iii) Due to the borrower's or endorser's (if applicable) bankruptcy;

(7) A period of up to three years in cases where the effect of a variable interest rate on a fixed-amount or graduated repayment schedule causes the extension of the maximum repayment term; or

(8) A period in the event of a national military mobilization or other local or national emergency.

(c) *Period of forbearance.* (1) The Secretary grants forbearance for a period of up to one year.

(2) The forbearance is renewable, upon request of the borrower, for the duration of the period in which the borrower meets the condition required for the forbearance.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.206 Borrower responsibilities and defenses.

(a) The borrower shall give the school the following information as part of the origination process for a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan:

(1) A statement, as described in 34 CFR Part 668, that the loan will be used for the cost of the student's attendance.

(2) Information demonstrating that the borrower is eligible for the loan.

(3) Information concerning the outstanding FFEL Program and Direct Loan Program loans of the borrower and, for a parent borrower, of the student, including any Federal Consolidation Loan or Direct Consolidation Loan.

(4) A statement authorizing the school to release to the Secretary information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (*e.g.*, the student's enrollment status, financial assistance, and employment records).

(b)(1) The borrower shall promptly notify the Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and

(2) The borrower shall promptly notify the school of any change in address during enrollment.

(c) *Borrower defenses.* (1) In any proceeding to collect on a Direct Loan, the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law. These proceedings include, but are not limited to, the following:

(i) Tax refund offset proceedings under 34 CFR 30.33.

(ii) Wage garnishment proceedings under section 488A of the Act.

(iii) Salary offset proceedings for Federal employees under 34 CFR Part 31.

(iv) Credit bureau reporting proceedings under 31 U.S.C. 3711(f).

(2) If the borrower's defense against repayment is successful, the Secretary

notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include, but is not limited to, the following:

(i) Reimbursing the borrower for amounts paid toward the loan voluntarily or through enforced collection.

(ii) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(iii) Updating reports to credit bureaus to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan.

(3) The Secretary may initiate an appropriate proceeding to require the school whose act or omission resulted in the borrower's successful defense against repayment of a Direct Loan to pay to the Secretary the amount of the loan to which the defense applies. However, the Secretary does not initiate such a proceeding after the period for the retention of records described in § 685.308(c) unless the school received actual notice of the claim during that period.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.207 Obligation to repay.

(a) *Obligation of repayment in general.* (1) A borrower is obligated to repay the full amount of a Direct Loan, including the principal balance, fees, any collection costs charged under § 685.202(e), and any interest not subsidized by the Secretary, unless the borrower is relieved of the obligation to repay as provided in this part.

(2) The borrower's repayment of a Direct Loan may also be subject to the deferment provisions in § 685.204, the forbearance provisions in § 685.205, and the discharge provisions in § 685.212.

(b) *Direct Subsidized Loan repayment.* (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an "in-school" period and is not required to make payments on a Direct Subsidized Loan unless—

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under § 685.204.

(2)(i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii) During a grace period, the borrower is not required to make payments on a Direct Subsidized Loan.

(3) A borrower is not obligated to pay interest on a Direct Subsidized Loan for in-school or grace periods unless the borrower is required to make payments on the loan during those periods under paragraph (b)(1) of this section.

(4) The repayment period for a Direct Subsidized Loan begins the day after the grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(c) *Direct Unsubsidized Loan repayment.* (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an "in-school" period and is not required to make payments of principal on a Direct Unsubsidized Loan unless—

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under § 685.204.

(2)(i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii) During a grace period, the borrower is not required to make any principal payments on a Direct Unsubsidized Loan.

(3) A borrower is responsible for the interest that accrues on a Direct Unsubsidized Loan during in-school and grace periods. Interest that accrues may be capitalized or paid by the borrower.

(4) The repayment period for a Direct Unsubsidized Loan begins the day after the grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(d) *Direct PLUS Loan repayment.* The repayment period for a Direct PLUS Loan begins on the day the loan is fully disbursed. Interest begins to accrue on the day the first installment is disbursed. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(e) *Direct Consolidation Loan repayment.* The repayment period for a Direct Consolidation Loan begins and interest begins to accrue on the day the loan is disbursed. The borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.208 Repayment plans.

(a) *General.* (1) A borrower may repay a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, or the income contingent repayment plan.

(2) A borrower may repay a Direct PLUS Loan or a Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, or the graduated repayment plan.

(3) The Secretary may provide an alternative repayment plan in accordance with paragraph (g) of this section.

(4) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that a borrower of a Direct PLUS Loan or a Direct PLUS Consolidation Loan may repay the Direct PLUS Loan or the Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.

(b) *Standard repayment plan.* (1) Under the standard repayment plan, a borrower shall repay a loan in full within ten years from the date the loan entered repayment by making fixed monthly payments.

(2) Periods of authorized deferment or forbearance are not included in the ten-year repayment period.

(3) A borrower's payments under the standard repayment plan are at least $50 per month, except that a borrower's final payment may be less than $50.

(4) The number of payments or the fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(c) *Extended repayment plan.* (1) Under the extended repayment plan, a borrower shall repay a loan in full by making fixed monthly payments within an extended period of time that varies with the total amount of the borrower's loans, as described in paragraph (e) of this section.

(2) Periods of deferment and forbearance are not included in the number of years of repayment.

(3) A borrower makes fixed monthly payments of at least $50, except that a borrower's final payment may be less than $50.

(4) The number of payments or the fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(d) *Graduated repayment plan.* (1) Under the graduated repayment plan, a

borrower shall repay a loan in full by making payments at two or more levels within a period of time that varies with the total amount of the borrower's loans, as described in paragraph (e) of this section.

(2) Periods of deferment and forbearance are not included in the number of years of repayment.

(3) The number of payments or the monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(4) No scheduled payment under the graduated repayment plan may be less than the amount of interest accrued on the loan between monthly payments, less than 50% of the payment amount that would be required under the standard repayment plan, or more than 150% of the payment amount that would be required under the standard repayment plan.

(e) *Repayment period for the extended and graduated plans.* Under the extended and graduated repayment plans, if the total amount of the borrower's Direct Loans is—

(1) Less than $10,000, the borrower shall repay the loans within 12 years of entering repayment;

(2) Greater than or equal to $10,000 but less than $20,000, the borrower shall repay the loans within 15 years of entering repayment;

(3) Greater than or equal to $20,000 but less than $40,000, the borrower shall repay the loans within 20 years of entering repayment;

(4) Greater than or equal to $40,000 but less than $60,000, the borrower shall repay the loans within 25 years of entering repayment; and

(5) Greater than or equal to $60,000, the borrower shall repay the loans within 30 years of entering repayment.

(f) *Income contingent repayment plan.* (1) Under the income contingent repayment plan, a borrower's monthly repayment amount is generally based on the total amount of the borrower's (and, in some circumstances, the borrower's spouse's) Direct Loans, family size, and Adjusted Gross Income (AGI) reported by the borrower for the most recent year for which the Secretary has obtained income information. In the case of a married borrower who files a joint Federal income tax return and is not repaying loans jointly with a spouse under § 685.209(a)(4), the borrower's AGI includes the income of the borrower's spouse. A borrower shall make payments on a loan until the loan is repaid in full or until the loan has been in repayment through the end of the income contingent repayment period.

(2) The regulations in effect at the time a borrower's first Direct Loan enters repayment govern the method for determining the borrower's monthly repayment amount for all of the borrower's Direct Loans, unless—

(i) The Secretary amends the regulations relating to a borrower's monthly repayment amount under the income contingent repayment plan; and

(ii) The borrower submits a written request that the amended regulations apply to the repayment of the borrower's Direct Loans.

(3) Provisions governing the income contingent repayment plan are set out in § 685.209.

(g) *Alternative repayment.* (1) The Secretary may provide an alternative repayment plan for a borrower who demonstrates to the Secretary's satisfaction that the terms and conditions of the repayment plans specified in paragraphs (b) through (f) of this section are not adequate to accommodate the borrower's exceptional circumstances.

(2) The Secretary may require a borrower to provide evidence of the borrower's exceptional circumstances before permitting the borrower to repay a loan under an alternative repayment plan.

(3) If the Secretary agrees to permit a borrower to repay a loan under an alternative repayment plan, the Secretary notifies the borrower in writing of the terms of the plan. After the borrower receives notification of the terms of the plan, the borrower may accept the plan or choose another repayment plan.

(4) If a borrower's payment under the alternative repayment plan is less than the accrued interest on the loan, the unpaid interest is added to the principal balance of the loan.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.209 Income contingent repayment plan.

(a)(1) Under the income contingent repayment plan described in § 685.208(f), a borrower may choose to repay Direct Loans in one of two ways. The borrower's options are described in paragraphs (b) and (c) of this section.

(2) A borrower may change options under the income contingent repayment plan by notifying the Secretary in writing. However, a borrower may change options no more frequently than once a year. The Secretary annually provides the borrower with estimates of monthly payment amounts under each option.

(3) The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

(4) Married borrowers may repay their loans jointly if they meet the following requirements:

(i) Each spouse is repaying a Direct Loan under the same option of the income contingent repayment plan.

(ii) The spouses filed a joint Federal income tax return for the most recent year for which the Secretary has obtained income information.

(iii) The spouses submit a written request that includes their names and social security numbers to the Secretary.

(5) Examples of the calculation of the monthly repayment amounts under both options of the income contingent repayment plan and a table that shows monthly repayment amounts for borrowers at various income and debt levels under both options are included in Appendix A to this part.

(b) *Option 1.*—(1) *General.* (i) In general, under Option 1, a borrower shall make monthly payments calculated using a percentage of the borrower's Adjusted Gross Income (AGI) called the "payback rate." The payback rate is based upon the total amount of the borrower's Direct Loans, as described under paragraph (b)(2) of this section. The minimum payback rate is four percent, and the maximum rate is 15 percent.

(ii) If a borrower provides documentation acceptable to the Secretary that the borrower has one or more dependents other than the borrower's spouse, the Secretary subtracts from the borrower's monthly payment a family size adjustment of seven dollars per dependent for up to five dependents.

(iii) A borrower's monthly payment is equal to the borrower's AGI multiplied by the payback rate, divided by 12 months, minus the family size adjustment amount. However, if the monthly repayment amount is less than $25, the borrower is not required to make a payment.

(2) *Payback rate.* (i) A borrower's payback rate is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment and does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (a)(4) of this section. If the borrower obtains another Direct Loan, a new payback rate for all of the borrower's Direct Loans is calculated on the basis of the combined amounts of the loans when the loans entered repayment.

(ii) If the total amount of a borrower's Direct Loans is less than or equal to $1,000, the payback rate is four percent. If the total amount of a borrower's Direct Loans is greater than $1,000, the payback rate is four percent plus an additional percent that begins at zero and increases at a rate of 0.2 percent for each additional $1,000 borrowed up to a maximum payback rate of 15 percent.

(iii) More specifically, if the total amount of a borrower's Direct Loans is greater than $1,000, the payback rate is the lesser of 0.15 or the following: 0.04 + (debt − 1,000) (0.000002).

(3) *Exception for certain married borrowers.* The combined monthly payment amount for married borrowers who repay their loans jointly under paragraph (a)(4) of this section is the total of the individual monthly payment amounts for each borrower calculated under paragraph (b)(1)(iii) of this section. The amount of a borrower's individual monthly payment amount is applied to that borrower's debt. The payback rate for each borrower is calculated separately on the basis of the amount of the borrower's Direct Loans. For purposes of this paragraph, the Secretary assumes that the AGI for each borrower is proportionate to the relative size of the borrower's individual debt and subtracts one half of the applicable family size adjustment from each borrower's monthly payment amount. If the combined monthly repayment amount is less than $25, the borrowers are not required to make a payment.

(c) *Option 2.* (1) In general, under Option 2, a borrower shall make monthly payments as calculated under Option 1, except that no monthly payment exceeds the amount the borrower would repay over 12 years using standard amortization. The Secretary calculates the 12-year standard amortization amount on the basis of the interest rate in effect when the borrower chooses Option 2. The amount a borrower would repay over 12 years using standard amortization is determined without any family size adjustment or minimum monthly repayment amount.

(2) More specifically, if a borrower chooses Option 2 under the income contingent repayment plan—

(i) The borrower's payments do not exceed the 12-year standard amortization amount regardless of the borrower's income;

(ii) The borrower's repayment period may be extended beyond the repayment period under Option 1 (but not beyond the 25-year maximum period described in § 685.209(d)(2)(i)); and

(iii) Interest accrues throughout the repayment period and is capitalized until the limitation on capitalization of interest in paragraph (d)(3) of this section is reached.

(3) *Exception for certain married borrowers.* The combined monthly payment amount for married borrowers who repay their loans jointly under paragraph (a)(4) of this section is the total of the individual monthly payment amounts for each borrower calculated under paragraph (b)(1)(iii) of this section, unless the combined amount exceeds the 12-year standard amortization amount. If the combined amount exceeds the 12-year standard amortization amount, the couple pays the 12-year standard amortization amount, and the amount applied to each borrower's debt is determined by calculating the 12-year standard amortization amount for that borrower's debt.

(d) *Other features of the income contingent repayment plan.* (1) *Alternative documentation of income.* If a borrower's AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower's monthly repayment amount.

(2) *Repayment period.* (i) The maximum repayment period under the income contingent repayment plan is 25 years.

(ii) The repayment period does not include periods in which the borrower makes payments under the standard, extended, graduated, or alternative repayment plan or periods of authorized deferment or forbearance.

(iii) If a borrower repays more than one loan under the income contingent repayment plan, a separate repayment period for each loan begins when that loan enters repayment.

(iv) If a borrower has not repaid a loan in full at the end of the 25-year repayment period under the income contingent repayment plan, the Secretary cancels the unpaid portion of the loan.

(v) At the beginning of the repayment period, a borrower shall make monthly payments of the amount of interest that accrues on the borrower's Direct Loans until the Secretary calculates the borrower's monthly repayment amount on the basis of the borrower's income.

(3) *Limitation on capitalization of interest.* If the amount of a borrower's monthly payment is less than the accrued interest, the unpaid interest is capitalized until the outstanding principal amount increases to one and one-half times the original principal amount. After the outstanding principal amount reaches one and one-half times the original amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original amount is the amount owed by the borrower when the borrower enters repayment.

(4) *Notification of terms and conditions.* When a borrower selects or is required by the Secretary to repay a loan under the income contingent repayment plan, the Secretary notifies the borrower of the terms and conditions of the plan, including—

(i) That the Internal Revenue Service will disclose certain tax return information to the Secretary or the Secretary's agents; and

(ii) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in § 685.209(a)(3), the borrower may contact the Secretary and obtain the Secretary's determination as to whether an adjustment is appropriate.

(5) *Consent to disclosure of tax return information.* (i) A borrower shall provide written consent to the disclosure of certain tax return information by the Internal Revenue Service (IRS) to agents of the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan under the income contingent repayment plan. The borrower shall provide consent by signing a consent form, developed consistent with 26 CFR 301.6103(c)–1 and provided to the borrower by the Secretary, and shall return the signed form to the Secretary.

(ii) The borrower shall consent to disclosure of the borrower's taxpayer identity information as defined in 26 U.S.C. 6103(b)(6), tax filing status, and AGI.

(iii) The borrower shall provide consent for a period of five years from the date the borrower signs the consent form. The Secretary provides the borrower a new consent form before that period expires. The IRS does not disclose tax return information after the IRS has processed a borrower's withdrawal of consent.

(iv) The Secretary designates the standard repayment plan for a borrower who selects the income contingent repayment plan but—

(A) Fails to provide the required written consent;

(B) Fails to renew written consent upon the expiration of the five-year period for consent; or

(C) Withdraws consent and does not select another repayment plan.

(v) If a borrower defaults and the Secretary designates the income

contingent repayment plan for the borrower but the borrower fails to provide the required written consent, the Secretary consults with the borrower prior to establishing a repayment plan for the borrower.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.210 Choice of repayment plan.

(a) *Initial selection of a repayment plan.* (1) Before a Direct Loan enters into repayment, the Secretary provides the borrower a description of the available repayment plans and requests the borrower to select one. A borrower may select a repayment plan before the loan enters repayment by notifying the Secretary of the borrower's selection in writing.

(2) If a borrower does not select a repayment plan within 45 days after the Secretary provides the borrower with a description of available repayment plans, the Secretary designates the standard repayment plan described in § 685.208(b) for the borrower.

(b) *Changing repayment plans.* (1) A borrower may change repayment plans at any time after the loan has entered repayment by notifying the Secretary in writing. However, a borrower who is repaying a defaulted loan under the income contingent repayment plan under § 685.211(c)(3)(ii) may not change to another repayment plan unless—

(i) The borrower was required to and did make a payment under the income contingent repayment plan in each of the prior six months; and

(ii) The borrower makes and the Secretary approves a request to change plans.

(2)(i) A borrower may not change to a repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment, except that a borrower may change to the income contingent repayment plan at any time.

(ii) If a borrower changes plans, the repayment period is the period provided for under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income contingent repayment plan, the repayment period is calculated as described in § 685.209(d)(2).

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.211 Miscellaneous repayment provisions.

(a) *Payment application and prepayment.* (1) The Secretary applies any payment first to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal.

(2) A borrower may prepay all or part of a loan at any time without penalty. If a borrower pays any amount in excess of the amount due, the excess amount is a prepayment.

(3) If a prepayment equals or exceeds the monthly repayment amount under the borrower's repayment plan, the Secretary—

(i) Applies the prepaid amount according to paragraph (a)(1) of this section;

(ii) Advances the due date of the next payment unless the borrower requests otherwise; and

(iii) Notifies the borrower of any revised due date for the next payment.

(4) If a prepayment is less than the monthly repayment amount, the Secretary applies the prepayment according to paragraph (a)(1) of this section.

(b) *Refunds from schools.* The Secretary applies any refund due to a borrower that the Secretary receives from a school under § 668.22 against the borrower's outstanding principal and notifies the borrower of the refund.

(c) *Default*—(1) *Acceleration.* If a borrower defaults on a Direct Loan, the entire unpaid balance and accrued interest are immediately due and payable.

(2) *Collection charges.* If a borrower defaults on a Direct Loan, the Secretary assesses collection charges in accordance with § 685.202(e).

(3) *Collection of a defaulted loan.* (i) The Secretary may take any action authorized by law to collect a defaulted Direct Loan including, but not limited to, filing a lawsuit against the borrower, reporting the default to national credit bureaus, requesting the Internal Revenue Service to offset the borrower's Federal income tax refund, and garnishing the borrower's wages.

(ii) If a borrower defaults on a Direct Stafford Loan, a Direct Unsubsidized Stafford Loan, a Direct Unsubsidized Consolidation Loan or a Direct Subsidized Consolidation Loan, the Secretary may designate the income contingent repayment plan for the borrower.

(d) *Ineligible borrowers.* (1) The Secretary determines that a borrower is ineligible if, at the time the loan was made and without the school's or the Secretary's knowledge, the borrower (or the student on whose behalf a parent borrowed) provided false or erroneous information or took actions that caused the borrower or student—

(i) To receive a loan for which the borrower is wholly or partially ineligible;

(ii) To receive interest benefits for which the borrower was ineligible; or

(iii) To receive loan proceeds for a period of enrollment for which the borrower was not eligible.

(2) If the Secretary makes the determination described in paragraph (d)(1) of this section, the Secretary sends an ineligible borrower a demand letter that requires the borrower to repay some or all of a loan, as appropriate. The demand letter requires that within 30 days of the borrower's receipt of the letter, the borrower repay any principal amount for which the borrower is ineligible and any accrued interest, including interest subsidized by the Secretary, through the previous quarter.

(3) If a borrower fails to comply with the demand letter described in paragraph (d)(2) of this section, the borrower is in default.

(4) A borrower may not consolidate a loan under § 685.215 for which the borrower is wholly or partially ineligible.

(e) *Rehabilitation of defaulted loans.* A defaulted Direct Loan is rehabilitated if the borrower makes 12 consecutive on-time, reasonable, and affordable monthly payments. The amount of such a payment is determined on the basis of the borrower's total financial circumstances. If a defaulted loan is rehabilitated, the Secretary instructs any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.212 Discharge of a loan obligation.

(a) *Death.* If the Secretary receives acceptable documentation that a borrower (or the student on whose behalf a parent borrowed) has died, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(b) *Total and permanent disability.* If the Secretary receives acceptable documentation that a borrower has become totally and permanently disabled, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. A borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(c) *Bankruptcy.* If a borrower's obligation to repay a loan is discharged in bankruptcy, the Secretary does not require the borrower or any endorser to make any further payments on the loan.

(d) *Closed schools.* If a borrower meets the requirements in § 685.213, the

Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(e) *False certification and unauthorized disbursement.* If a borrower meets the requirements in § 685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(f) *Payments received after eligibility for discharge.* The Secretary returns to the sender or, for a discharge based on death, the borrower's estate, those payments received after the requirements for discharge have been met.

(g) *Loan forgiveness demonstration program.* If funds are appropriated for the loan forgiveness demonstration program authorized by section 428J of the Act, the Secretary follows the procedures and applies the standards in 34 CFR 682.215 for borrowers under the Direct Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.213 Closed school discharge.

(a) *General.* (1) The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if the borrower (or the student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed, as described in paragraph (c) of this section.

(2) For purposes of this section—

(i) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary; and

(ii) "School" means a school's main campus or any location or branch of the main campus.

(b) *Relief pursuant to discharge.* (1) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges or collection costs with respect to the loan.

(2) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan.

(3) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(4) The Secretary reports the discharge of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge of a loan under this section, a borrower shall submit to the Secretary a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall—

(1) State that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received the proceeds of a loan to attend a school;

(ii) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 90 days before the school closed (or longer in exceptional circumstances); and

(iii) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(2) State whether the borrower (or student) has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation; and

(3) State that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(d) *Cooperation by borrower in enforcement actions.* (1) In order to obtain a discharge under this section, a borrower shall cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover for amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower shall—

(i) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(ii) Produce any documents reasonably available to the borrower with respect to those representations; and

(iii) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(2) The Secretary denies the request for a discharge or revokes the discharge of a borrower who—

(i) Fails to provide the testimony, documents, or a sworn statement required under paragraph (d)(1) of this section; or

(ii) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(e) *Transfer to the Secretary of borrower's right of recovery against third parties.* (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this section limits or forecloses the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan.

(f) *Discharge procedures.* (1) After confirming the date of a school's closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 90 days prior to the closure date.

(2) If the borrower's current address is known, the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower

on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (f)(2) of this section.

(4) If a borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

(6) If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that determination and the reasons for the determination.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.214 Discharge for false certification of student eligibility or unauthorized payment.

(a) *Basis for discharge*—(1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Certified the student's eligibility for a Direct Loan on the basis of ability to benefit from its training and the student did not meet the eligibility requirements described in 34 CFR part 668 and section 484(d) of the Act, as applicable;

(ii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization; or

(iii) Certified the eligibility of a student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet the requirements for employment (in the student's State of residence when the loan was certified) in the occupation for which the training program supported by the loan was intended.

(2) *Unauthorized payment.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan if the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school.

(b) *Relief pursuant to discharge.* (1) Discharge for false certification under paragraph (a)(1) of this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges and collection costs with respect to the loan.

(2) Discharge for unauthorized payment under paragraph (a)(2) of this section relieves the borrower of the obligation to repay the amount of the payment discharged.

(3) The discharge under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the discharged loan or payment.

(4) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(5) The Secretary reports the discharge under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge under this section, the borrower shall submit to the Secretary a written request and a sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall meet the requirements in paragraphs (c) (1) through (5) of this section.

(1) *Ability to benefit.* In the case of a borrower requesting a discharge based on the school's defective testing of the student's ability to benefit, the borrower shall state that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received a disbursement of a loan to attend a school;

(ii) Received a Direct Loan at that school on the basis of an ability to benefit from the school's training and did not meet the eligibility requirements described in 34 CFR Part 668 and section 484(d) of the Act, as applicable; and

(iii) Either—

(A) Withdrew from the school and did not find employment in the occupation for which the training program was intended; or

(B) Completed the training program for which the loan was made, attempted to obtain employment in the occupation for which the program was intended, and was not able to find employment in that occupation or obtained employment in that occupation only after receiving additional training that was not provided by the school that certified the loan.

(2) *Unauthorized loan.* In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower shall—

(i) State that he or she did not sign the document in question or authorize the school to do so; and

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature.

(3) *Unauthorized payment.* In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, the borrower shall—

(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so;

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature;

(iii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(4) *Claim to third party.* The borrower shall state whether the borrower (or student) has made a claim with respect to the school's false certification or unauthorized payment with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation.

(5) *Cooperation with Secretary.* The borrower shall state that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions as described in § 685.213(d) and to transfer any right to recovery against a third party to the Secretary as described in § 685.213(e).

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary mails the borrower a disclosure application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the disclosure application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits the written request and sworn statement described in paragraph (c) of the section, the Secretary determines whether to grant a request for discharge under this section by reviewing the request and sworn statement in light of information available from the Secretary's records and from other sources, including guaranty agencies, State authorities, and cognizant accrediting associations.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.215 Consolidation.

(a) *Direct Consolidation Loans.* A borrower may consolidate one or more education loans made under certain Federal programs into one or more Direct Consolidation Loans. Loans consolidated into a Direct Consolidation Loan are discharged when the Direct Consolidation Loan is originated.

(b) *Loans eligible for consolidation.* The following loans may be consolidated into a Direct Consolidation Loan:

(1) Federal Stafford Loans.

(2) Guaranteed Student Loans.

(3) Federal Insured Student Loans (FISL).

(4) Direct Subsidized Loans.

(5) Direct Subsidized Consolidation Loans.

(6) Federal Perkins Loans.

(7) National Direct Student Loans (NDSL).

(8) National Defense Student Loans (NDSL).

(9) Federal PLUS Loans.

(10) Parent Loans for Undergraduate Students (PLUS).

(11) Direct PLUS Loans.

(12) Direct PLUS Consolidation Loans.

(13) Federal Unsubsidized Stafford Loans.

(14) Federal Supplemental Loans for Students (SLS).

(15) Federal Consolidation Loans.

(16) Direct Unsubsidized Loans.

(17) Direct Unsubsidized Consolidation Loans.

(18) Auxiliary Loans to Assist Students (ALAS).

(19) Health Professions Student Loans (HPSL).

(20) Health Education Assistance Loans (HEAL).

(21) Other loans made under subpart II of part A of title VII of the Public Health Service Act.

(c) *Types of Direct Consolidation Loans.* (1) The loans identified in paragraphs (b)(1) through (8) of this section may be consolidated into a Direct Subsidized Consolidation Loan.

(2) The loans identified in paragraphs (b)(9) through (12) of this section may be consolidated into a Direct PLUS Consolidation Loan.

(3) The loans identified in paragraphs (b)(13) through (21) of this section may be consolidated into a Direct Unsubsidized Consolidation Loan.

(d) *Eligibility for a Direct Consolidation Loan.* (1) A borrower may obtain a Direct Consolidation Loan if, at the time the borrower applies for such a loan, the borrower meets the following requirements:

(i) The borrower either—

(A) Has an outstanding balance on a Direct Loan; or

(B) Has an outstanding balance on an FFEL loan and asserts either—

(*1*) That the borrower is unable to obtain an FFEL consolidation loan; or

(*2*) That the borrower is unable to obtain an FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower and is eligible for the income contingent repayment plan under the Direct Loan Program.

(ii) On the loans being consolidated, the borrower is—

(A) In an in-school period and seeks to consolidate loans made under both the FFEL Program and the Direct Loan Program;

(B) In a six-month grace period;

(C) In a repayment period but not in default;

(D) In default but has made satisfactory arrangements to repay the defaulted loan; or

(E) In default but agrees to repay the consolidation loan under the income contingent repayment plan described in § 685.208(f) and signs the consent form described in § 685.209(d)(5).

(iii) The borrower certifies that no other application to consolidate any of the borrower's loans listed in paragraph (b) of this section is pending with any other lender.

(iv) The borrower agrees to notify the Secretary of any change in address.

(v) In the case of a Direct PLUS Consolidation Loan—

(A) The borrower may not have an adverse credit history as defined in § 685.200(b)(7)(ii); or

(B) If the borrower has such an adverse credit history, the borrower shall obtain an endorser for the consolidation loan who does not have an adverse credit history or provide documentation satisfactory to the Secretary that extenuating circumstances relating to the borrower's credit history exist.

(2) Two married borrowers may consolidate their loans together if they meet the following requirements:

(i) At least one spouse meets the requirements of paragraph (d)(1)(i) of this section.

(ii) Both spouses meet the requirements of paragraphs (d)(1)(ii) through (v) of this section.

(iii) Each spouse agrees to be held jointly and severally liable for the repayment of the total amount of the consolidation loan and to repay the loan regardless of any change in marital status.

(e) *Application for a Direct Consolidation Loan.* To obtain a Direct Consolidation Loan, a borrower or borrowers shall submit a completed application to the Secretary. A single application may be used for one or more consolidation loans. A borrower may add eligible loans to a Direct Consolidation Loan by submitting a request to the Secretary within 180 days after the date on which the Direct Consolidation Loan is originated.

(f) *Origination of a consolidation loan.* (1) If the Secretary approves an application for a consolidation loan, the Secretary pays to each holder of a loan selected for consolidation the amount necessary to discharge the loan. For a loan that is in default, the Secretary limits collection costs that may be charged to the borrower to no more than those authorized under the FFEL Program and may impose reasonable limits on collection costs paid to the holder.

(2) Upon receipt of the proceeds of a Direct Consolidation Loan, the holder of a consolidated loan shall promptly apply the proceeds to fully discharge the borrower's obligation on the consolidated loan. The holder of a consolidated loan shall notify the borrower that the loan has been paid in full.

(3) The principal balance of a Direct Consolidation Loan is equal to the sum of the amounts paid to the holders of the consolidated loans.

(4) If the amount paid by the Secretary to the holder of a consolidated loan exceeds the amount needed to discharge that loan, the holder of the consolidated loan shall promptly refund the excess amount to the Secretary to be credited against the outstanding balance of the Direct Consolidation Loan.

(5) If the amount paid by the Secretary to the holder of the consolidated loan is insufficient to discharge that loan, the holder shall notify the Secretary in writing of the remaining amount due on the loan. The Secretary promptly pays the remaining amount due.

(g) *Interest rate.* The interest rate on a Direct Subsidized Consolidation Loan or a Direct Unsubsidized Consolidation Loan is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans under § 685.202(a)(1). The interest rate on a Direct PLUS Consolidation Loan is the rate established for Direct PLUS Loans under § 685.202(a)(2).

(h) *Repayment plans.* A borrower may repay a Direct Consolidation Loan under any of the repayment plans described in § 685.208, except that—

(1) A borrower may not repay a Direct PLUS Consolidation Loan under the income contingent repayment plan; and

(2) A borrower who became eligible to consolidate a defaulted loan under paragraph (d)(1)(ii)(E) of this section shall repay the consolidation loan under the income contingent repayment plan unless—

(i) The borrower was required to and did make a payment under the income contingent repayment plan in each of the prior six months; and

(ii) The borrower makes and the Secretary approves a request to change plans.

(i) *Repayment period.* (1) Except as noted in paragraph (i)(4) of this section, the repayment period for a Direct Consolidation Loan begins on the day the loan is disbursed.

(2) Under the extended or graduated repayment plan, the Secretary determines the repayment period under § 685.208(e) on the basis of the outstanding balances on all of the borrower's loans that are eligible for consolidation and the balances on other education loans except as provided in paragraph (i)(3) of this section.

(3)(i) The total amount of outstanding balances on the other education loans used to determine the repayment period under the graduated or extended repayment plan may not exceed the amount of the Direct Consolidation Loan.

(ii) The borrower may not be in default on the other education loan unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(iii) The lender of the other educational loan may not be an individual.

(4) A Direct Consolidation Loan receives a grace period if it includes a Direct Loan or FFEL Program loan for which the borrower is in an in-school period at the time of consolidation. The repayment period begins the day after the grace period ends.

(j) *Repayment schedule.* (1) The Secretary provides a borrower of a Direct Consolidation Loan a repayment schedule before the borrower's first payment is due. The repayment schedule identifies the borrower's monthly repayment amount under the repayment plan selected.

(2) If a borrower adds an eligible loan to the consolidation loan under paragraph (e) of this section, the Secretary makes appropriate adjustments to the borrower's monthly repayment amount and repayment period.

(k) *Refunds received from schools.* If a lender receives a refund from a school on a loan that has been consolidated into a Direct Consolidation Loan, the lender shall transmit the refund and an explanation of the source of the refund to the Secretary within 30 days of receipt.

(l) *Special provisions for joint consolidation loans.* The provisions of paragraphs (l) (1) through (3) of this section apply to a Direct Consolidation Loan obtained by two married borrowers.

(1) *Deferment.* To obtain a deferment on a joint Direct Consolidation Loan under § 685.204, both borrowers shall meet the requirements of that section.

(2) *Forbearance.* To obtain forbearance on a joint Direct Consolidation Loan under § 685.205, both borrowers shall meet the requirements of that section.

(3) *Discharge.* (i) To obtain a discharge of a joint Direct Consolidation Loan under § 685.212, each borrower shall meet the requirements for one of the types of discharge described in that section.

(ii) If a borrower meets the requirements for discharge under § 685.212 (d) or (e) on a loan that was consolidated into a joint Direct Consolidation Loan and the borrower's spouse does not meet the requirements for any type of discharge described in § 685.212, the Secretary discharges a portion of the consolidation loan equal to the amount of the loan that would have been eligible for discharge under the provisions of § 685.212 (d) or (e), as applicable.

(Authority: 20 U.S.C. 1078–8, 1087a *et seq.*)

SUBPART C—REQUIREMENTS, STANDARDS, AND PAYMENTS FOR DIRECT LOAN PROGRAM SCHOOLS

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) *General.* (1) Participation of a school in the Direct Loan Program means that eligible students at the school may receive Direct Loans. To participate in the Direct Loan Program, a school shall—

(i) Demonstrate to the satisfaction of the Secretary that the school meets the requirements for eligibility under the Act and applicable regulations; and

(ii) Enter into a written program participation agreement with the Secretary.

(2) The chief executive officer of the school shall sign the program participation agreement on behalf of the school.

(b) *Program participation agreement.* In the program participation agreement, the school shall promise to comply with the Act and applicable regulations and shall agree to—

(1) Identify eligible students who seek student financial assistance at the institution in accordance with section 484 of the Act;

(2) Estimate the need of each of these students as required by part F of the Act for an academic year. For purposes of estimating need, a Direct Unsubsidized Loan, a Direct PLUS Loan, or any loan obtained under any State-sponsored or

private loan program may be used to offset the expected family contribution of the student for that year;

(3) Certify that the amount of the loan for any student under part D of the Act is not in excess of the annual limit applicable for that loan program and that the amount of the loan, in combination with previous loans received by the borrower, is not in excess of the aggregate limit for that loan program;

(4) Set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G of the Act;

(5) Provide timely and accurate information to the Secretary for the servicing and collecting of loans—

(i) Concerning the status of student borrowers (and students on whose behalf parents borrow) while these students are in attendance at the school;

(ii) Upon request by the Secretary, concerning any new information of which the school becomes aware for these students (or their parents) after the student leaves the school; and

(iii) Concerning student eligibility and need, for the alternative origination of loans to eligible students and parents in accordance with part D of the Act;

(6) Provide assurances that the school will comply with requirements established by the Secretary relating to student loan information with respect to loans made under the Direct Loan Program;

(7) Provide that the school will accept responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(8) Provide that eligible students at the school and their parents may participate in the programs under part B of the Act at the discretion of the Secretary for the period during which the school participates in the Direct Loan Program under part D of the Act, except that a student may not receive loans under both part D of the Act and part B of the Act for the same period of enrollment and a parent (borrowing for the same student) may not receive loans under both part D of the Act and part B of the Act for the same period of enrollment;

(9) Provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with the school, to ensure that the school is complying with program requirements and meeting program objectives;

(10) Provide that the school will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under part D of the Act or any benefits associated with such a loan; and

(11) Comply with other provisions that the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of part D of the Act.

(c) *Origination.* (1) If a school or consortium originates loans in the Direct Loan Program, it shall enter into a supplemental agreement that—

(i) Provides that the school or consortium will originate loans to eligible students and parents in accordance with part D of the Act ; and

(ii) Provides that the note or evidence of obligation on the loan is the property of the Secretary.

(2) The chief executive officer of the school shall sign the supplemental agreement on behalf of the school.

(Authority: 20 U.S.C. 1087a *et seq.*, 1094)

§ 685.301 Certification of a loan by a Direct Loan Program school.

(a) *Determining eligibility and loan amount.* (1) A school participating in the Direct Loan Program shall ensure that any information it provides to the Secretary in connection with loan origination is complete and accurate. Except as provided in 34 CFR Part 668, subpart E, a school may rely in good faith upon statements made in the application by the student.

(2) A school shall provide to the Secretary borrower information that includes but is not limited to—

(i) The borrower's eligibility for a loan, as determined in accordance with §§ 685.200 and 685.203;

(ii) The student's loan amount; and

(iii) The anticipated and actual disbursement date or dates and disbursement amounts of the loan proceeds.

(3) A school may not certify a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan, or a combination of loans, for an amount that—

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 685.203; or

(ii) Exceeds the student's estimated cost of attendance less—

(A) The student's estimated financial assistance for that period; and

(B) In the case of a Direct Subsidized Loan, the borrower's expected family contribution for that period.

(4)(i) A school determines a Direct Subsidized or Direct Unsubsidized Loan amount in accordance with § 685.203 and the definitions in 34 CFR 668.2 for the proration of loan amounts required for undergraduate students.

(ii) When prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan.

(5) A school may refuse to certify a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, and if—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, gender, color, religion, national origin, age, disability status, or income.

(6) A school may not assess a fee for the completion or certification of any Direct Loan Program forms or information.

(b) *Determining disbursement dates and amounts.* (1) Before disbursing a loan, a school that originates loans shall determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student.

(2) Except as provided in paragraph (b)(3) of this section, a school shall establish disbursement dates for any Direct Loan made for a period of enrollment as follows:

(i) Except as provided in paragraph (b)(2)(iv) of this section, disbursements must be in two or more installments.

(ii) No installment may exceed one-half the loan.

(iii) At least one-half of the loan period must elapse before the second installment is disbursed except as necessary to permit the second installment to be disbursed at the beginning of the next semester, quarter, or similar division of the loan period.

(iv) If at least one-half of the loan period has elapsed when the first disbursement is made, the loan may be disbursed in a single installment.

(3) A school that is not in a State is not required to establish disbursement dates under paragraph (b)(2) of this section.

(c) *Promissory note handling.* (1) The Secretary provides promissory notes for use in the Direct Loan Program. A school may not modify, or make any additions to, the promissory note without the Secretary's prior written approval.

(2) A school that originates a loan shall provide to the Secretary an executed, legally enforceable promissory note as proof of the borrower's indebtedness.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.302 Schedule requirements for courses of study by correspondence.

(a) This section contains requirements relating to the enrollment status of students in schools that offer programs of study by correspondence.

(b) A school that offers a course of study by correspondence shall establish a schedule for submission of lessons by its students and provide it to a prospective student prior to the student's enrollment.

(c) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must begin, the location of any resident training, and the period of time within which that resident training must be completed.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.303 Processing loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing loan proceeds contained in 34 CFR Part 668.

(b) *General.*—(1)(i) *A school that initiates the drawdown of funds.* A school may not disburse loan proceeds to a borrower unless the school has obtained an executed, legally enforceable promissory note from the borrower.

(ii) *A school that does not initiate the drawdown of funds.* A school may disburse loan proceeds only to a borrower for whom the school has received funds from the Secretary.

(2)(i) Except in the case of a late disbursement under paragraph (d) of this section, or as provided in paragraph (b)(2)(iii) of this section, a school may disburse loan proceeds only to a student whom the school determines has continuously maintained eligibility in accordance with the provisions of § 685.200 from the beginning of the loan period described in the promissory note.

(ii) If, after a school makes the first disbursement to a borrower, the student becomes ineligible due solely to the school's loss of eligibility to participate in the title IV programs or the Direct Loan Program, the school may make subsequent disbursements to the borrower as permitted by 34 CFR Part 668.

(iii) If, prior to making any disbursement to a borrower, the student temporarily ceases to be enrolled on at least a half-time basis, the school may make a disbursement and any subsequent disbursement to the student if the school determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(3) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made, or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school shall notify the Secretary, within 30 days of the date described in § 685.304(a), of the student's withdrawal, expulsion, or failure to attend school, as applicable, and return to the Secretary—

(i) Any loan proceeds credited by the school to the student's account; and

(ii) The amount of payments made by the student to the school, to the extent that they do not exceed the amount of any loan proceeds disbursed by the school to the student.

(4) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Federal Stafford, Federal Supplemental Loans for Students, Direct Subsidized, or Direct Unsubsidized Loan, a school may not disburse the proceeds of a Direct Subsidized or Direct Unsubsidized Loan until 30 days after the first day of the student's program of study.

(c) *Processing of the proceeds of a Direct Loan.*—(1) *Schools that use student accounts.* After a student has registered, a school that uses student accounts shall—

(i) Credit the amount of the loan proceeds to the student's account not more than 21 days prior to the first day of the period of enrollment;

(ii) Notify the borrower in writing that it has so credited that account; and

(iii) Make available to the borrower the remaining loan proceeds. The school shall make remaining loan proceeds available to the borrower no sooner than 10 days before the first day of the period of enrollment and no later than 45 days after disbursement. For purposes of this paragraph, the "remaining loan proceeds" means those proceeds that remain after the allowable charges owed to the school by the student have been satisfied.

(2) *Schools that do not use student accounts.* After a student has registered, a school that does not use student accounts shall, no sooner than 10 days before the first day of the period of enrollment, disburse the loan to the borrower.

(3) *Proceeds held for the benefit of a student.* Upon the written request of the student, the school, as a fiduciary for the benefit of the student, may hold loan proceeds in order to assist the student in managing his or her loan funds for the remainder of the academic year. The school shall maintain these funds in a separate account established solely for the purpose of holding students' funds and may not commingle them with other funds or use them for any other purpose.

(d) *Late disbursement.* (1) For purposes of this paragraph, a disbursement is late if the school delivers loan proceeds—

(i) After the loan period; or

(ii) Before the end of the loan period but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) Except as provided in paragraph (d)(4) of this section, a school may not make any late disbursement beyond the 60th day after the applicable condition in paragraph (d)(1) of this section.

(3) Notwithstanding paragraph (d)(4) of this section, a school may not make—

(i) A late subsequent disbursement of a Direct Subsidized or Direct Unsubsidized Loan to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully completed the period of enrollment for which the loan was intended; or

(ii) Any late disbursement that, under 34 CFR Part 668, is considered to be awarded for a period in which the student was not enrolled on at least a half-time basis at the school.

(4) In exceptional circumstances, a school may make a disbursement within 30 days after the period described in (d)(2) of this section. If it does so, the school shall document the exceptional circumstances in the student's file.

(e) *Initial counseling.* (1) Except as provided in paragraph (e)(5) of this section, a school shall conduct initial counseling prior to making the first disbursement of the proceeds of a Direct Subsidized or Direct Unsubsidized Loan to a borrower unless—

(i) The borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home school; or

(ii) The borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, Federal Unsubsidized Stafford, or Federal SLS Loan.

(2) The counseling must be in person, by audiovisual presentation, or by computer-assisted technology. In each case, the school shall ensure that an individual with knowledge of the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a student enrolled in a correspondence program or a study-abroad program approved for credit at the home school, the school shall provide the borrower with written counseling materials by mail prior to disbursing the loan proceeds.

(3) In conducting the initial counseling, the school shall—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports, garnishment of wages, and litigation;

(iii) Provide the borrower with general information with respect to the average indebtedness of students who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the borrower's program of study; and

(iv) Inform the student as to the average anticipated monthly repayment for those students based on the average indebtedness provided under paragraph (e)(2)(iii) of this section.

(4) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in Appendix D to 34 CFR Part 668.

(5) A school may adopt an alternative approach for initial counseling as part of the school's quality assurance plan described in § 685.300(b)(9). If a school adopts an alternative approach, it is not required to meet the requirements of paragraphs (e)(1)–(3) of this section unless the Secretary determines that the alternative approach is not adequate. The alternative approach must—

(i) Ensure that each borrower subject to initial counseling under paragraph (e)(1) of this section receives written counseling materials that contain the information described in paragraph (e)(3) of this section;

(ii) Be designed to target those students who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

(iii) Include performance measures that demonstrate the effectiveness of the school's alternative approach.

(f) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Direct Subsidized or Direct Unsubsidized Loan borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence program, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling materials to the borrower at the borrower's last known address within 30 days after the school learns that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall—

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness;

(ii) Review for the borrower available repayment options including the standard repayment, extended repayment, graduated repayment, and income contingent repayment plans, and loan consolidation);

(iii) Provide options to the borrower concerning those debt-management strategies that the school determines would facilitate repayment by the borrower;

(iv) Explain to the borrower how to contact the party servicing the student's Direct Loans;

(v) Meet the requirements described in paragraphs (e)(3) (i) and (ii) of this section;

(vi) Review with the borrower the conditions under which the borrower may defer repayment or obtain cancellation of a loan; and

(vii) Require the borrower to provide corrections to the school's records concerning name, address, social security number, references, and driver's license number, as well as the name and address of the borrower's expected employer (if known). The school shall provide this information to the Secretary within 60 days.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in Appendix D to 34 CFR Part 668.

(4) The school shall maintain in the student borrower's file documentation substantiating the school's compliance with paragraphs (e) and (f) of this section as to that borrower.

(g) *Treatment of excess loan proceeds.* Before the disbursement of any Direct Subsidized or Direct Unsubsidized Loan proceeds, if a school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's Direct Unsubsidized, Direct PLUS, or State-sponsored or another non-Federal loan to cover the expected family contribution, if not already done; or

(2) Reducing one or more subsequent disbursements to eliminate the overaward.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.304 Determining the date of a student's withdrawal.

(a) A school shall follow the procedures in 34 CFR 668.22(i) in determining the student's date of withdrawal.

(b) The school shall use the date determined under paragraph (a) of this section for the purpose of reporting to the Secretary the student's date of withdrawal and for determining when a refund must be paid under § 685.305.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.305 Payment of a refund to the Secretary.

(a) *General.* By applying for a Direct Loan, a borrower authorizes the school to pay directly to the Secretary that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a Direct Loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to the Secretary on behalf of that student.

(b) *Determination, allocation, and payment of a refund.* In determining the portion of a student's refund that is allocable to a Direct Loan, the school shall follow the procedures established in 34 CFR 668.22 for allocating and paying a refund that is due.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.306 Withdrawal procedure for schools participating in the Direct Loan Program.

(a) A school participating in the Direct Loan Program may withdraw from the program by providing written notice to the Secretary.

(b) A participating school that intends to withdraw from the Direct Loan Program shall give at least 60 days notice to the Secretary.

(c) Unless the Secretary approves an earlier date, the withdrawal is effective on the later of—

(1) 60 days after the school notifies the Secretary; or

(2) The date designated by the school.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.307 Remedial actions.

(a) *General.* The Secretary may require the repayment of funds and the purchase of loans by the school if the Secretary determines that the unenforceability of a loan or loans, or the disbursement of loan amounts for which the borrower was ineligible, resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to purchase loans from the Secretary in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR Part 668, Subpart H.

(c) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the Direct Loan Program in accordance with 34 CFR Part 668, Subpart G.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.308 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) *General.* A participating school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in this part and in 34 CFR Part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR Part 668 to the Secretary.

(b) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report from the Secretary, complete and return that report to the Secretary within 30 days of receipt; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary within the next 60 days, notify the Secretary within 30 days if it discovers that a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan has been made to or on behalf of a student who—

(i) Enrolled at that school but has ceased to be enrolled on at least a half-time basis; or

(ii) Has been accepted for enrollment at that school but failed to enroll on at least a half-time basis for the period for which the loan was intended.

(3) The Secretary provides student status confirmation reports to a school at least semi-annually.

(4) The Secretary may provide the student status confirmation report in either paper or electronic format.

(c) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1) Shall keep all records required under this part for five years following the student's last day of attendance at the school;

(2) Shall keep copies of reports and other forms used by the school relating to the Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS Loan Programs for five years after completion;

(3) Shall keep all records involved in any loan, claim, or expenditure questioned by a Federal audit until resolution of any audit questions.

(4) In the event of the school's closure, termination, suspension, or change in ownership resulting in a change of control as described in 34 CFR Part 600, shall provide for the retention of the records and reports required by this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(5) May keep files, records, and copies of reports in microform or other media formats.

(d) *Loan record requirements.* In addition to the records required by 34 CFR Part 668, for each Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loan received under this part by or on behalf of its students, a school shall maintain a copy of any application data submitted to the Secretary and shall, upon request, produce a record of—

(1) The amount of the loan and the loan period;

(2) The data in an individual student budget or the school's itemized standard budget that were used in calculating the student's estimated cost of attendance;

(3) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period in accordance with § 685.102;

(4) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(5) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(6) In the case of a Direct Subsidized Loan under § 685.200, the data used to determine the student's expected family contribution;

(7) In the case of a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan, the date of each disbursement of the loan.

(8) The information collected at the exit interview; and

(9) Any other matter for which a record would be required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with an independent auditor, the Secretary, the Department of Education Office of Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access for examination and copying of the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to school personnel associated with the school's administration of the programs under title IV of the Act for the purpose of obtaining information relating to the school's administration of the programs under title IV of the Act. In providing reasonable access, the school may not—

(i) Refuse to supply any information regarding the school's administration of the programs under title IV of the Act deemed relevant by the Secretary;

(ii) Refuse to permit interviews with those personnel without the presence of representatives of the school's management; and

(iii) Refuse to permit interviews with school personnel unless they are recorded by the school.

(f) *Information sharing.* (1) Upon request by the Secretary, a school promptly shall provide the Secretary with any information the school has regarding the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who is enrolled and who has received a Direct Subsidized or Direct Unsubsidized Loan has changed his or her permanent address, the school shall notify the Secretary.

(g) *Accounting requirements.* (1) A school shall establish and maintain on a current basis financial records that reflect all transactions for the bank account specified in paragraph (h)(1) of this section. The school shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separately account for those transactions.

(2) The school shall account for receiving and expending Direct Loan Program funds in accordance with generally-accepted accounting principles.

(h) *Direct Loan Program bank account.* (1) The school shall establish and maintain a bank account as trustee for the Secretary and the borrower for Direct Loan Program funds. The school shall notify the bank in writing that the Direct Loan Program account contains Federal funds. In addition, the school shall ensure that the word "Federal" is in the name of the school's Direct Loan Program account. Unless the Secretary requires otherwise, the school's Direct Loan Program account need not be a separate bank account.

(2) Any interest earned on Direct Loan Program funds deposited in the school's account is considered Federal funds and must be returned to the Secretary.

(i) *Division of functions.* A school shall divide the functions of authorizing payments and disbursing funds to borrowers so that no single office has responsibility for both functions under the Direct Loan Program.

(j) *Limit on use of funds.* Except for funds paid to a school under section 452(b)(1) of the Act, funds received by a school under this part may be used only to make Direct Loans to eligible borrowers and may not be used or hypothecated for any other purpose.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart D—School Participation and Loan Origination in the Direct Loan Program

§ 685.400 School participation requirements for academic years 1996–1997 and beyond.

(a) In order to participate in the Direct Loan Program, a school must meet the eligibility requirements in section 435(a) of the Act, including the requirement that it have a cohort default rate of less than 25 percent for at least one of the three most recent fiscal years for which data are available unless the school is exempt from this requirement under section 435(a)(3)(C).

(b) In order to qualify for initial participation, the school must not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the Act.

(c) If schools apply as a consortium, each school in the consortium must meet the requirements in paragraphs (a) and (b) of this section.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.401 Selection criteria and process for academic years 1996–1997 and beyond.

(a) The Secretary selects schools to participate in the Direct Loan Program for an academic year beginning in 1996–1997 from among those that apply to participate.

(b) In evaluating an application from an eligible school, the Secretary—

(1) To the extent possible, selects schools that are reasonably representative of the schools that are participating in the FFEL Program in terms of anticipated loan volume, length of academic program, control of the school, highest degree offered, size of student enrollment, geographic location, annual loan volume, and default experience; and

(2) In order to ensure an expeditious but orderly transition from the FFEL Program to the Direct Loan Program, selects schools that the Secretary believes will make the transition as smooth as possible.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.402 Criteria for schools to originate loans for academic years 1996–1997 and beyond.

(a) *Initial determination of origination status.* (1) Standard origination. Any school eligible to participate in the Direct Loan Program under § 685.400 is eligible to participate under standard origination.

(2) *School Origination.* To be eligible to originate loans, a school must meet the following criteria:

(i) Have participated in the Federal Perkins Loan Program or the Federal Pell Grant Program or, for a graduate and professional school, a similar program for the three most recent years preceding the date of application to participate in the Direct Loan Program.

(ii) If participating in the Federal Pell Grant Program, not be on the reimbursement system of payment.

(iii) In the opinion of the Secretary, have had no severe performance deficiencies for any of the programs under title IV of the Act, including deficiencies demonstrated by the most recent audit or program review.

(iv) Be financially responsible in accordance with the standards of 34 CFR 668.15.

(v) Be current on program and financial reports and audits required under title IV of the Act for the 12-month period immediately preceding the date of application to participate in the Direct Loan Program.

(vi) Be current on Federal cash transaction reports required under title IV of the Act for the 12-month period immediately preceding the date of application to participate in the Direct Loan Program and have no final determination of cash on hand that exceeds immediate title IV program needs.

(vii) Have no material findings in any of the annual financial audits submitted for the three most recent years preceding the date of application to participate in the Direct Loan Program.

(viii) Provide an assurance that the school has no delinquent outstanding debts to the Federal Government, unless—

(A) Those debts are being repaid under or in accordance with a repayment arrangement satisfactory to the Federal Government; or

(B) The Secretary determines that the existence or amount of the debts has not been finally determined by the cognizant Federal agency.

(3) A school that meets the criteria to originate loans may participate under school origination option 1 or 2 or under standard origination.

(b) *Change in origination status.* (1) After the initial determination of a school's origination status, the Secretary may allow a school that does not qualify to originate loans under either origination option 1 or origination option 2 to do so if the Secretary determines that the school is fully capable of originating loans under one of those options.

(2)(i) At any time after the initial determination of a school's origination status, a school participating under origination option 2 may request to

change to origination option 1 or standard origination, and a school participating under origination option 1 may request to change to standard origination.

(ii) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(3)(i) A school participating under origination option 1 may apply to participate under option 2, and a school participating in standard origination may apply to participate under either origination option 1 or 2 after one full year of participation in its initial origination status.

(ii) Applications to participate under another origination option are considered on an annual basis.

(iii) An application to participate under another origination option is evaluated on the basis of criteria and performance standards established by the Secretary, including but not limited to—

(A) Eligibility under paragraph (a)(2) of this section;

(B) Timely submission of accurate origination and disbursement records;

(C) Successful completion of reconciliation on a monthly basis; and

(D) Timely submission of completed and signed promissory notes, if applicable.

(iv) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(c) *Secretarial determination of change in origination status.* (1) At any time after a school has been approved to originate loans, the Secretary may require a school participating under origination option 2 to convert to option 1 or to standard origination and may require a school participating under origination option 1 to convert to standard origination.

(2) The Secretary may require a school to change origination status if the Secretary determines that such a change is necessary to ensure program integrity or if the school fails to meet the criteria and performance standards established by the Secretary, including but not limited to—

(i) For an origination option 1 school, eligibility under paragraph (a)(2) of this section, the timely submission of completed and signed promissory notes and accurate origination and disbursement records, and the successful completion of reconciliation on a monthly basis; and

(ii) For an origination option 2 school, the criteria and performance standards required of origination option 1 schools and accurate and timely drawdown requests.

(3) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(d) *Origination by consortia.* A consortium of schools may participate under origination options 1 or 2 only if all members of the consortium are eligible to participate under paragraph (a)(2) of this section. All provisions of this section that apply to an individual school apply to a consortium.

(e) *School determination of change of Servicer.* (1) The Secretary assigns one or more Servicers to work with a school to perform certain functions relating to the origination and servicing of Direct Loans.

(2) A school may request the Secretary to designate a different Servicer. Documentation of the unsatisfactory performance of the school's current Servicer must accompany the request. The Servicer requested must be one of those approved by the Secretary for participation in the Direct Loan Program.

(3) The Secretary grants the request if the Secretary determines that—

(i) The claim of unsatisfactory performance is accurate and substantial; and

(ii) The Servicer requested by the school can accommodate such a change.

(4) If the Secretary denies the school's request based on a determination under paragraph (e)(3)(ii) of this section, the school may request another Servicer.

(5) The change in Servicer is effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(Authority: 20 U.S.C. 1087a *et seq.*)

Appendix A—Income Contingent Repayment

Examples of the Calculation of Monthly Repayment Amounts

Example 1. A single borrower with $12,500 of Direct Loans and an Adjusted Gross Income (AGI) of $25,000.

Step 1: Under either Option 1 or Option 2, calculate the payback rate. Because the borrower's debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii), as follows:

- Subtract $1,000 from the total amount of the borrower's Direct Loans: ($12,500—$1,000 = $11,500).
- Multiply the result by 0.000002: ($11,500 x 0.000002 = 0.023).
- Add the result to 0.04: (0.04 + 0.023 = 0.063).
- The result is the payback rate.

Step 2: Compare the calculated payback rate (0.063) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the borrower's payback rate is 0.063.

Step 3: Calculate the annual repayment amount by multiplying the borrower's AGI by the payback rate: ($25,000 x 0.063 = $1,575).

Step 4: Calculate the monthly repayment amount by dividing the annual repayment amount by 12 months: ($1,575 • 12 = $131.25).

Step 5: Compare the calculated monthly repayment amount ($131.25) to the $25 minimum repayment amount. Because the calculated amount is greater than the minimum amount, the borrower's monthly repayment amount is $131.25 under Option 1.

Step 6: If the borrower has chosen Option 2, compare the monthly repayment amount under Option 1 ($131.25) to the amount the borrower would repay under a 12-year standard amortization. The Secretary calculates the 12-year standard amortization amount using the interest rate in effect when the borrower chose Option 2. If the interest rate was seven percent, the 12-year standard amortization amount is approximately $10.28 for every $1,000 of debt. In this example, the 12-year standard amortization amount is approximately $128.50 ($10.28 × 12.5). Because the monthly payment calculated under Option 1 ($131.25) exceeds the 12-year standard amortization amount ($128.50), the borrower's monthly repayment amount is $128.50 under Option 2.

Example 2: Married borrowers with a combined Adjusted Gross Income (AGI) of $30,000. The husband has $5,000 of Direct Loans. The wife has $15,000 of Direct Loans. The couple has two dependents.

Step 1: Under either Option 1 or Option 2, calculate the husband's payback rate. Because his debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii) as follows:

- Subtract $1,000 from the amount of the husband's loans: ($5,000—$1,000 = $4,000).
- Multiply the result by 0.000002: ($4,000 × 0.000002 = 0.008).
- Add the result to 0.04: (0.04+0.008=0.048).
- The result is the husband's payback rate.

Step 2: Compare the husband's calculated payback rate (0.048) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the husband's payback rate is 0.048.

Step 3: Calculate the husband's assumed AGI by multiplying the couple's total AGI ($30,000) by the amount of the husband's loans ($5,000), divided by the total amount of the couple's debt ($20,000): ($30,000×$5,000÷$20,000=$7,500).

Step 4: Calculate the husband's annual repayment amount by multiplying the husband's assumed AGI ($7,500) by his payback rate (0.048): ($7,500×0.048=$360).

Step 5: Divide the annual repayment amount by 12 months: ($360÷12=$30).

Step 6: Calculate the couple's total family size adjustment amount by multiplying the number of dependents (2) by $7: (2×$7=$14).

Step 7: Calculate the couple's' individual family size adjustment amounts by dividing the total family size adjustment ($14) by 2: ($14÷2=$7).

Step 8: Calculate the husband's monthly repayment amount by subtracting his family

size adjustment amount ($7) from the amount calculated in Step 5 ($30): ($30 − $7=$23).

Step 9: Calculate the wife's payback rate. Because her debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii) as follows:

- Subtract $1,000 from the amount of the wife's loans: ($15,000 − $1,000=$14,000).
- Multiply the result by 0.000002: ($14,000×0.000002=0.028).
- Add the result to 0.04: (0.04+0.028=0.068).
- The result is the wife's payback rate.

Step 10: Compare the wife's calculated payback rate (0.068) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the wife's payback rate is 0.068.

Step 11: Calculate the wife's assumed AGI by multiplying the couple's total AGI ($30,000) by the amount of the wife's loans ($15,000), divided by the total amount of the couple's debt ($20,000): ($30,000×$15,000÷$20,000=$22,500).

Step 12: Calculate the wife's annual repayment amount by multiplying the wife's assumed AGI ($22,500) by her payback rate (0.068): ($22,500×0.068=$1,530).

Step 13: Divide the annual repayment amount by 12 months: ($1,530÷12=$127.50).

Step 14: Calculate the wife's monthly repayment amount by subtracting her family size adjustment amount calculated in Step 7 ($7) from the amount calculated in Step 13 ($127.50): ($127.50 − $7=$120.50).

Step 15: Calculate the couple's combined monthly repayment amount by adding the husband's monthly repayment amount calculated in Step 8 ($23) and the wife's monthly repayment amount calculated in Step 14 ($120.50): ($23+$120.50=$143.50).

Step 16: Compare the couple's combined monthly repayment amount ($143.50) to the $25 minimum repayment amount. Because the calculated amount is greater than the minimum amount, the couple's combined monthly repayment amount is $143.50 under Option 1.

Step 17: If the couple has chosen Option 2, compare the combined monthly repayment amount under Option 1 ($143.50) to the amount the couple would repay under a 12-year standard amortization. The Secretary calculates the 12-year standard amortization amount using the interest rate in effect when the couple chose Option 2. If the interest rate was seven percent, the 12-year standard amortization amount is approximately $10.28 for every $1,000 of debt. In this example, the 12-year standard amortization amount is approximately $205.60 ($10.28×20). Because the monthly payment calculated under Option 1 ($143.50) does not exceed the 12-year standard amortization amount ($205.60), the couple's combined monthly repayment amount is $143.50 under Option 2.

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Income Contingent Repayment Plan

Sample Monthly Repayment Amounts for a Single Borrower at Various Income and Debt Levels Under Option 1

Use the table values if there are no dependents. Otherwise, subtract $7 for each dependent other than a spouse, up to 5 dependents, and if the result is less than $25 no payment is required.

	Initial Debt																							
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	25	25	25	25	25	25	25	25
3,000	0	0	0	0	0	0	0	0	0	0	0	27	30	32	35	37	38	38	38	38	38	38	38	38
4,000	0	0	0	0	0	0	0	26	28	29	33	36	39	43	46	49	50	50	50	50	50	50	50	50
5,000	0	0	0	0	26	28	30	33	35	37	41	45	49	53	58	62	63	63	63	63	63	63	63	63
6,000	0	0	27	29	32	34	37	39	42	44	49	54	59	64	69	74	75	75	75	75	75	75	75	75
7,000	25	28	31	34	37	40	43	46	48	51	57	63	69	75	81	86	88	88	88	88	88	88	88	88
8,000	29	32	35	39	42	45	49	52	55	59	65	72	79	85	92	99	100	100	100	100	100	100	100	100
9,000	32	36	40	44	47	51	55	59	62	66	74	81	89	96	104	111	113	113	113	113	113	113	113	113
10,000	36	40	44	48	53	57	61	65	69	73	82	90	98	107	115	123	125	125	125	125	125	125	125	125
12,500	45	50	55	60	66	71	76	81	86	92	102	113	123	133	144	154	156	156	156	156	156	156	156	156
15,000	54	60	66	73	79	85	91	98	104	110	123	135	148	160	173	185	188	188	188	188	188	188	188	188
17,500	63	70	77	85	92	99	106	114	121	128	143	158	172	187	201	216	219	219	219	219	219	219	219	219
20,000	72	80	88	97	105	113	122	130	138	147	163	180	197	213	230	247	250	250	250	250	250	250	250	250
22,500	81	90	99	109	118	128	137	146	156	165	184	203	221	240	259	278	281	281	281	281	281	281	281	281
25,000	90	100	110	121	131	142	152	163	173	183	204	225	246	267	288	308	313	313	313	313	313	313	313	313
30,000	108	120	133	145	158	170	183	195	208	220	245	270	295	320	345	370	375	375	375	375	375	375	375	375
35,000	125	140	155	169	184	198	213	228	242	257	286	315	344	373	403	432	438	438	438	438	438	438	438	438
40,000	143	160	177	193	210	227	243	260	277	293	327	360	393	427	460	493	500	500	500	500	500	500	500	500
45,000	161	180	199	218	236	255	274	293	311	330	368	405	443	480	518	555	563	563	563	563	563	563	563	563
50,000	179	200	221	242	263	283	304	325	346	367	408	450	492	533	575	617	625	625	625	625	625	625	625	625
55,000	197	220	243	266	289	312	335	358	380	403	449	495	541	587	633	678	688	688	688	688	688	688	688	688
60,000	215	240	265	290	315	340	365	390	415	440	490	540	590	640	690	740	750	750	750	750	750	750	750	750
65,000	216	260	287	314	341	368	395	423	450	477	531	585	639	693	748	802	813	813	813	813	813	813	813	813
70,000	216	280	309	338	368	397	426	455	484	513	572	630	688	747	805	863	875	875	875	875	875	875	875	875
75,000	216	300	331	363	394	425	456	488	519	550	613	675	738	800	863	925	938	938	938	938	938	938	938	938
80,000	216	320	353	387	420	453	487	520	553	587	653	720	787	853	920	987	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
85,000	216	340	375	411	446	482	517	553	588	623	694	765	836	907	978	1,048	1,063	1,063	1,063	1,063	1,063	1,063	1,063	1,063
90,000	216	360	398	435	473	510	548	585	623	660	735	810	885	960	1,035	1,110	1,125	1,125	1,125	1,125	1,125	1,125	1,125	1,125
95,000	216	380	420	459	499	538	578	618	657	697	776	855	934	1,013	1,093	1,172	1,188	1,188	1,188	1,188	1,188	1,188	1,188	1,188
100,000	216	400	442	483	525	567	608	650	692	733	817	900	983	1,067	1,150	1,233	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250

Under Option 2, the monthly repayment amount will never exceed the values in the following line:

Initial Debt																							
$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$26	$51	$77	$103	$129	$154	$180	$206	$231	$257	$309	$360	$411	$463	$514	$566	$617	$668	$720	$771	$823	$874	$926	$1,028

[FR Doc. 94–19733 Filed 8–17–94; 8:45 am]
BILLING CODE 4000–01–C

federal register

Thursday
August 18, 1994

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in Southwestern South Dakota; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB98

Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in Southwestern South Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The U.S. Fish and Wildlife Service, in cooperation with the U.S. Forest Service and the National Park Service, will release black-footed ferrets (*Mustela nigripes*) into the Conata Basin/Badlands Reintroduction Area in southwestern South Dakota. This reintroduction will implement a primary recovery action for this federally listed endangered species and will allow evaluation of release techniques.

Provided conditions are acceptable, surplus captive-raised black-footed ferrets will be released in 1994 and annually thereafter for several years or until a self-sustaining population is established. Releases will utilize and refine reintroduction techniques used at other reintroduction areas and, if fully successful, will establish a wild population within about 5 years. The Conata Basin/Badlands black-footed ferret population is designated as a nonessential experimental population in accordance with Section 10(j) of the Endangered Species Act of 1973, as amended. This population will be managed in accordance with the provisions of the accompanying special rule.

EFFECTIVE DATE: August 18, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the following Service offices:

—Regional Office, Ecological Services, 134 Union Boulevard, Lakewood, Colorado 80228, (303) 236–8189.

—South Dakota Field Office, Ecological Services, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501–5408, (605) 224–8693.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Naten (303) 236–8189 at the Regional Office address or Mr. Douglas Searls (605) 224–8693 at the South Dakota Field Office address above.

SUPPLEMENTARY INFORMATION:

Background

The background information included in this rule has been reduced from what was published in the proposed rule to reduce publishing costs. Please refer to the proposed rule published in the **Federal Register** on May 19, 1993 (58 FR 29176) for more detailed information.

The black-footed ferret (*Mustela nigripes*) is an endangered carnivore with a black face mask, black legs, and a black-tipped tail. It is nearly 60 cm (2 ft) long and weighs up to 1.1 kg (2.5 lbs). It is the only ferret native to North America.

Though the black-footed ferret was found over a wide area historically, it is difficult to make a conclusive statement on its historical abundance due to its nocturnal and secretive habits. The black-footed ferret's historical range includes 12 States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. There is prehistoric evidence of the black-footed ferret from the Yukon Territory, Canada, to New Mexico and Texas (Anderson et al. 1986). Although there are no specimen records for black-footed ferrets from Mexico, prairie dogs (*Cynomys* spp.) inhabit Chihuahua (Anderson 1972) and were present as far back as the late Pleistocene-Holocene Age (Messing 1986). Because black-footed ferrets depend almost exclusively on prairie dogs for food and shelter (Henderson et al. 1969; Forrest et al. 1985) and black-footed ferret range is coincident with that of prairie dogs (Anderson et al. 1986), it is probable that black-footed ferrets may have been historically endemic to northern Mexico.

Black-footed ferrets prey primarily on prairie dogs and use their burrows for shelter and denning. There are specimen records of black-footed ferrets from ranges of three species of prairie dogs: black-tailed prairie dogs (*Cynomys ludovicianus*), white-tailed prairie dogs (*Cynomys leucurus*), and Gunnison's prairie dogs (*Cynomys gunnisoni*) (Anderson et al. 1986).

Widespread poisoning of prairie dogs and agricultural cultivation of their habitat drastically reduced prairie dog abundance and distribution in the last century. Sylvatic plague, which may have been introduced to North America around the turn of the century, also decimated prairie dog populations, particularly in the southern portions of their range. The severe decline of prairie dogs resulted in a concomitant and near-fatal decline in black-footed ferrets, though the latter's decline may be partially attributable to other factors such as secondary poisoning from prairie dog toxicants or high susceptibility to canine distemper. The black-footed ferret was listed as an endangered species on March 11, 1967.

In 1964, a wild population of ferrets was discovered in South Dakota and was studied intensively for several years, but this population disappeared in the wild by 1974, its last member dying in captivity in 1979. Afterwards, some believed that the species was probably extinct, until another wild population was discovered near Meeteetse, Wyoming, in 1981. The Meeteetse population underwent a severe decline in 1985 and 1986 due to canine distemper, which is fatal to infected black-footed ferrets. Eighteen survivors were taken into captivity between 1986 and 1987 to prevent extinction and to serve as founder animals in a captive propagation program aimed at eventually reintroducing the species into the wild.

In 6 years, the captive population has increased from 18 to over 300 black-footed ferrets. In 1988, the single captive population was split into three separate captive subpopulations to avoid the possibility that a single catastrophic event could wipe out the entire known population. Two additional captive subpopulations were established in 1990, and one additional captive subpopulation was established in 1991 and again in 1992, making a total of seven captive subpopulations. A secure population of 200 breeding adults was achieved in 1991, allowing initiation of ferret reintroductions into the wild.

Section 10(j) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), allows the Fish and Wildlife Service (Service) to designate certain populations of federally listed species that are released into the wild as "experimental populations." The circumstances under which this designation can be applied are: (1) The population is wholly separate geographically from nonexperimental populations of the same species (e.g., the population is reintroduced outside the species' current range but within its historical range); and (2) the Service determines that the release will further the conservation of the species. This designation can increase the Service's flexibility to manage a reintroduced population because under section 10(j) an experimental population can be treated as a threatened species regardless of its designation elsewhere in its range, and, under section 4(d) of

the Act, the Service has greater discretion in developing management programs for threatened species than for endangered species.

Section 10(j) of the Act requires, when an experimental population is designated, that a determination be made by the Service whether that population is essential or nonessential to the continued existence of the species. Nonessential experimental populations located outside National Wildlife Refuge System or National Park System lands are treated, for purposes of section 7 of the Act, as if they are proposed for listing. Thus, only two provisions of section 7 would apply outside National Wildlife Refuge System and National Park System lands: section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species; and section 7(a)(4), which requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to insure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Activities undertaken on private lands are not affected by section 7 of the Act unless they are authorized, funded, or carried out by a Federal agency.

However, pursuant to section 7(a)(2), individual animals comprising the designated experimental population may be removed from an existing source or donor population only after it has been determined that such removal is not likely to jeopardize the continued existence of the species. Moreover, removal must be conducted under a permit issued in accordance with the requirements of 50 CFR 17.22.

Forty-nine black-footed ferrets were reintroduced as a nonessential experimental population to the Shirley Basin/Medicine Bow (Shirley Basin) site in Wyoming in September and October 1991. Subsequent surveys conducted during November 7–14, 1991, found nine individual ferrets. Snow surveys conducted during March 1992 revealed signs of six to eight black-footed ferrets. Spotlight surveys conducted during July and August 1992 confirmed the presence of a minimum of four adult black-footed ferrets and two litters. One litter contained two young, and the second litter contained four young black-footed ferrets. During September and October 1992, an additional 90 black-footed ferrets were released at the Shirley Basin site. Forty-eight ferrets were released at the Shirley Basin site in September and October 1993. Currently, the only known populations of black-footed ferrets are the experimental population at the Shirley Basin site and those animals in captivity.

In addition to this reintroduction, the Service and state wildlife agencies in 11 western states are identifying potential black-footed ferret reintroduction sites within the species' historical range. Potential reintroduction sites have been identified in Wyoming (two sites), Montana (one site), South Dakota (one site), Colorado (one site), Utah (one site), and Arizona (one site).

On May 19, 1993, the Service published a proposed rule in the **Federal Register** (58 FR 29176) to reintroduce black-footed ferrets into the Conata Basin/Badlands Reintroduction Area in southwestern South Dakota as a nonessential experimental population. This area is located in eastern Pennington County, South Dakota, and was historically occupied by black-footed ferrets. The Reintroduction Area is within the larger Experimental Population Area, which includes portions of Pennington, Jackson, and Shannon Counties. Numerous black-footed ferret surveys have been conducted in the Experimental Population Area and have not turned up any evidence of live black-footed ferrets. The latest physical evidence that black-footed ferrets occupied southwestern South Dakota occurred in 1974.

To the best of our knowledge, any reintroduced population of black-footed ferrets in the Experimental Population Area would be wholly separate and distinct from other black-footed ferret populations.

Conata Basin/Badlands Reintroduction Area: The Conata Basin/Badlands Reintroduction Area encompasses approximately 17,000 hectares (42,000 acres) of primarily Federal land administered either by the National Park Service (NPS) or the U.S. Forest Service (USFS). Mapping conducted in 1990 indicates that approximately 3,200 hectares (8,000 acres) of prairie dog towns exist at the Conata Basin/Badlands Reintroduction Area. Approximately, 3,000 hectares (7,400 acres) had prairie dog densities that would be considered good ferret habitat; the remaining hectares were recovering from previous control efforts. Using the method outlined in Biggins et al. (1991), this acreage has a present black-footed ferret habitat index of about 160. When additional parameters, such as spacial requirements, were incorporated into the indexing system, this area had a ferret habitat index of approximately 100.

Reintroduction and black-footed ferret management will occur in specifically delineated areas designated as the "Conata Basin/Badlands Reintroduction Area." The Reintroduction Area is centered within the larger Experimental Population Area which includes portions of eastern Pennington, western Jackson, and northern Shannon Counties. Any black-footed ferret occurring within the Experimental Population Area will have experimental status.

Specifics on the location and boundaries of the Conata Basin/Badlands Reintroduction Area and Experimental Population Area are provided in the map accompanying the special rule. Current plans are to begin releasing black-footed ferrets into a subportion of the Conata Basin/Badlands Reintroduction Area considered best for release and initial management. If reintroduction is successful, black-footed ferrets eventually will disperse from the initial Reintroduction Area. Black-footed ferrets may be released into other portions of the Conata Basin/Badlands Reintroduction Area at a later date.

Black-footed ferrets will be released into the Reintroduction Area only if biological conditions are suitable and an acceptable management framework has been developed. Reintroduction will be re-evaluated if one or more of the following conditions specified in the "Draft Cooperative Black-Footed Ferret Management Plan For The Conata Basin/Badlands Area In South Dakota" (USFWS, USFS, and NPS 1993) occur:

(1) Failure to maintain a black-footed ferret habitat rating index (Biggins et al. 1991) of at least 26 (i.e., carrying capacity for 40 adult black-footed ferrets) or a strong indication that such will be the case within 5 years.

(2) Failure to acquire or maintain a nonessential experimental population designation for the Reintroduction Area through the Federal rulemaking process.

(3) Wild black-footed ferret populations are discovered within the Experimental Population Area prior to the first breeding season following the first reintroduction.

(4) A significant number of cases of canine distemper or other diseases determined to be detrimental to black-footed ferrets is documented in any wild mammal in or near the Reintroduction Area within 6 months of the scheduled reintroduction.

(5) Fewer than 20 black-footed ferrets are available for the first release.

(6) Funding is not available to implement the reintroduction program.

Reintroduction protocol: In general, the reintroduction protocol will involve

releasing a minimum of 20 captive-raised black-footed ferrets in the first year of reintroduction and releasing ferrets annually thereafter, as needed, for 2–4 years or until a wild population is established. Captive animals selected for release will be as genetically redundant as possible with the gene pool in the captive breeding population; hence, any loss of released animals is unlikely to appreciably affect existing genetic diversity in the species. Moreover, because breeding black-footed ferrets in captivity is not a problem, any animals lost in the reintroduction effort could be replaced. To enhance genetic diversity in the reintroduced population, it may be necessary to release black-footed ferrets from other established, reintroduced populations (e.g., the Shirley Basin site).

Several strategies for releasing captive-raised black-footed ferrets will be utilized during the reintroduction: (1) Hard release with no pre-release conditioning (i.e., release without an acclimation period); (2) soft release (release with an acclimation period and gradual reduction in supplied food and shelter); and (3) pre-release conditioning in a quasi-natural environment followed by hard release (this technique may be used when sufficient numbers of black-footed ferrets are available). Ferrets will be released in September and October, when wild juvenile ferrets typically become independent and exhibit dispersal tendencies and are physically capable of killing prey, avoiding predators, and adjusting to environmental extremes.

The hard release with no pre-release conditioning will utilize neither release cages or any preconditioning in a contained prairie dog colony. Ferrets will be transported to the release site and held for a minimum of 12 hours to ensure general health. Subsequently, the ferrets will be released into the prairie dog colonies from the transport container and will receive no supplementary care.

The soft release technique is similar to that used in the initial releases in Wyoming. Release cages are situated at the release site, and black-footed ferrets are maintained in the cages for a few days to acclimate to the surroundings. After a few days, a tunnel (tube) is opened to allow the black-footed ferrets free egress and ingress. Food is supplied even after departure in case the black-footed ferrets need to return to a known food supply.

Pre-release conditioning prior to hard release will utilize black-footed ferrets raised from birth in a large, seminatural, enclosed prairie dog colony. In this design, the captive environment should allow a natural expression of genetically influenced behaviors, or, if behaviors are learned, the captive environment should provide appropriate stimuli to learning during the critical period. Presenting juvenile captive animals with stimuli resembling those prevalent in their natural environment may help individuals retain efficient use of adaptive traits and, subsequently, increase post-release survival by reinforcing inherent survival skills in natural ways at natural periods of development.

Other types of release methods also could be tested. The rationale is to compare release techniques that are different from one another but to use techniques that seem reasonable.

Most releases will occur in September and October when the black-footed ferrets are about 18 weeks of age. However, releases during other times of the year remain an option. Once independent of artificial support, all black-footed ferrets will be managed in a similar manner.

Prior to release, ferrets will be vaccinated against disease, as appropriate, including canine distemper, if an effective vaccine is developed for black-footed ferret use (an experimental vaccine is now being tested). In areas other than Badlands National Park, preventative and, where necessary, corrective measures to reduce predation by coyotes (*Canis latrans*), badgers (*Taxidea taxus*), raptors, or other predators may be undertaken in the initial phases of the release but should not be necessary in the long term. Habitat conditions will be monitored continually during the reintroduction effort.

All black-footed ferrets released will be marked [e.g., with Passive Integrated Transponder (PIT) tags or non-toxic paints]. A sample of released ferrets may be radio-tagged and their behavior monitored. Other monitoring would include the use of spotlighting, snow surveys, or visual sighting techniques.

Realistically, the Service expects high natural mortality (up to 90 percent) among released black-footed ferrets in the first year of the reintroduction. Despite pre-release conditioning, captive-bred animals will be relatively naive in terms of avoiding predators, securing prey, and withstanding environmental rigors. Mortality is expected to be highest within the first month of release. A realistic goal for the first year would be to work toward enabling a few black-footed ferrets to survive at least 1 month after release with perhaps 10 percent of the released animals surviving the winter.

Intensive studies conducted on the wild Meeteetse population during the 1982–1986 period will provide a natural baseline against which the South Dakota reintroduction effort can be compared to determine how well the reintroduction experiments are proceeding. These baseline data will be supplemented with baseline biological and behavioral data taken from the South Dakota population in the 1960's and 1970's.

If successful, this reintroduction effort is expected to result in the establishment of a free-ranging population of at least 40 adult black-footed ferrets within the Conata Basin/Badlands Reintroduction Area by a target date of 1997 or 1998. The Service will evaluate project progress annually, including sources of mortality. The biological status of the population at this site will be re-evaluated within the first 5 years to determine future management needs. However, this 5-year evaluation will not include an evaluation to determine whether the nonessential experimental designation for the Conata Basin/Badlands population should be changed. The Service anticipates that the nonessential experimental designation for this population will not be changed unless the experiment is determined to be a failure (and this rulemaking is terminated) or until the species is determined to be recovered (and is delisted). Once recovery goals for delisting are met, a proposed rule to delist will be prepared.

The revised Black-footed Ferret Recovery Plan (Recovery Plan) (USFWS 1988) establishes objectives and outlines steps for recovery that, when accomplished, will provide for viable black-footed ferret populations in captivity and within its historical range. Recovery Plan objectives include:

(1) increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991 (this recovery goal subsequently was changed to 240 breeding adults and has been achieved);

(2) establishing a pre-breeding census population of 1,500 free-ranging black-footed ferret breeding adults in 10 or more populations with no fewer than 30 breeding adults in any population by the year 2010; and

(3) encouraging the widest possible distribution of reintroduced black-footed ferret populations.

Status of Reintroduced Population

The Conata Basin/Badlands population of black-footed ferrets will be designated a nonessential experimental population according to the provisions of Section 10(j) of the

Act. The basis for this designation is explained below.

The 1988 Recovery Plan states as one of its goals the development of a captive population containing a minimum of 200 breeding adults. This number was chosen to maintain the maximum genetic variability and to have enough animals to protect the species from a stochastic event; however, it has since been revised to 240 by the Species Survival Plan Group of the American Zoological and Aquarium Association, which manages the captive ferret population. To date, the captive program contains over 300 black-footed ferrets separated geographically into 7 different breeding facilities. With the recovery goal of 240 animals achieved, the captive population can now supply surplus ferrets for reintroduction efforts. As described in the Wyoming final rule (56 FR 41473), the captive population will be the donor population from which surplus ferrets will be taken for reintroduction activities. Without the protection of the donor or captive population, reintroduction efforts could not occur. Therefore, the captive donor population is essential to the recovery of the species by supplying surplus ferrets for reintroduction.

The "experimental population" designation means the reintroduced ferret population will be treated as a threatened species rather than an endangered species. Under section 4(d) of the Act, this designation enables the Service to develop special regulations for management of the population that are less restrictive than the mandatory prohibitions covering endangered species. Thus, the experimental designation allows the management flexibility needed to ensure that reintroduction is compatible with current or planned human activities in the Reintroduction Area and to permit biological manipulation of the population for recovery purposes.

Experimental populations can be determined as either "essential" or "nonessential." An essential experimental population means a population "whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild" (50 CFR 17.80, Subpart H—Experimental Populations). All other experimental populations are treated as "nonessential." For purposes of section 7(a)(2) of the Act, nonessential experimental populations are treated as though they are proposed for listing, except on National Wildlife Refuge System and National Park System lands, where they are treated as a species listed as threatened under the Act.

The captive black-footed ferret population is the primary species population. It has been protected against the threat of extinction from a single catastrophic event by splitting the captive population into seven widely separated subpopulations.

The primary repository of genetic diversity for the species is the approximately 240 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population. Hence, any loss of reintroduced animals in the Montana experimental population would not significantly impact species survival or the goal of preserving maximum genetic diversity in the species.

All animals lost during the reintroduction attempt can be readily replaced through captive breeding, as demonstrated by the rapid increase in the captive population over the past 6 years. Based on current population dynamics, 100 juvenile ferrets will likely be produced each year in excess of numbers needed to maintain 240 breeding adults in captivity.

The concept of experimental populations and classifying them as nonessential was amended into the Act by Congress in 1982 to make it easier to reintroduce individuals of an endangered or threatened species in areas where there was local opposition to the reintroduction. This is discussed in greater detail later in this document under Issue 1.

The Experimental Population Area does not currently contain ferrets; the proposed nonessential experimental population will include all ferrets taken from captivity and released into the Experimental Population Area and all their progeny.

This reintroduction effort will be the Service's second attempt to reintroduce the black-footed ferret into the wild. The biological and logistical problems of reintroducing and recovering this species that remain to be addressed are significant. However, reintroduction attempts must continue or the captive population may become overly adapted to captivity. In the long run, exclusive captivity likely would increase the risk of ferrets losing important wild survival instincts and reduce the likelihood of successful reintroduction and ultimately recovery of the species.

Virtually all of the habitat in the Conata Basin/Badlands Reintroduction Area is federally owned. The nonessential experimental population designation will facilitate re-establishment of the species in the wild by easing adjacent landowner concerns about protective measures for reintroduced ferrets that might otherwise be taken. This designation will relax the regulations that protect each individual ferret of the reintroduced population, while promoting the conservation of the reintroduced population as a whole. The nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets, such that adjacent private landowners may continue their current lifestyles.

First attempts to reintroduce the black-footed ferret into the wild (including the Shirley Basin and South Dakota reintroductions) will place great emphasis on developing and improving reintroduction techniques. This applied research will lay the groundwork for a general reintroduction and management protocol for re-establishing black-footed ferrets in other parts of their historical range, which the Service expects to develop after initial reintroductions have occurred.

As ferret reintroduction efforts progress, the Service will evaluate each potential site to determine whether released ferret populations should be proposed as nonessential experimental or essential experimental, or should retain their endangered status. The Service believes that at least 10 or more wild populations are needed to ensure the immediate survival and downlisting of this species to threatened status (U.S. Fish and Wildlife Service 1988).

Location of Reintroduced Population

Under Section 10(j) of the Act, an experimental population must be wholly separate geographically from nonexperimental populations of the same species. Since the last known member of the original Meeteetse black-footed ferret population was captured for inclusion in the captive population in 1987, no ferrets other than those released in Wyoming in 1991, 1992, and 1993 have been confirmed anywhere in the wild. There is a chance that black-footed ferrets still exist outside the Shirley Basin site. However, survey work for black-footed ferrets in the Experimental Population Area has been extensive because of the interspersion of Federal and tribal lands, and no ferrets have been found. Since 1982, the USFS has conducted over 760 surveys for black-footed ferrets on more than 20,200 hectares (50,000 acres) of prairie dog colonies in the Experimental Population Area. This included prairie dog complexes on both Federal and neighboring private lands when the complex covered both land ownerships.

The NPS has conducted 24 black-footed ferret surveys on over 800

hectares (2,000 acres) of prairie dog colonies since 1988. During the period 1985–1989, the Pine Ridge Indian Reservation undertook a $6.2 million prairie dog control program and treated over 121,000 hectares (300,000 acres) of prairie dog habitat on the reservation. All treated acres were surveyed prior to treatment and part of this acreage lies within the Experimental Population Area.

In addition to actual black-footed ferret surveys, numerous hours have been spent on prairie dog colonies in the Experimental Population Area conducting a variety of research and land management practices. No black-footed ferrets or black-footed ferret sign was observed during these activities. Based on these data, the Service believes that the reintroduced population will not overlap with any wild population of the species. Consequently, barring strong evidence to the contrary (such as a wild black-footed ferret being found in the Experimental Population Area before the first breeding season), with this final rulemaking, the Service administratively determines that wild black-footed ferrets no longer exist in the Experimental Population Area prior to this release.

The Conata Basin/Badlands Reintroduction Area lies on USFS and NPS land in three irregularly shaped areas. The Conata Basin/Badlands Reintroduction Area lies entirely in eastern Pennington County. The Experimental Population Area extends southward into Shannon County and eastward into Jackson County.

The Conata Basin/Badlands Experimental Population Area is that area bounded on the north by Interstate Highway 90 (I–90) beginning where it crosses the Cheyenne River; then east following I–90 to State Highway 73; then south along Highway 73 to Highway 44; then west along Highway 44 to where it meets Bureau of Indian Affairs (BIA) Highway 2 and continues west along BIA Highway 2 to BIA Highway 41; then north along BIA Highway 41 to the Cheyenne River; and then northeast along the Cheyenne River to the point of origin at I–90. While none of these features absolutely preclude black-footed ferret movement, the deterrent they represent, coupled with the distance from the Reintroduction Area, makes it unlikely that a black-footed ferret would emigrate outside the Experimental Population Area. Sufficient black-footed ferret surveys have been conducted in the Experimental Population Area over the last 10 years to indicate that no wild black-footed ferret population exists in the area.

The Conata Basin/Badlands Reintroduction Area will serve as the core recovery area. Prior to the first breeding season following the first releases, all marked black-footed ferrets in the wild in the Experimental Population Area will comprise the nonessential experimental population. During and after the first breeding season, all black-footed ferrets in the wild located east of the Cheyenne River and Bureau of Indian Affairs (BIA) Highway 41, south of I–90, west of State Highway 73, and north of State Highway 44 and BIA Highway 2 in Pennington, Shannon, and Jackson Counties, South Dakota, will comprise the nonessential experimental population. Reintroduced black-footed ferrets are expected to remain in the Conata Basin/Badlands Reintroduction Area because of the prime prairie dog populations present and the limited home range of black-footed ferrets. In the unlikely event that a black-footed ferret leaves the Conata Basin/Badlands Reintroduction Area but stays within the boundaries of the Experimental Population Area, the Service will have the authority to capture the emigrant and place it back into the Reintroduction Area, translocate it to another reintroduction site, or place it in captivity. However, black-footed ferrets on Federal lands in the Experimental Population Area generally will not be removed. If a black-footed ferret is found on private land outside the Reintroduction Area but within the Experimental Population Area, the landowner will be consulted and the black-footed ferret will be removed if the landowner so requests.

All black-footed ferrets released in the Reintroduction Area will be appropriately marked (e.g., with PIT tags, non-toxic paints, or radio collars). In the unlikely event that unmarked black-footed ferrets are found in the Experimental Population Area before the first breeding season following the first fall release, a concerted effort will be initiated to determine the location of the source population. This search will ascertain whether a wild population exists and determine the need for appropriate cooperative conservation actions.

A black-footed ferret occurring outside the Experimental Population Area in South Dakota would initially be considered as endangered but may be captured for genetic testing. If an animal is genetically determined to be from the experimental population, it may be returned to the Reintroduction Area, held in captivity, or released at another reintroduction site.

If an animal is determined to be genetically unrelated to the experimental population, then, under an existing contingency plan, up to nine black-footed ferrets may be taken for use in the captive-breeding program. If a landowner outside the Experimental Population Area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

Management

The Conata Basin/Badlands reintroduction will be undertaken by the Service, the USFS, and the NPS in accordance with the Management Plan (USFWS, USFS, and NPS 1993). This Management Plan will be updated as necessary. General reintroduction protocols were discussed under "Background." Additional considerations pertinent to reintroduction are discussed here.

1. *Monitoring:* Various monitoring efforts are planned over the first 5 years. Prairie dog numbers and distribution will be monitored annually. Monitoring for sylvatic plague will be conducted. Presence of canine distemper will be monitored prior to and during reintroduction. Reintroduced black-footed ferrets and their offspring will be monitored every year using spotlight surveys and/or snow tracking surveys done on foot. Some black-footed ferrets may be radio-collared and all will be marked. Assuming some black-footed ferrets survive the winter and enter the courtship and breeding season the next year, monitoring of breeding success and recruitment will take priority. Black-footed ferret behavior will be monitored throughout the duration of the reintroduction effort.

The Service will request that the USFS's and the NPS's Reintroduction Area supervisor/manager assign a primary black-footed ferret program contact for agencies, private landowners, and public users in the affected area, who will follow up on reports of injured or killed black-footed ferrets and immediately notify the U.S. Fish and Wildlife Field Supervisor, Ecological Services, Pierre, South Dakota, (605) 224–8693. The Field Supervisor will notify the Service's Law Enforcement Division. Discussions and actions to follow up these notifications and collection and determination of the disposition of any live or dead specimens will follow as soon as possible.

The Service will assist in ensuring that governmental agencies and the public are informed about the presence of black-footed ferrets in the affected area via public information, education,

and media programs. These information programs also will address the precautions and care that should be taken in handling sick and injured black-footed ferrets. This will enhance effective treatment and care in handling specimens and, when dead black-footed ferrets are located, will ensure proper preservation of black-footed ferret remains. The finder or investigator will be requested to ensure that evidence pertinent to the specimen is not unnecessarily disturbed.

The Service will require that persons locating dead, injured, or sick black-footed ferrets immediately notify the Field Supervisor, Fish and Wildlife Service, Ecological Services, Pierre, South Dakota.

2. *Disease Considerations:* Reintroduction will be re-evaluated if a significant number of cases of canine distemper are documented in any wild mammal within 6 months prior to the scheduled reintroduction. Samples from coyotes and badgers will be obtained prior to the reintroduction to determine if canine distemper exists in the Reintroduction Area. Visitors and biologists will be discouraged from bringing dogs into the Reintroduction Area. Residents and hunters will be encouraged to report sick wildlife. Efforts are continuing to develop an effective canine distemper vaccine for black-footed ferrets.

Although there is no history of sylvatic plague in the area, sampling for sylvatic plague will occur on a regular basis prior to and during the reintroduction effort.

3. *Genetic Considerations:* While the ultimate genetic goal of the reintroduction program is to establish wild reintroduced populations that embody the maximum level of genetic diversity available from the captive population, individuals used for reintroduction will be chosen so that the level of genetic diversity and demographic stability (e.g., stable age and sex structure) of the captive population is not compromised (reduced) by their removal.

4. *Prairie Dog Management:* Prairie dog management in the Reintroduction Area will be in accordance with the USFS's Prairie Dog Management Plan on USFS land and according to the NPS's Resource Management Plan on NPS land. While both plans may be subject to change, the proposed black-footed ferret reintroduction is based on current versions of these plans, and no change in present plans is sought because of black-footed ferret reintroduction. Prairie dog management on private land is at the discretion of the landowners.

5. *Mortality:* Though efforts will be made to reduce mortality, significant mortality will inevitably occur as captive-raised animals adapt to the wild. Natural mortality from predators, fluctuating food availability, disease, hunting inexperience, etc., will be reduced though predator and prairie dog management, vaccination, supplemental feeding, and pre-release conditioning. Human-caused mortality will be reduced through information and education efforts.

A low level of mortality from "incidental take" (defined by the Act as take that is incidental to, but not the purpose of, an otherwise lawful activity) is expected during the reintroduction program as a result of designing the black-footed ferret reintroduction program to work within the context of traditional land uses in the Reintroduction Area.

Incidental take (e.g., ferret injury or mortality) will be required to be reported immediately to the Service. The Service will investigate each case. If it is determined that a ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, such conduct will not be considered "knowing take" for the purpose of this regulation. Therefore, the Service will not take legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

The biological opinion prepared on the reintroduction anticipates an incidental take level of 12 percent per year. If this level of incidental take is exceeded at any time within any year, the Service, in cooperation with the USFS and the NPS, will conduct an evaluation of incidental take and cooperatively develop and implement with the landowners and land users measures to reduce incidental take.

Even if all released animals were to succumb to natural and human-caused mortality factors, this would not threaten the continued existence of the species, because the captive population is the species' primary population and could readily replace any animals lost in the reintroduction effort. This is consistent with the designation of the reintroduced population as a nonessential experimental population. The choice for wildlife managers is either to risk excess captive black-footed ferrets in reintroduction efforts in order to re-establish the species in the wild, or to keep all black-footed ferrets in relative safety in captivity. The Service believes the long-term benefits to the species of establishing individual wild ferret populations outweighs the relatively minor risks associated with losses of surplus ferrets during reintroduction efforts.

6. *Special Handling:* Under the special regulation [promulgated under authority of Section 4(d) of the Act] that will accompany the experimental population designation, Service employees and agents will be authorized to handle black-footed ferrets for scientific purposes; relocate black-footed ferrets to avoid conflict with human activities; relocate ferrets within the Experimental Population Area to improve ferret survival and recovery prospects; relocate black-footed ferrets to future reintroduction sites; aid animals that are sick, injured, or orphaned; and salvage and dispose of dead ferrets. If a ferret is determined to be unfit to remain in the wild, it will be placed in captivity. The Service will determine the disposition of sick, injured, orphaned, or dead black-footed ferrets.

7. *Coordination with Landowners and Land Management Agencies:* The South Dakota black-footed ferret reintroduction program was discussed with potentially affected State and Federal agencies in the proposed Reintroduction Area. An effort to identify issues and concerns associated with reintroduction into the Conata Basin/Badlands Area was conducted through a Coordinated Resource Management process. A Local Level Committee (LLC) was selected consisting of Federal Agencies, State agencies, environmental interests, grazing and land-use interests, and local landowners to discuss concerns about ferret reintroduction over a period of 16 months.

The LLC did not reach a consensus on a plan for black-footed ferret restoration. However, the issues raised during the six LLC meetings provided valuable input to the Federal agencies responsible for developing the Environmental Impact Statement (EIS). The LLC members also provided their individual comments to the Governor of South Dakota, who indicated in letters to the Secretaries of Agriculture and Interior his willingness to support a black-footed ferret restoration program, provided property rights of private individuals could be protected.

8. *Potential for Conflict with Grazing and Recreational Activities:* USFS lands in the Conata Basin/Badlands Reintroduction Area are included in grazing allotments. Conflicts between grazing and black-footed ferret management are not anticipated on USFS lands as current USFS prairie dog management plans have assigned reduced Animal Unit Months to areas

that are designated untreated areas for prairie dogs. No additional grazing restrictions will be placed on USFS lands with grazing allotments in the Conata Basin/Badlands Reintroduction Area as a result of black-footed ferret reintroduction. No commercial grazing occurs on NPS land.

No restrictions in addition to existing requirements will be placed on landowners regarding prairie dog control on private lands in the Experimental Population Area.

Recreational activities currently practiced in the Conata Basin/Badlands Reintroduction Area (e.g., antelope hunting, prairie dog shooting, rabbit hunting using greyhound dogs, furbearer or predator trapping, and off-road vehicle recreation) are either unlikely to impact black-footed ferrets or, if negative impacts are demonstrated, will be managed to avoid or minimize such impacts.

9. *Protection of Black-Footed Ferrets:* Released black-footed ferrets will initially need protection from natural sources of mortality (predators, disease, inadequate prey, etc.) and from human-caused sources of mortality. Natural mortality will be reduced through pre-release conditioning, vaccination, predator control, management of prairie dog populations, etc. Human-caused mortality will be minimized by placing black-footed ferrets in an area with low human population density; by working with landowners, Federal land managers, and recreationists to develop means for conducting existing and planned activities in a manner compatible with ferret recovery; and by conferring with developers on proposed actions and providing recommendations that will reduce likely adverse impacts to ferrets.

A final biological opinion was prepared on this action to reintroduce black-footed ferrets into the Experimental Population Area; it concluded that this action is not likely to jeopardize any listed species.

10. *Public Awareness and Cooperation:* Extensive information sharing about the program and the species, via educational efforts targeted toward the public in the region and nationally, will enhance public awareness of this species and this reintroduction.

11. *Overall:* The designation of the Conata Basin/Badlands population as a nonessential experimental population and its associated management flexibility should encourage local acceptance of and cooperation with the reintroduction effort. The Service considers the nonessential experimental population designation, the accompanying special rule, and the Management Plan necessary to obtain the cooperation of landowners, agencies, citizens, grazing interests, and recreational interests in the area.

12. *Effective Date:* The provisions of 5 U.S.C. 533 provide that at least 30 days shall be allowed before a rule becomes effective unless an agency has good reason to make it effective sooner. It is essential to the success of the reintroduction effort that releases commence in the fall of the year, when wild young ferrets typically would become independent of natal care and disperse. The Service plans to begin initial ferret releases in the South Dakota Reintroduction Area in early September 1994. Therefore, this rule is effective immediately upon publication in the **Federal Register**.

Summary of Comments and Recommendations

In the May 19, 1993, proposed rule and associated notifications, all interested parties were invited to submit comments or recommendations concerning any aspect of the proposed rule that might contribute to the development of a final rule. On May 21, 1993, the Service mailed copies of the proposed rule, the Draft Environmental Impact Statement (DEIS), and a draft management plan to appropriate Federal Agencies, tribal governments, State agencies, county governments, business and conservation organizations, and other interested parties. Approximately 300 of these packets were mailed.

Legal notices inviting public comment were published in the Rapid City Journal on June 5, 1993, and the Sioux Falls Argus Leader on June 4, 1993. In early May and again in early June, news releases were mailed to over 200 media outlets in South Dakota, including newspapers, television stations, and radio stations. Two public hearings on the proposed rule were held. On June 9, 1993, a hearing was held in Pierre, South Dakota, and on June 10, 1993, a hearing was held in Rapid City, South Dakota.

The Service received 54 letters and 28 oral comments on the entire proposed rule and DEIS package. Only 13 of the letters were determined to be direct comments on the proposed rule.

Most environmental groups and some individuals pointed out the same concern—that is, that the designation of the captive population as the essential one is incorrect and that some portion of the Reintroduction Area should be designated as an essential population. One commenter supported the nonessential designation.

Two different commenters made numerous comments on the proposed rule. They felt that the experimental population option was used too broadly; it should be used on private land only and not on public land. They felt no evidence was presented that section 7 and section 9 of the Act were impediments to black-footed ferret releases. They felt that the proposed rule could be construed to mean that the Service would invite or condone indiscriminate killing of black-footed ferrets and wanted no hunting, trapping, or off-road vehicle (ORV) use in the Reintroduction Area.

One commenter objected to provisions that would allow landowners to request removal of black-footed ferrets without a clear demonstration of harm.

One commenter questioned the need for greater management flexibility because they felt that the return of the black-footed ferret does not present any risk to land use. This commenter also saw no need to reduce the requirements of section 7 and section 9 of the Act from the proposal, thought the proposed rule was biased toward protecting human activities and that management priority should be placed on protecting black-footed ferrets, and thought that captive breeding efforts should be reduced in favor of placing priority on wild populations.

Two commenters questioned if a list of parameters had been developed that would move the program from a nonessential to essential reintroduction. They also were concerned that the South Dakota reintroduction was remarkably similar to the Montana reintroduction and suggested that a national plan be developed.

One commenter thought it was unclear whether the incidental take allowance by nonagency persons within the Experimental Population Area includes take occurring in the Reintroduction Area.

Comments of a similar nature or point are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below:

Issue 1: Should the reintroduced population be designated as an essential experimental population as opposed to a nonessential experimental population?

Response: The Service's rationale for designating the South Dakota ferret reintroduction as a nonessential experimental population was explained above under "Status of Reintroduced Population." Establishment of a wild population in the Experimental Population Area is not essential to the continued existence of the species in the wild. The donor captive population,

which is the population whose loss would appreciably affect the likelihood of survival of the species in the wild, is secure and other reintroduction sites are being identified and readied.

The captive population is the primary species population. It has been protected against the threat of extinction from a single catastrophic event through splitting the captive population into seven widely separated subpopulations. Hence, loss of the experimental population would not threaten the species' survival.

The primary repository of genetic diversity for the species is the 240 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population; hence, any loss of reintroduced animals in this experimental population will not significantly impact the goal of preserving maximum genetic diversity in the species.

All animals lost during the reintroduction attempt can readily be replaced through captive breeding, as demonstrated by the rapid increase in the captive population over the past 6 years. Based on current population dynamics, 100 juvenile ferrets will likely be produced each year in excess of numbers needed to maintain 240 breeding adults in captivity.

There are no known populations of ferrets in the wild except for the nonessential experimental population reintroduced into the Shirley Basin area in Wyoming. The only other ferrets known to exist are in captive breeding facilities. Because the breeding program has been so successful, there are more ferrets in captivity than are needed for the breeding program or for ensuring the survival of the species. Ferrets that are the subject of this rule are surplus animals that the Service has determined are not needed for these purposes. Having a sufficient number of black-footed ferrets in the breeding program means that the Service will be able to continue to produce surplus ferrets for reintroductions and thus bring about the survival of the species in the wild.

Consequently, the captive breeding population is the population that is essential to the survival of the species in the wild. The nonessential designation is based on the Service's conclusion that those ferrets to be removed from captivity and reintroduced into South Dakota are not needed for the survival of the species in the wild. If the released animals are lost, they can be replaced with other black-footed ferrets produced in captivity.

The Service's position is supported by the preamble to the final rule for establishing experimental populations published in the **Federal Register** on August 27, 1984 (49 FR 33885). It explains that the organisms that will be reclassified as experimental are those which are to be removed from an existent source or donor population. Additionally, one commenter on the proposed rule that preceded the final rule on experimental populations stated that no species classified as endangered could have populations biologically nonessential to their survival. In its final rule, the Service disagreed with this comment and stated "* * * there can be situations where the status of the extant population is such that individuals can be removed to provide a donor source for reintroduction without creating adverse impacts upon the parent population. This is especially true if the captive propagation efforts are providing individuals for release into the wild."

Furthermore, the Service referred to the Conference Report, which is especially significant because the definition of "essential population" in the experimental population final rule is virtually identical to the language in the Conference Report. Congress explained, "* * * (T)he level of reduction necessary to constitute 'essentiality' is expected to vary among listed species and, in most cases, experimental populations will not be essential" [H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess., 34 (1982)].

The Senate report explains that the special regulations designating experimental populations are to be designed to address the "particular needs" of each experimental population and that the Secretary is "granted broad flexibility" in promulgating the special regulations [S. Rep. No. 97–418, 97th Cong., 2d Sess. 8 (1982)].

Issue 2: Should the reintroduced population be fully endangered rather than experimental?

Response: The Service has not decided that black-footed ferrets in captivity are the only ferrets that will ever retain endangered status under the Act. It is important to recognize that one of the reasons Congress amended the Act in 1982 was to provide for experimental populations. The House Report is instructive on this point. It states that reintroduction efforts had encountered strong opposition from the states and areas where species were to be reintroduced. Opponents were concerned that, if reintroduced species were fully protected under the Act, then conflicts with existing uses would result and new development would be curtailed. Congress amended the Act to mitigate and alleviate such fears.

Because of the flexibility provided by Congress as discussed under Issue 1, the Service maintains that it has the authority under the Act to designate this population as experimental if such action will further the conservation of the species, and if the decision is based on the best scientific and commercial data available.

Issue 3: Should the proposed reintroduction provide greater protection for black-footed ferrets from impacts such as grazing, trapping, prairie dog hunting, and oil and gas development than is proposed?

Response: The Service, working with the NPS and the USFS, developed the Management Plan that will guide how these types of activities are carried out within the Reintroduction Area. The Service believes the Management Plan provides adequate protection from these activities. Both the NPS and the USFS have authority to restrict access if additional protection proves necessary.

Issue 4: Should black-footed ferrets be removed from private land in the Experimental Population Area without clear demonstration of harm?

Response: The Reintroduction Area has been identified as an adequate area for a black-footed ferret population to survive. The surrounding Experimental Population Area has been identified as an area that acts as a buffer zone. The purpose of the nonessential experimental population designation was to alleviate local landowner concerns over restrictions that would otherwise occur with the presence of black-footed ferrets. Removal of a black-footed ferret at the landowner's request will allow for the relocation of the animal into high quality habitat areas in the Reintroduction Area, and also would keep released ferrets concentrated in the Reintroduction Area, which may aid in the recovery of the species. The Service does not view the removal of black-footed ferrets from private lands as detrimental to the reintroduction effort.

Issue 5: Is there a need for less management flexibility than that described in the proposed rule (e.g., no reduction in section 7 and section 9 responsibilities)?

Response: Designation of an experimental population provides flexibility in management outside the Reintroduction Area as well as within the Reintroduction Area. While the experimental designation will help relieve some restrictions on landowners relating to the presence of black-footed ferrets, the designation also is important to biologists by allowing them to

directly manage released ferrets (e.g., by capture and relocation), which will benefit the reintroduction effort and the species. The nonessential experimental designation does change the status of black-footed ferrets with respect to section 7 and section 9 of the Act. Nevertheless, ferrets under this designation still retain significant protections under the Act, and the Service does not believe an experimental designation will be detrimental to the establishment of a sustained black-footed ferret population.

Issue 6: Is there a list of parameters that would change the status of black-footed ferrets from nonessential to essential? Should a national plan be developed?

Response: Once this final rule goes into effect, changing the nonessential experimental designation of the South Dakota ferret population would require a new rulemaking process, which would include a proposed rule, a public comment period, public meetings, National Environmental Policy Act compliance, and other documentation before a final rule to change the designation could be published. Under the experimental population regulations (50 CFR 17 Subpart H), any rule designating an experimental population must provide "* * * a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species." The 5-year evaluation noted in section 17.84(g)(10) of the proposed rule is intended to be a milestone in this required periodic review and evaluation process, and will be a review of the biological success of the reintroduction effort. If determined to be less than successful, the Service, USFS, and NPS will modify the reintroduction protocol and/or the strategies within the Management Plan to improve ferret survival and/or recruitment, with the involvement of affected landowners and land managers. If the experiment is extremely unsuccessful, the Service, USFS, and NPS may consider a temporary hold on releasing ferrets into the Reintroduction Area until better release or management techniques are developed. The 5-year evaluation will not include an evaluation to determine whether the population should be reclassified.

The Service does not foresee any likely situation, except for eventual delisting of the species, that would call for altering the nonessential experimental status of the South Dakota ferret population.

However, the Service is working toward development of a national strategy that will address the goals and objectives outlined in the Black-footed Ferret Recovery Plan developed in 1978 and revised in 1988.

Issue 7: Is clarification needed on whether incidental take allowed under the special rule would include take occurring in the Reintroduction Area?

Response: The take statement which appears in Section 17.84(g)(5) applies to the Experimental Population Area as defined by the rule; this includes the Reintroduction Area. The Reintroduction Area is entirely on Federal land, and Federal land management agencies within the area have authority over land-use practices on their lands and have agreed to abide by the Management Plan. Thus, incidental take allowed by the special rule will apply to the Reintroduction Area but will be regulated by adequate Federal authority.

Issue 8: Were the boundaries of the Experimental Population Area appropriate—that is, why was a larger area not considered for the Reintroduction Area?

Response: Black-footed ferrets were historically found throughout western South Dakota. The Experimental Population Area boundaries were drawn to include all potential black-footed ferret habitat (prairie dog colonies) within the Conata Basin/Badlands Prairie Dog Complex—that is, prairie dog colonies within 7 kilometers of another colony (and that were not being treated with rodenticides). Black-footed ferrets traveling beyond the Reintroduction Area will be exposed to areas of less suitable habitat. The proposed Reintroduction Area, according to available modeling information, contains sufficient acreage and densities of prairie dogs to support a viable population of black-footed ferrets for a 100-year period.

Issue 9: How does the Service plan to address impacts on long-term black-footed ferret viability?

Response: The Service has addressed the long-term viability of ferrets in the wild through recovery goals and objectives described in the 1988 revised Black-footed Ferret Recovery Plan. This plan identifies objectives that must be met to downlist the species to threatened, which in turn would ensure the long-term viability of the species in the wild. The revised recovery plan reflects current information and recovery objectives, and outlines steps for recovery that, when accomplished, will provide for viable black-footed ferret populations in captivity and within its historical range. These objectives include:

(1) Increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991 (this goal was subsequently changed to 240 and has been achieved);

(2) Establishing a pre-breeding census population of 1,500 free ranging black-footed ferret breeding adults in 10 or more populations with no fewer than 30 breeding adults in any population by the year 2010; and

(3) Encouraging the widest possible distribution of reintroduced black-footed ferret populations.

It is the Service's opinion that the Recovery Plan will continue to be revised to reflect future requirements and direction to ensure recovery of the black-footed ferret in the wild. In addition, the Service plans to develop a national strategy for implementing the ferret reintroduction program, based in part on initial reintroduction efforts. This strategy would outline the specific methods and means necessary to achieve recovery objectives cited in the Recovery Plan.

National Environmental Policy Act

A final EIS, as defined under the authority of the National Environmental Policy Act of 1969, has been prepared and is available from the Service offices identified in the **ADDRESSES** section.

Required Determinations

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Effective Date

The provisions of 5 U.S.C. provide for no less that 30 days for a rule to become effective unless an agency, for good reason, makes it sooner. Due to the need to release black-footed ferrets to the wild immediately in order to allow them as much time as possible to become established before winter sets in, this final rule is effective immediately.

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Authors

The principal authors of this rule are Douglas Searls, South Dakota Field Office and Ronald Naten, Regional Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by revising the existing two entries for the "Ferret, black-footed" under "MAMMALS" to read as shown below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Ferret, black-footed	*Mustela nigripes*	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population below.	E	1, 3, 433, 543	NA	NA
Do	do	do	U.S.A. (specified portions of Wyoming and South Dakota).	XN	433, 543	NA	17.84(g)
*	*	*	*	*	*		*

3. Section 17.84 is amended by revising the text of paragraph (g) to read as follows:

§ 17.84 Special rules—vertebrates

* * * * *

(g) Black-footed ferret (*Mustela nigripes*)

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i) and (g)(9)(ii) of this section are nonessential experimental populations. Each of these populations will be managed in accordance with their respective management plans.

(2) No person may take this species in the wild in the experimental population areas except as provided in paragraphs (g)(3), (4), (5), and (10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under § 17.32 may take black-footed ferrets in the wild in the experimental population areas.

(4) Any employee or agent of the Service or appropriate State wildlife agency, who is designated for such purposes, when acting in the course of official duties, may take a black-footed ferret from the wild in the experimental population areas if such action is necessary:

(i) For scientific purposes;

(ii) To relocate a ferret to avoid conflict with human activities;

(iii) To relocate a ferret that has moved outside the Reintroduction Area when removal is necessary to protect the ferret, or is requested by an affected landowner or land manager, or whose removal is requested pursuant to paragraph (g)(12) of this section;

(iv) To relocate ferrets within the experimental population areas to improve ferret survival and recovery prospects;

(v) To relocate ferrets from the experimental population areas into other ferret reintroduction areas or captivity;

(vi) To aid a sick, injured, or orphaned animal; or

(vii) To salvage a dead specimen for scientific purposes.

(5) A person may take a ferret in the wild within the experimental population areas provided such take is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity and if such ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct. Such conduct will not be considered "knowing take" for purposes of this regulation, and the Service will not take legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

(6) Any taking pursuant to paragraphs (g)(3), (4) (vi) and (vii), and (5) of this section must be reported immediately to the appropriate Service Field Supervisor, who will determine the disposition of any live or dead specimens.

(i) Such taking in the Shirley Basin/Medicine Bow experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming (telephone: 307/772–2374).

(ii) Such taking in the Conata Basin/Badlands experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224–8693).

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any ferret or part thereof from the experimental populations taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraphs (g) (2) and (7) of this section.

(9) The sites for reintroduction of black-footed ferrets are within the historical range of the species.

(i) The Shirley Basin/Medicine Bow Management Area is shown on the attached map and will be considered the core recovery area for the species in southeastern Wyoming. The boundaries of the nonessential experimental population will be that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany Counties (see Wyoming map). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will comprise the nonessential experimental population thereafter.

(ii) The Conata Basin/Badlands Reintroduction Area is shown on the attached map for South Dakota and will be considered the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area will be north of State Highway 44 and BIA Highway 2 east of the Cheyenne River and BIA Highway 41, south of I–90, and west of State Highway 73 within Pennington, Shannon, and Jackson Counties, South Dakota. Any black-footed ferret found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of black-footed ferrets in the Reintroduction Area. A black-footed ferret occurring outside the experimental population area in South Dakota would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following actions if necessary:

(A) If an animal is genetically determined to have originated from the experimental population, it may be returned to the Reintroduction Area or to a captive facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine black-footed ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(10) The reintroduced populations will be continually monitored during the life of the project, including the use of radio-telemetry and other remote sensing devices, as appropriate. All released animals will be vaccinated against diseases prevalent in mustelids, as appropriate, prior to release. Any animal which is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or the Department or their agents and given appropriate care. Such an animal may be released back to its respective reintroduction area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(11) The status of each experimental population will be re-evaluated within the first 5 years after the first year of release of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of individuals released into the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described areas. Once recovery goals are met for delisting the species, a rule will be proposed to address delisting.

(12) This 5-year evaluation will not include a re-evaluation of the "nonessential experimental" designation for these populations. The Service does not foresee any likely situation which would call for altering the nonessential experimental status of any population. Should any such alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any private landowner who consented to the introduction of black-footed ferrets on his lands will be permitted to terminate his consent and the ferrets will be, at his request, relocated pursuant to paragraph (g)(4)(iii) of this rule.

* * * * *

4. Section 17.84 is amended by adding a map to follow the existing map at the end of paragraph (g).

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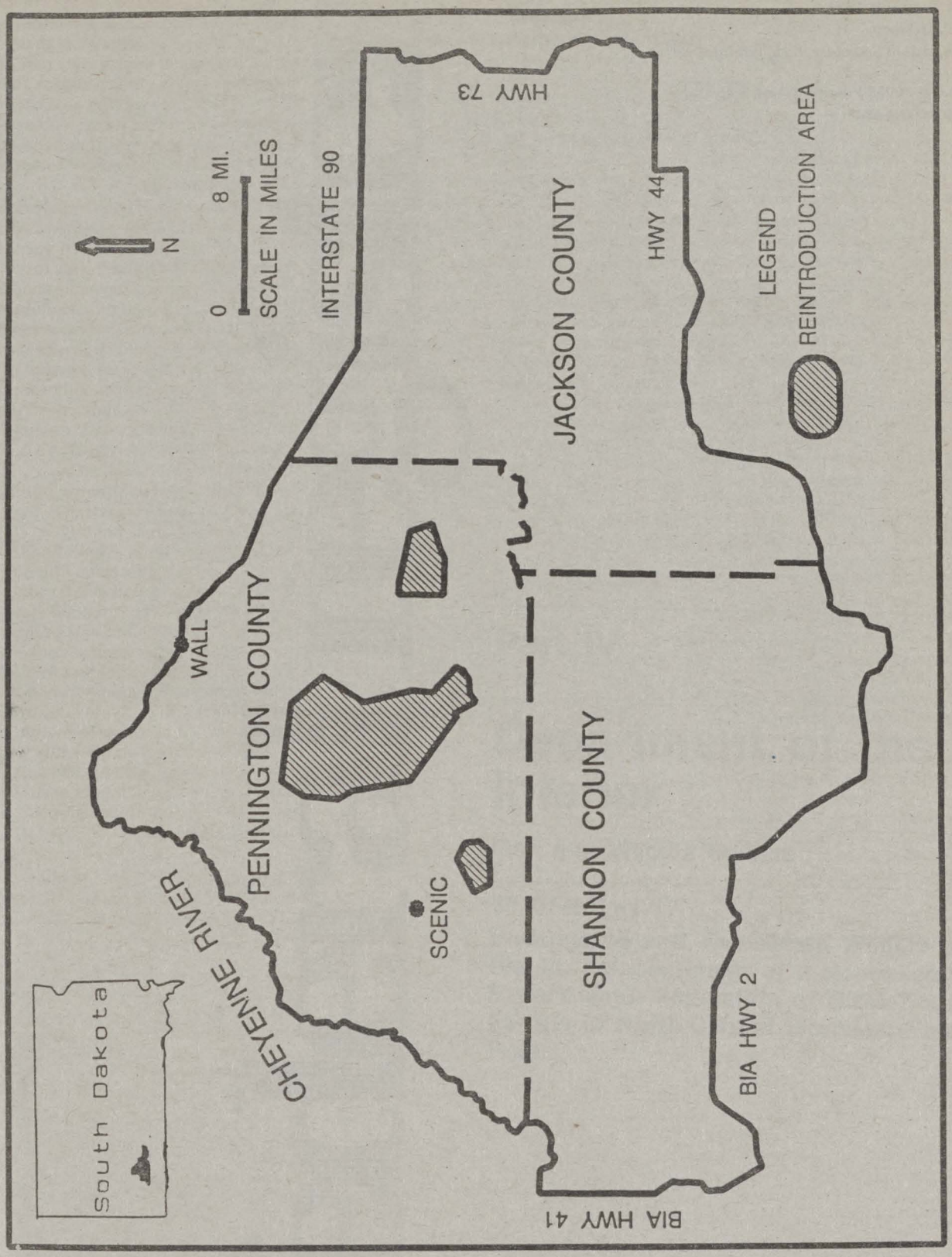

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Dated: August 9, 1994.

Robert P. Davison,

Acting Assistant Secretary, Fish, Wildlife and Parks.

[FR Doc. 94–20036 Filed 8–17–94; 8:45 am]

BILLING CODE 4310–55–P

federal register

Thursday
August 18, 1994

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in North-Central Montana; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB96

Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Black-footed Ferrets in North-Central Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service), in cooperation with the Montana Department of Fish, Wildlife and Parks, will reintroduce black-footed ferrets (*Mustela nigripes*) into the 11,061 km² (4,237 mi²) North-central Montana Black-footed Ferret Experimental Population Area in north-central Montana. This reintroduction will implement a primary recovery action for this endangered species and also allow evaluation of release techniques. Provided conditions are acceptable, a minimum of 20 surplus captive-raised ferrets will be released in 1994 and annually thereafter for 2 to 4 years, or until a wild population is established. Releases will test ferret reintroduction techniques and, if fully successful, will result in a wild population within 5 years. The north-central Montana population is designated a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. This population will be managed in accordance with the provisions of the accompanying special rule.

EFFECTIVE DATE: September 19, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the following Service offices:

—Regional Office, Ecological Services, 134 Union Boulevard, Lakewood, Colorado, (303) 236–8189.

—U.S. Fish and Wildlife Service, Billings Suboffice, Ecological Services, 1501 14th Street West, Suite 230, Billings, Montana, (406) 657–6750.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Naten, (303) 236–8189, at the Colorado address or Mr. Dennis Christopherson, (406) 657–6750, at the Montana address above.

SUPPLEMENTARY INFORMATION:

Background

The background information included in this rule has been reduced from what was published in the proposed rule to reduce publishing costs. Please refer to the proposed rule published in the Federal Register on April 13, 1993 (58 FR 19220), for more detailed information.

The black-footed ferret (*Mustela nigripes*) is an endangered carnivore with a black face mask, black legs, and a black-tipped tail. It is nearly 60 cm (2 ft) long and weighs up to 1.1 kg (2.5 lbs). It is the only ferret native to North America.

Though the black-footed ferret was found over a wide area historically, it is difficult to make a conclusive statement on its historical abundance due to its nocturnal and secretive habits. The black-footed ferret's historical range included 12 States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. There is prehistoric evidence of this species from Yukon Territory, Canada, to New Mexico and Texas (Anderson et al. 1986). Although there are no specimen records for black-footed ferrets from Mexico, prairie dogs (*Cynomys* spp.) inhabit Chihuahua (Anderson 1972) and were present as far back as the Late Pleistocene-Holocene Age (Messing 1986). Black-footed ferrets depend almost exclusively on prairie dogs and prairie dog towns for food and shelter (Henderson et al. 1969, Forrest et al. 1985), and ferret range is coincident with that of prairie dogs (Anderson et al. 1986). No documentation exists of black-footed ferrets breeding outside prairie dog colonies. Consequently, it is probable that black-footed ferrets were historically endemic to northern Mexico.

Black-footed ferrets prey primarily on prairie dogs and use their burrows for shelter and denning. There are specimen records of black-footed ferrets from the ranges of three species of prairie dogs: black-tailed prairie dogs (*Cynomys ludovicianus*), white-tailed prairie dogs (*Cynomys leucurus*), and Gunnison's prairie dogs (*Cynomys gunnisoni*) (Anderson et al. 1986).

Widespread poisoning of prairie dogs and agricultural cultivation of their habitat drastically reduced prairie dog abundance and distribution in the last century. Sylvatic plague, which may have been introduced to North America around the turn of the century, also decimated prairie dog populations, particularly in the southern portions of their range. The severe decline of prairie dogs resulted in a concomitant and near-fatal decline in black-footed ferrets, though the latter's decline may be partially attributable to other factors such as secondary poisoning from prairie dog toxicants (e.g., strychnine) or high susceptibility to canine distemper. The black-footed ferret was listed as an endangered species on March 11, 1967.

In 1964, a wild population of ferrets was discovered in South Dakota and was studied intensively for several years; this population became extinct in 1974, its last member dying in captivity in 1979. Afterwards, some believed that the species was probably extinct, until another wild population was discovered near Meeteetse, Wyoming, in 1981. The Meeteetse population underwent a severe decline between 1985 and 1986 due to canine distemper, which is fatal to infected ferrets. Eighteen survivors were taken into captivity in 1986 and 1987 to prevent extinction and to serve as founder animals in a captive propagation program aimed at eventually reintroducing the species into the wild.

In 6 years, the captive population has increased from 18 to over 300 black-footed ferrets. In 1988, the single captive population was split into three separate captive subpopulations to avoid the possibility that a single catastrophic event could wipe out the entire known population. Two additional captive subpopulations were established in 1990, and one additional captive subpopulation was established in 1991 and again in 1992, making a total of seven captive subpopulations. A secure population of 200 breeding adults was achieved in 1991, allowing initiation of ferret reintroductions into the wild.

Section 10(j) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), allows the Fish and Wildlife Service (Service) to designate certain populations of federally listed species that are released into the wild as "experimental populations." The circumstances under which this designation can be applied are: (1) The population is wholly separate geographically from nonexperimental populations of the same species (e.g., the population is reintroduced outside the species' current range but within its historical range); and (2) the Service determines that the release will further the conservation of the species. This designation can increase the Service's flexibility to manage a reintroduced population, because under section 10(j) an experimental population can be treated as a threatened species regardless of its designation elsewhere in its range, and, under section 4(d) of the Act, the Service has greater discretion in developing management programs for threatened species than for endangered species.

Section 10(j) of the Act requires, when an experimental population is designated, that a determination be

made by the Service whether that population is essential or nonessential to the continued existence of the species. Nonessential experimental populations located outside national wildlife refuge or national park lands are treated, for purposes of section 7 of the Act, as if they are proposed for listing. Thus, only two provisions of section 7 would apply outside National Wildlife Refuge System and National Park System lands: section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species; and section 7(a)(4), which requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to insure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Activities undertaken on private lands are not affected by section 7 of the Act unless they are authorized, funded, or carried out by a Federal agency.

However, pursuant to section 7(a)(2), individual animals comprising the designated experimental population may be removed from an existing source or donor population only after it has been determined that such removal is not likely to jeopardize the continued existence of the species. Moreover, removal must be conducted under a permit issued in accordance with the requirements in 50 CFR § 17.22.

Forty-nine black-footed ferrets were reintroduced as a nonessential experimental population to the Shirley Basin/Medicine Bow (Shirley Basin) area in southeastern Wyoming in September and October 1991. Subsequent surveys during November 7–14, 1991, found nine individual ferrets. Snow surveys conducted during March 1992 revealed sign of six to eight ferrets. Spotlight surveys conducted during July and August 1992 confirmed the presence of a minimum of four adult black-footed ferrets and two litters. One litter contained two young and the second contained four young ferrets. During September and October 1992 an additional 90 black-footed ferrets were released at the Shirley Basin site. Spotlight surveys in July 1993 confirmed the presence of a minimum of nine adults and four litters. Forty-eight ferrets were released at the Shirley Basin site in September and October 1993. Currently, the only known populations of black-footed ferrets are the experimental population at the Shirley Basin site and those animals in captivity.

In addition to this reintroduction, the Service and state wildlife agencies in 11 western states currently are identifying potential black-footed ferret reintroduction sites within the species' historical range. Potential reintroduction sites have been identified in Wyoming (two sites), Montana (one site), South Dakota (one site), Colorado (one site), Utah (one site), and Arizona (one site).

On April 13, 1993, the Service published a proposed rule in the **Federal Register** (58 FR 19220) to introduce black-footed ferrets into the North-central Montana Black-footed Ferret Experimental Population Area (Experimental Population Area) as a nonessential experimental population. This area is located in portions of Phillips and Blaine Counties, Montana, and was historically occupied by black-footed ferrets. Numerous ferret surveys conducted in the Experimental Population Area have resulted in no evidence of ferrets currently inhabiting the area (Reading 1991). The latest physical evidence of black-footed ferrets in the Experimental Population Area was a skull collected in 1984.

To the best of our knowledge, any reintroduced population of ferrets in the Experimental Population Area would be wholly separate and distinct from other ferret populations.

Experimental Population Site: The Experimental Population Area encompasses 11,016 km² (4,237 mi²) and consists of 36 percent private land, 5 percent State trust land, 28 percent federally managed land (outside national wildlife refuges), 9 percent national wildlife refuge land, and 22 percent Fort Belknap Indian Reservation (Reservation) land. Except for the Little Rocky Mountains, the majority of the land area is actual or potential prairie dog habitat. Mapping conducted in 1988 and 1990 indicated that 19,223 hectares (46,886 acres) of prairie dog towns existed in the Experimental Population Area, with an estimated potential prey biomass to support 561 black-footed ferret families.

Reintroduction, habitat management, and intensive ferret management will occur in a smaller, specifically-delineated area called the North-central Montana Reintroduction Area (Reintroduction Area), which occurs within the Experimental Population Area. Specifics on the location and boundaries of the Reintroduction Area are provided in the accompanying special rule. The Reservation contained 8,572 hectares (20,907 acres) of prairie dog towns in 1990, and occurs entirely within the designated Experimental Population Area but is not included within the Reintroduction Area.

Mapping of prairie dog towns completed during fall and summer of 1991 and 1992 showed a 52 percent reduction in prairie dog acreage within the Reintroduction Area from 1988 to fall 1992. Sylvatic plague is active in the complex and is believed to be the primary factor in the reduction of occupied acreage. Prairie dog colonies in the Reintroduction Area within 20 km (12.4 mi) of the release site will be resurveyed in the summer of 1994 prior to the release of black-footed ferrets.

The UL-Bend National Wildlife Refuge (NWR), adjacent to and administered by the Charles M. Russell NWR, is the primary release site (hereafter in this document this entire area will be referred to as the Charles M. Russell NWR to avoid confusion). If reintroduction is successful, ferrets will eventually disperse from the release site into other portions of the Reintroduction Area. If a ferret were to disperse outside the Reintroduction Area and/or to the Reservation, the affected landowner or the Fort Belknap Tribal Council has the option to request its removal. Even without such a request, authorized personnel could relocate the ferret to the Reintroduction Area or to captivity, if necessary.

Ferrets will be released into the Reintroduction Area only if biological conditions are suitable, and under a management framework determined to be acceptable to the State of Montana, the Service, private landowners, and other land managers in the area. Reintroduction will be re-evaluated if one or more of the following conditions occur:

(1) The black-footed ferret habitat rating index (Biggins et al. 1993) for the Reintroduction Area falls below 50 percent of the 1988 level. This habitat rating index is based on abundance of prairie dogs and estimates the number of ferret families a prairie dog complex can support.

(2) Failure to acquire or maintain a nonessential experimental population designation for the Reintroduction Area through the Federal rulemaking process.

(3) Wild black-footed ferret populations are found within the Experimental Population Area prior to the first breeding season following the first reintroduction.

(4) Active cases of canine distemper are diagnosed within the Reintroduction Area within 6 months prior to release.

(5) Fewer than 20 black-footed ferrets are available for the first release.

(6) Funding is not available to implement the reintroduction program.

Reintroduction protocol: In general, the reintroduction protocol will involve releasing a minimum of 20 ferrets in the first year of reintroduction and releasing ferrets annually thereafter, as needed, for 2 to 4 years or until a wild population is established. Captive animals selected for release will be as genetically redundant as possible with the gene pool in the captive breeding population; hence, any loss of released animals is unlikely to appreciably affect existing genetic diversity in the species. Moreover, because breeding ferrets in captivity is not a problem, any animals lost in the reintroduction effort could be replaced. To enhance genetic diversity in the reintroduced population, it may be necessary to release ferrets from other established, reintroduced nonessential populations (e.g., the Shirley Basin site).

Several strategies for releasing captive-raised black-footed ferrets will be utilized during the reintroduction: (1) Hard release with no pre-release conditioning (i.e., release without an acclimation period); (2) soft release (release with an acclimation period and gradual reduction in supplied food and shelter); and (3) pre-release conditioning in a quasi-natural environment followed by hard release (this technique may be used when sufficient numbers of black-footed ferrets are available). Ferrets will be released in September and October, when wild juvenile ferrets typically become independent and exhibit dispersal tendencies, and are physically capable of killing prey, avoiding predators, and adjusting to environmental extremes.

The hard release with no pre-release conditioning will utilize neither release cages or any preconditioning in a contained prairie dog colony. Ferrets will be transported to the release site and held for a minimum of 12 hours to ensure general health. Subsequently, the ferrets will be released into the prairie dog colonies from the transport container and will receive no supplementary care.

Soft release involves raising juveniles in captivity with little exposure to the physical and environmental demands experienced in the wild. These juvenile ferrets will then be placed into release cages with buried nest boxes at the Reintroduction Site. It may be desirable to surround each cage with an electric fence to prevent damage by cattle or big game. Ferrets will be held and fed in the release cages for 10 days while acclimating to the cage and immediately surrounding area. After 10 days, the doors to the release cages will be opened and the ferrets will be allowed access to the prairie dog colonies; however, food will continue to be provided while the ferrets learn to kill prey in the prairie dog colony. This soft release design is similar to release protocol used at the Shirley Basin reintroduction site, except the Montana site is located in black-tailed prairie dog colonies, instead of white-tailed prairie dog colonies.

Pre-release conditioning prior to hard release will utilize black-footed ferrets raised from birth in a large, seminatural, enclosed prairie dog colony. In this design, the captive environment should allow a natural expression of genetically influenced behaviors, or, if behaviors are learned, the captive environment should provide appropriate stimuli to learning during the critical period. Presenting juvenile captive animals with stimuli resembling those prevalent in their natural environment may help individuals retain efficient use of adaptive traits and, subsequently, increase post-release survival by reinforcing inherent survival skills in natural ways at natural periods of development.

Regardless of release technique, it is expected that ferrets will be placed in separate burrow systems 200 meters (219 yards) apart within the same prairie dog colony. Ferrets will be released sequentially over a period of 3–8 weeks because all animals will not reach the proper age for release at once, and because it would be difficult to intensively monitor all radio-tagged animals if they are released simultaneously. The proposed rule stated that all ferrets released would be young-of-the-year. This final rule removes that language in an effort to broaden the Service's flexibility and options in managing the release and analyzing of reintroduction techniques. The Service believes removal of this language to be minor in nature and does not affect the intention of this rulemaking.

Prior to release, ferrets will be vaccinated against disease, as appropriate, including canine distemper if an effective vaccine is developed for ferret use by that time (an experimental distemper vaccine is now being tested). Preventative and, where necessary, corrective measures to reduce ferret predation by coyotes (*Canis latrans*), badgers (*Taxidea taxus*), raptors, or other predators will be undertaken in the initial phases of the release, but should not be necessary in the long term. Habitat conditions will be monitored continually during the reintroduction effort. If the ferret habitat rating index (Biggins et al. 1993) drops to unacceptable levels, ferrets will be released in another biologically suitable prairie dog complex in the Reintroduction Area, translocated to another release site, released at the next scheduled site, or returned to captivity. Cooperative management actions will be taken to maintain overall prairie dog populations at 1988 levels in the Reintroduction Area.

All black-footed ferrets released will be appropriately marked [e.g., with a Passive Integrated Transponder (PIT) tag or non-toxic paints]. Some ferrets (up to a maximum of 50) may be radio-tagged in the first year, while smaller samples may be radio-tagged in later years. Radio-tagged ferrets will be intensively monitored. Other ferrets will be monitored using spotlight, snow surveys, or visual sighting techniques.

It is unlikely that released ferrets or their offspring will emigrate outside of the Experimental Population Area. This is because the Experimental Population Area is essentially a large island of excellent ferret habitat (i.e., prairie dog colonies), while the surrounding area to the north, east, and west is relatively devoid of prairie dog colonies, and the Missouri Breaks and Missouri River on the southern edge of the Experimental Population Area are physiographic obstacles to migration. Given the large size of the Experimental Population Area, current knowledge of ferret mobility gained from radio-telemetry studies at Meeteetse between 1982 and 1986 (less than 7 km or 4.3 mi/night) and 1991 studies at the Shirley Basin site (17 km or 10.5 mi/night), and significantly better prey base and colonization opportunities within the Experimental Population Area, it is unlikely that ferrets will disperse outside of the Experimental Population Area.

Experimental reintroduction designs will be tested and possibly modified at this and/or upcoming reintroduction sites. The Montana release will be limited by the number of captive ferrets available in excess of captive population objectives, needs of the Shirley Basin reintroduction site, and the needs of other ferret reintroduction sites initiated in the future. However, the 20 to 56 ferrets available for release in Montana in 1994 are considered sufficient to begin testing the proposed release techniques and to monitor results.

Realistically, the Service and the Montana Department of Fish, Wildlife and Parks (Department) expect high mortality rates (up to 90 percent) among released ferrets in the first year of release. Despite pre-release conditioning, captive-bred animals will be relatively naive in terms of avoiding predators, securing prey, and withstanding environmental rigors. Mortality is expected to be highest

within the first month of release. A realistic goal for the first year, based on experience at the Shirley Basin site, would be for 20 percent of released ferrets to survive at least 1 month after release, with perhaps 10 percent of released animals surviving the winter.

Intensive studies conducted on the wild Meeteetse population between 1982 and 1986, and in 1991 and 1992 at the Shirley Basin reintroduction site will provide a natural baseline against which the Montana reintroduction effort can be compared to determine how well the experiments are proceeding. Ferrets have a high level of natural mortality in the wild, based on studies at Meeteetse. Population data presented by Forrest et al. (1988) was used for computer simulation modeling by Harris et al. (1989), and indicated juvenile mortality rates of a stable population of approximately 78.5 percent. Since young-of-the-year ferrets will be used in the reintroduction program initially, these data will provide a basis of comparison. Additionally, these baseline data will be supplemented with baseline biological and behavioral data gathered in the 1960's and 1970's from the South Dakota population.

If successful, this reintroduction effort is expected to result in the establishment of a free-ranging population of at least 50 adult black-footed ferrets within the Reintroduction Area by a target date of 1998. The Service and Department will evaluate progress of the reintroduction annually, including sources of mortality. The biological status of the population at the site will be re-evaluated within the first 5 years to determine future management needs. However, the 5-year review will not include an evaluation to determine whether the nonessential experimental designation for the Montana ferret population should be changed. The Service anticipates that this designation will not be changed for the Montana ferret population unless the experiment is determined to be a failure (and this rulemaking is terminated) or until the species is determined to be recovered (and is delisted). Once recovery goals are met for delisting the species, a proposed rule to delist will be prepared.

The revised Black-footed Ferret Recovery Plan (Recovery Plan) (USFWS 1988) establishes objectives and outlines steps for recovery that, when accomplished, will provide for viable black-footed ferret populations in captivity and within its historical range. These objectives include:

(1) Increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991 (this recovery goal subsequently was changed to 240 and has been achieved);

(2) Establishing a pre-breeding census population of 1,500 free-ranging black-footed ferret breeding adults in 10 or more populations with no fewer than 30 breeding adults in any population by the year 2010; and

(3) Encouraging the widest possible distribution of reintroduced black-footed ferret populations.

Status of Reintroduced Population

The north-central Montana black-footed ferret population will be designated a nonessential experimental population according to the provisions of section 10(j) of the Act. The basis for this designation is explained below. The 1988 Recovery Plan states as one of its goals the development of a captive population containing a minimum of 200 animals. This number was chosen to maintain maximum genetic variability and to ensure enough animals to protect the species from a stochastic event; however, it has since been revised to 240 by the Species Survival Plan Group of the American Zoological and Aquarium Association, which manages the captive ferret population. To date, the captive program contains over 300 black-footed ferrets separated geographically into 7 different breeding facilities. With the recovery goal of 240 animals achieved, the captive population can now supply surplus animals for reintroduction efforts. As described in the Wyoming final rule published in the **Federal Register** on August 21, 1991 (56 FR 41473), the captive population will be the donor population from which surplus ferrets will be taken for reintroduction activities. Without the protection of the donor or captive population, reintroduction efforts could not occur. Therefore, the captive donor population is essential to the recovery of the species by supplying surplus ferrets for reintroduction.

The "experimental population" designation means the reintroduced ferret population will be treated as a threatened species rather than an endangered species. Under section 4(d) of the Act, this designation enables the Service to develop special regulations for management of the population that are less restrictive than the mandatory prohibitions covering endangered species. Thus, the experimental designation allows the management flexibility needed to ensure that reintroduction is compatible with current or planned human activities in the reintroduction area and to permit biological manipulation of the population for recovery purposes.

Experimental populations can be determined as either "essential" or "nonessential." An essential experimental population means a population "whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild" [50 CFR 17.80 (Subpart H—Experimental Populations)]. All other experimental populations are treated as "nonessential." For purposes of section 7(a)(2) of the Act, nonessential experimental populations are treated as though they are proposed for listing (except on National Wildlife Refuge System and National Park System lands, where they are treated as a species listed as threatened under the Act).

The captive black-footed ferret population is the primary species population. It has been protected against the threat of extinction from a single catastrophic event by splitting the captive population into seven widely separated subpopulations.

The primary repository of genetic diversity for the species is the approximately 240 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population. Hence, any loss of reintroduced animals in the Montana experimental population would not significantly impact species survival or the goal of preserving maximum genetic diversity in the species.

All animals lost during the reintroduction attempt can be readily replaced through captive breeding, as demonstrated by the rapid increase in the captive population over the past 6 years. Based on current population dynamics, 100 juvenile ferrets will likely be produced each year in excess of numbers needed to maintain 240 breeding adults in captivity.

The concept of experimental populations and classifying them as nonessential was amended into the Act by Congress in 1982 to make it easier to reintroduce individuals of an endangered or threatened species in areas where there was local opposition to the reintroduction. This is discussed in greater detail later in this document under Issue 1.

The Experimental Population Area does not currently contain ferrets; the proposed nonessential experimental population will include all ferrets taken from captivity and released into the Experimental Population Area and all their progeny.

This reintroduction effort will be the Service's second attempt to reintroduce the black-footed ferret into the wild. The biological and logistical problems of reintroducing and recovering this

species that remain to be addressed are significant. However, reintroduction attempts must continue or the captive population may become overly adapted to captivity. In the long run, exclusive captivity likely would increase the risk of ferrets losing important wild survival instincts and reduce the likelihood of successful reintroduction and ultimately recovery of the species.

Fifty-eight percent of the land in the Experimental Population Area is privately managed or on the Fort Belknap Indian Reservation. The nonessential experimental population designation will facilitate reestablishment of this species in the wild by easing landowner concerns about the effects on their activities of protection measures for reintroduced ferrets. The experimental population designation is less restrictive than the "endangered" designation and provides a more flexible management framework for protecting and recovering black-footed ferrets, thereby reassuring non-Federal landowners that they may continue their current lifestyles.

Resource management plans for U.S. Bureau of Land Management (BLM) lands within the Reintroduction Area provide for prairie dog management for black-footed ferrets while maintaining traditional multiple uses such as prairie dog shooting, grazing, oil and gas development, etc. The Charles M. Russell NWR, the primary ferret release site, will serve as a refugium where land management conflicts can be avoided. Management plans for the refuge allow for prairie dog expansion but does not allow prairie dog shooting; cattle grazing is either restricted or absent.

First attempts to reintroduce black-footed ferrets into the wild (including the Shirley Basin and Montana reintroductions) will place great emphasis on developing and improving reintroduction techniques. This applied research will lay the groundwork for a general black-footed ferret reintroduction and management protocol for other reintroduction sites, which the Service, together with other State and Federal authorities, expects to develop after initial reintroductions. Thus, an inability to establish a Montana population in the first few years of effort will not be considered to "appreciably reduce the likelihood of the survival of the species in the wild" (50 CFR 17.80), because the knowledge and data obtained during this reintroduction effort in black-tailed prairie dog colonies will be used to improve reintroduction techniques, thereby enhancing the probability of successful future reintroductions at other sites.

As ferret reintroduction efforts progress, the Service will evaluate each potential reintroduction site to determine whether subsequently released populations should be proposed as nonessential experimental or essential experimental populations or should retain their endangered status. The Service believes that at least 10 individual wild populations are needed to ensure the immediate survival and downlisting of this species to threatened status (U.S. Fish and Wildlife Service 1988).

Location of Reintroduced Population

Under section 10(j) of the Act, an experimental population must be wholly separate geographically from nonexperimental populations of the same species. Since the last known member of the original Meeteetse ferret population was captured for inclusion in the captive population in 1987, no ferrets other than those released in Wyoming in 1991, 1992, and 1993 have been confirmed anywhere in the wild. There is a chance that ferrets may still exist in the wild outside the Shirley Basin site. However, thousands of hours of ferret survey and habitat evaluation work have been conducted in the general vicinity of the proposed Montana reintroduction site and no wild ferrets have been found. Based on these data, the Service does not believe that the reintroduced population will overlap with any wild population of the species.

The Experimental Population Area lies between the Milk River on the north and the Missouri River on the south in Phillips and Blaine Counties. The eastern boundary is the Phillips/Valley County line. The west boundary follows the west edge of the Reservation to the southwestern corner, then extends south to the Missouri River along the Phillips/Blaine County line.

Since 1978, 175 ferret surveys at 138 different prairie dog colonies covering over 14,351 hectares (35,463 acres) have been conducted in the Experimental Population Area. Wildlife biologists spent approximately 14,122 hours on all prairie dog colonies within the area performing activities related to ferrets, prairie dogs, or species associated with prairie dogs, and local residents were extensively contacted and solicited for ferret observations. No live ferrets were located. Based on this survey work, it is reasonable to conclude that wild black-footed ferrets no longer exist in the area encompassed by the Experimental Population Area boundary. Consequently, barring strong evidence to the contrary (such as a wild ferret being found in the Experimental Population Area before the first breeding season), the Service with this final rulemaking administratively determines that wild ferrets no longer exist in the Experimental Population Area prior to this release.

The Reintroduction Area will serve as the core recovery area for the north-central Montana experimental population; i.e., efforts to maintain ferret and prairie dog populations will focus on the Reintroduction Area. The Reintroduction Area covers 206,000 hectares (502,000 acres) composed of approximately 40 percent BLM-administered lands, 30 percent private lands, 20 percent National Wildlife Refuge System lands, and 10 percent lands managed by the Corps of Engineers, the Bureau of Reclamation, or the Montana Department of State Lands. Within the Reintroduction Area are approximately 6,201 hectares (15,068 acres) of prairie dog colonies: 2,718 BLM hectares (6,604 acres); 1,851 Charles M. Russell National Wildlife Refuge hectares (4,500 est. acres); 349 Department of State Land hectares (848 acres); and 1,282 private hectares (3,116 acres). Under this final rule, ferrets that move to habitat outside the Reintroduction Area, including habitat on the Reservation, could be returned to the Reintroduction Area.

Prior to the first breeding season following the first ferret releases in Montana, all marked ferrets inhabiting the Experimental Population Area will comprise the nonessential experimental population. During and after the first breeding season, all ferrets inhabiting the Experimental Population Area, including all progeny of released animals, will comprise the nonessential experimental population.

There are significant barriers to ferret movement within and bordering the Experimental Population Area. These barriers are the Missouri River and, most importantly, the paucity of significant prairie dog colonies outside the Experimental Population Area. These movement barriers are expected to impede ferret dispersal within and outside the Experimental Population Area.

All ferrets released in the Reintroduction Area will be appropriately marked (e.g., with radio collars, PIT tags, or non-toxic paints). In the unlikely event that an unmarked ferret is found in the Experimental Population Area before the first breeding season (February-May 1995) following the fall 1994 release, a concerted effort will be initiated to find the location of the source wild population. This search will determine whether a wild population exists; if

such a population is confirmed, authorities will take appropriate cooperative action for its conservation. These actions would be guided by a "Final Contingency Plan for Disposition of Black-footed Ferrets Found in the Wild in Montana," developed by the Montana Department of Fish, Wildlife and Parks (MDFWP 1987); this plan calls for notification of Service and Department officials and affected landowners. If a wild ferret population was found, up to nine male and/or nonlactating female ferrets would be removed and transported to captive breeding facilities. The impact of the ongoing establishment of a nonessential experimental population in the Reintroduction Area on any newly found population would also be evaluated and appropriate action taken. In addition, any unmarked black-footed ferrets found outside the Experimental Population Area following the first breeding season will be "DNA fingerprinted" to determine if the individual(s) emigrated from the Experimental Population Area. If so, they would be returned to the Reintroduction Area or to captivity and become part of the captive breeding colony.

Management

The Montana ferret reintroduction project will be undertaken by the Service and the Department in accordance with the North-central Montana Black-footed Ferret Reintroduction and Management Plan (Management Plan) (MDFWP 1992). Copies may be obtained from the Montana Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620 (telephone 406/444-2535). This Management Plan will be updated as necessary. Details on the monitoring of prairie dogs and black-footed ferrets were discussed extensively in the proposed rule (58 FR 19220) but are not repeated here.

The Service will assist in ensuring that governmental agencies and the public are informed about the presence of ferrets in the affected area via public information and education programs and media. These programs also will address the precautions and care that should be taken in handling sick and injured ferrets. This will enhance effective treatment and care in handling specimens and, if dead ferrets are located, will ensure proper preservation of ferret remains. The finder or investigator will be requested to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

The Service will require that persons who take a ferret or who locate a dead, injured, or sick ferret immediately notify the State Supervisor, Fish and Wildlife Service, Ecological Services, Helena, Montana.

1. *Disease considerations*: Reintroduction will be reevaluated if an active case of canine distemper is documented in any wild mammal within 6 months prior to the scheduled reintroduction. Samples from approximately 20 coyotes will be obtained prior to reintroduction to determine if active canine distemper exists in the reintroduction area. Visitors and biologists will be discouraged from bringing dogs into the Reintroduction Area. Residents and hunters will be encouraged to vaccinate pets and report unusual wildlife behaviors and dead animals. Efforts are continuing to develop an effective long-term canine distemper vaccine for ferrets.

Ferrets will not be released into the Reintroduction Area or those already released will be relocated from the Reintroduction Area if the ferret habitat rating index (Biggins et al. 1993) falls below acceptable minimum levels as a result of sylvatic plague. Sylvatic plague has been documented in the proposed reintroduction area; therefore, monitoring will occur on a regular basis prior to and during the reintroduction effort. To the extent possible, strategies will be developed to enhance prairie dog recovery in areas impacted by plague.

2. *Prairie dog management*: The Service and Department will work cooperatively with landowners and land management agencies in the Reintroduction Area to: (a) Maintain an objective of 10,660 hectares (26,000 acres) of prairie dog habitat of mixed ownership, and (b) manage the prairie dog acreage at release sites at or below the 1988 survey level before ferrets are released (prairie dogs could be subject to control measures if their numbers exceed 1988 levels). Specific measures for managing the prairie dog ecosystem in the Reintroduction Area are described in the Management Plan. The Department, in cooperation with the Service, will coordinate prairie dog management programs, agendas, and the roles of participating agencies and individuals. A local Citizens Steering Committee will be used to assist the Department with this task. In areas where prairie dogs become a problem for the landowner, control techniques compatible with ferret recovery objectives could be implemented—e.g., through Environmental Protection Agency registered toxicants, nonlethal control methods (barriers, mechanical land treatment, water development, or grazing management) and shooting.

3. *Mortality*: Though efforts will be made to minimize ferret mortality during the reintroduction, significant mortality will inevitably occur as captive-raised animals adapt to the wild. Natural mortality from predators, fluctuating food availability, disease, hunting inexperience, etc., will be reduced though predator and prairie dog management, vaccination, soft release, supplemental feeding, and pre-release conditioning. Human-caused mortality will be reduced through information and education efforts directed at landowners and land users and review and cooperative management (where necessary) of human activities in the area.

A low level of mortality from "incidental take" (defined under the Act as take that is the result of, but not the purpose of, an otherwise lawful activity) is expected during the reintroduction because the program has been designed to work within the context of traditional land uses in the Reintroduction Area, such as grazing and ranching activities.

Incidental take (e.g., ferret injury or mortality) will be required to be reported immediately to the Service. The Service will investigate each case. If it is determined that a ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, such conduct will not be considered "knowing take" for the purpose of this regulation. Therefore, the Service will not seek legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

The biological opinion prepared on the reintroduction anticipates an incidental take level of 12 percent/year. If this level of incidental take is exceeded at any time within any year, the Service, in cooperation with the Department, will conduct an evaluation of incidental take and cooperatively develop and implement with landowners and land users measures to reduce incidental take.

Even if all released animals were to succumb to natural and human-caused mortality factors, this would not threaten the continued existence of the species, because the captive population is the species' primary population and could readily replace any animals lost in the reintroduction effort. This is consistent with the design of the reintroduced population as a nonessential experimental population. The choice for wildlife managers is either to risk the loss of surplus captive-bred ferrets during reintroduction efforts

designed to re-establish the species in the wild, or to keep all ferrets in the relative safety of captivity. The Service believes the long-term benefits to the species of establishing individual wild ferret populations outweighs the relatively minor risks associated with losses of surplus ferrets during reintroduction efforts.

4. *Special handling*: Under the special regulation [promulgated under authority of section 4(d) of the Act] that will accompany the experimental population designation, Service and Department employees and agents would be authorized to handle ferrets for scientific purposes (such as replacing radio collars); relocate ferrets to avoid conflict with human activities; relocate ferrets that have moved outside the Reintroduction Area when removal is necessary or requested; relocate ferrets within the Experimental Population Area to improve ferret survival and recovery prospects; relocate ferrets to future reintroduction sites; aid animals which are sick, injured, or orphaned; and salvage dead ferrets. If a ferret is determined to be unfit to remain in the wild, it would be returned to captivity. The Service would determine the disposition of sick, injured, orphaned, or dead ferrets.

5. *Coordination with landowners and land management agencies*: The Montana ferret reintroduction program was discussed with potentially affected State and Federal agencies in the proposed Reintroduction Area. A scoping effort to identify issues and concerns associated with the reintroduction was conducted prior to the development of the proposed rule, and a North-central Montana Working Group (Working Group) consisting of representatives from the Department, the Service, and BLM was assembled. The Working Group was instrumental in developing the reintroduction program and has acted as a recovery implementation group; it helped locate a suitable reintroduction area, defined the boundaries of the Experimental Population Area, identified issues and concerns, developed release protocols and research objectives, and made written recommendations. The Working Group's recommendations were incorporated into the Management Plan (MDFWP 1992).

The Working Group received assistance from the North-central Montana Black-footed Ferret Advisory Committee. This committee was established by the State of Montana and consisted of two representatives from the Animal and Plant Health Inspection Service, three from business, three landowners, the county agent for Phillips County, and representatives from the Montana Department of State Lands, the Montana Department of Agriculture, the Bureau of Indian Affairs, the National Wildlife Federation, the Fort Belknap Tribe, and the Yale School of Forestry and Environmental Studies. In addition, affected private land managers in the area were consulted and offered the opportunity to participate in development of the Management Plan. Public meetings concerning the proposed Montana ferret reintroduction were held in Missoula, Malta, Fort Belknap, Billings, and Miles City, Montana, in December 1991 to offer the general public in Montana the opportunity to learn about and comment on the reintroduction proposal. Although support for the reintroduction was expressed at the Miles City, Billings, and Missoula meetings, local residents within the Reintroduction Area did not support the project.

6. *Potential for conflict with oil and gas and mineral development activities*: Because all existing oil, gas, and mineral leases in the Reintroduction Area do not occur in prairie dog habitat, and the probability of new bentonite or oil and gas development is considered low, it is unlikely that oil and gas development in the Reintroduction Area would preclude establishment of a viable wild population of ferrets, even assuming full development of current oil and gas leases. If new oil or gas fields were developed in the Reintroduction Area, the Service, the Department, and BLM would work with affected companies to develop mutually agreeable means to avoid or mitigate potential adverse impacts from oil and gas activities on ferrets or their habitat. In addition, the Service is currently developing oil and gas guidelines for new leases and oil and gas projects proposed in prairie dog ecosystems managed for black-footed ferret recovery.

7. *Potential for conflict with grazing and recreational activities*: All BLM administered lands in the Reintroduction Area are included in grazing allotments. However, conflicts between grazing and ferret management are not anticipated on Federal lands, because current BLM rangeland management systems provide for prairie dog populations in grazed areas. No additional grazing restrictions will be placed on BLM lands with grazing allotments in the Reintroduction Area as a result of ferret reintroduction.

No restrictions in addition to existing requirements will be placed on prairie dog control activities by private landowners. Under the Management Plan, landowners can readily control prairie dogs on their lands. Elimination of prairie dogs on private or State lands within the Reintroduction Area would not prevent establishment of a self-sustaining ferret population, because sufficient prairie dog numbers to support such a population exist on Federal lands.

Recreational activities currently practiced in the Reintroduction Area (e.g., antelope hunting, prairie dog shooting, furbearer or predator trapping, and off-road vehicle recreation) are either unlikely to impact ferrets or, if negative impacts to ferrets are demonstrated, will be managed to avoid or minimize such impacts.

8. *Protection of ferrets*: Released ferrets will initially need protection from natural sources of mortality (predators, disease, inadequate prey, etc.) and from human-caused sources of mortality. Natural mortality will be reduced through pre-release conditioning, soft release, vaccination, predator control, management of prairie dog populations, etc. Human-caused mortality will be minimized by placing ferrets in an area with low human population density and relatively low development; by informing and working with local landowners, Federal land managers, developers, and recreationists to develop methods for conducting existing and planned activities in a manner compatible with ferret recovery; and by conferring with developers on proposed actions and providing recommendations that will reduce likely adverse impacts to ferrets.

A final biological opinion was prepared on this action to reintroduce ferrets into the Experimental Population Area and concluded that this action is not likely to jeopardize any listed species.

9. *Overall:* The designation of the north-central Montana ferret population as a nonessential experimental population and its associated management flexibility should encourage local acceptance of and cooperation with the reintroduction effort. The Service and Department consider the nonessential experimental population designation and accompanying special rule, the Management Plan, and the commitment to accommodate cooperatively planned oil, gas, and mineral exploration and development necessary to receive the cooperation of affected landowners, agencies, and citizens, and oil and gas, minerals, grazing, and recreational interests in the area.

10. *Effective date:* Pursuant to 5 U.S.C. 553(d)(3), this rule will take effect 30 days after publication. It is essential to the success of the

reintroduction effort that ferret releases commence in the fall of the year, when wild young ferrets typically would become independent of natal care and disperse. The Service hopes to begin initial ferret releases in the Montana Reintroduction Area in late September 1994.

Summary of Comments and Recommendations

In the April 13, 1993, proposed rule and associated notifications, all interested parties were invited to submit comments or recommendations concerning any aspect of the proposed rule that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, business and conservation organizations, and other interested parties were contacted and requested to comment. On April 22, 1993, the Service mailed letters notifying 368 persons and organizations of the proposed rule and solicited their comments. Of these 368 persons and organizations notified, all were provided copies of the proposed rule, and 350 were provided with a list of 8 offices where copies of the draft environmental assessment and Management Plan could be obtained. A detailed legal notice inviting public comment was published in the Phillips County News on April 28, 1993; the Billings Gazette on April 29, 1993; and the Great Falls Tribune on April 30, 1993. On April 19, 1993, a news release was mailed to 74 newspapers, 4 television stations, and 4 radio stations in Montana. Eight government offices (seven in Montana, one in Colorado) were identified as distribution points where one could obtain copies of the rule, draft Management Plan, and the draft environmental assessment. A public hearing on the proposed rule was held on May 24, 1993, in the Malta City Hall, Malta, Montana.

The Service received letters and/or oral comments from 41 commenters, including 2 State agencies, 3 county or local government offices, 7 businesses or business organizations, 10 conservation groups, and 19 individuals. Fifteen commenters supported a nonessential experimental reintroduction; six commenters opposed reintroduction; six commenters supported reintroduction under full protection of the Act; six commenters supported an essential experimental reintroduction; and two commenters did not support reintroduction but wanted a nonessential experimental designation if black-footed ferret reintroduction went forward. Comments of a similar nature or point are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below:

Issue 1: Should the reintroduced population be designated as a nonessential experimental population? Fifteen commenters supported the nonessential experimental designation, and 12 commenters supported a more restrictive designation based on their belief that a nonessential experimental designation was not justified and/or did not offer adequate protection to reintroduced ferrets or ferret habitat. Two commenters indicated that using the captive breeding population as the only essential population violates the Act. One commenter believed the Service should designate at least one wild population of black-footed ferrets as essential to the continued existence of the species in the wild.

Response: The Service's rationale for designating the Montana ferret reintroduction as a nonessential experimental population was explained above under "Status of Reintroduced Population." Establishment of a wild population in the Experimental Population Area is not essential to the continued existence of the species in the wild. The donor captive population, which is the population whose loss would appreciably affect the likelihood of survival of the species in the wild, is secure and other reintroduction sites are being identified and readied.

The captive population is the primary species population. It has been protected against the threat of extinction from a single catastrophic event through splitting the captive population into seven widely separated subpopulations. Hence, loss of the experimental population would not threaten the species' survival.

The primary repository of genetic diversity for the species is the 240 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population; hence, any loss of reintroduced animals in this experimental population will not significantly impact the goal of preserving maximum genetic diversity in the species.

All animals lost during the reintroduction attempt can readily be replaced through captive breeding, as demonstrated by the rapid increase in the captive population over the past 6 years. Based on current population dynamics, 100 juvenile ferrets will likely be produced each year in excess of numbers needed to maintain 240 breeding adults in captivity.

There are no known populations of ferrets in the wild except for the nonessential experimental population reintroduced into the Shirley Basin area in Wyoming. The only other ferrets known to exist are in captive breeding facilities. Because the breeding program has been so successful, there are more ferrets in captivity than are needed for the breeding program or for ensuring the survival of the species. Ferrets that are the subject of this rule are surplus animals that the Service has determined are not needed for these purposes. Having a sufficient number of black-footed ferrets in the breeding program means that the Service will be able to continue to produce surplus ferrets for reintroductions and thus bring about the survival of the species in the wild.

Consequently, the captive breeding population is the population that is essential to the survival of the species in the wild. The nonessential designation is based on the Service's conclusion that those ferrets to be removed from captivity and reintroduced into the wild are not needed for the survival of the species in the wild. If the released animals are lost, they can be replaced with other black-footed ferrets produced in captivity.

Issue 2: Some commenters argued that because captive ferrets would be released into the wild, and there are no nonexperimental ferrets currently in the wild, and the only other ferrets in the wild are nonessential, therefore the loss of ferrets to be reintroduced into Montana would appreciably reduce the survival of the species in the wild. This criticism centers on the issue of whether the species will survive "in the wild."

Response: These commenters mistakenly focus on ferrets after they have been reintroduced instead of focusing on the donor population of ferrets in captive breeding facilities. The former are the ferrets which are being reclassified from endangered to nonessential experimental and which the Service has determined are not needed for the survival of the species in the wild. It is the black-footed ferrets in the breeding program that are essential to the survival of the species in the wild, because these are producing surplus animals that can be used for reintroductions to establish wild populations. Without the captive ferret population, no additional ferret reintroductions could occur and the outlook for survival of the species in the wild would be extremely uncertain at this time.

The Service's position is supported by the preamble to the final rule for establishing experimental populations (August 27, 1984; 49 FR 33885). It

explains that the organisms that will be reclassified as experimental are those which are to be removed from an existent source or donor population. Additionally, a comment on the proposed rule that preceded the final rule on experimental populations was that no species classified as endangered could have populations biologically nonessential to their survival. In its final rule, the Service disagreed with this comment and stated " * * * there can be situations where the status of the extant population is such that individuals can be removed to provide a donor source for reintroduction without creating adverse impacts upon the parent population. This is especially true if the captive propagation efforts are providing individuals for release into the wild."

Furthermore, the Service referred to the Conference Report, which is especially significant because the definition of "essential population" in the final rule is virtually identical to the language in the Conference Report. Congress explained, " * * * (T)he level of reduction necessary to constitute 'essentiality' is expected to vary among listed species and, in most cases, experimental populations will not be essential" [H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess., 34 (1982)].

The Senate report explains that the special regulations designating experimental populations are to be designed to address the "particular needs" of each experimental population and that the Secretary is "granted broad flexibility" in promulgating the special regulations [S. Rep. No. 97–418, 97th Cong., 2d Sess. 8 (1982)].

It also is important to recognize that one reason Congress amended the Act in 1982 was to provide for experimental populations. The House Report is instructive on this point. It states that reintroduction efforts had encountered strong opposition from the States and areas where species were to be reintroduced. Opponents were concerned that if introduced species were to be fully protected under the Act, then conflicts with existing uses would result and new development would be curtailed. Congress amended the Act to mitigate and alleviate such fears.

Issue 3: One commenter stated that the Service's position that only black-footed ferrets in the captive population will be fully protected by the Act is arbitrary, capricious, and contrary to the intent of Congress to work affirmatively for conservation of the species in the wild.

Response: The Service has not decided that black-footed ferrets in captivity are the only ferrets that will ever receive full protection under the Act. However, as discussed under Issue 1, the Service maintains that it has the authority under section 10(j) of the Act to designate released populations as "nonessential experimental" if such action will further the conservation of the species, and if the decision is based on the best scientific and commercial data available.

Issue 4: One commenter indicated that it is not appropriate to consider the captive population the essential population when the intent of the Act is the recovery of a given species in the wild rather than in captivity.

Response: The Service agrees that the intent of the Act is to achieve recovery of the species in the wild. However, as explained under Issue 1 and Issue 2, it is appropriate to consider the captive ferret population as the essential population, since reintroductions at this time depend on the surplus ferrets produced by captive animals. Reintroducing surplus animals from the captive population into north-central Montana as a nonessential experimental population, together with other future reintroductions, is expected to result in recovery of the species in the wild. The revised Black-footed Ferret Recovery Plan requires that 10 ferret populations be established before downlisting the species to threatened status can occur, and the captive population is necessary to establish these populations through the reintroduction process. Thus, the captive ferret population is essential to recovery of the species in the wild.

Issue 5: Two commenters stated that an "essential" designation provides greater protection for ferrets from impacts such as grazing, trapping, prairie dog hunting, and oil and gas development. Three commenters suggested that section 7 consultation provisions of an essential designation should be provided for black-footed ferret reintroductions in Montana.

Response: The Service agrees that an essential designation would provide for a more stringent review of these types of activities under section 7 of the Act than the planned nonessential designation. However, the Service is part of the Working Group that developed the Management Plan that will guide how these activities are carried out within the Experimental Population Area. Thus, the Service contributed substantially to the Management Plan and believes it provides adequate protection for ferrets during these activities and will lead to establishment of a black-footed ferret population in north-central Montana.

Issue 6: One commenter stated that no formal definition is given in the ruling or in Service regulations as to what constitutes a nonessential population. In light of extreme susceptibility of black-footed ferrets and prairie dogs to disease and other natural and human-caused threats, a population of genetically redundant individuals does not automatically make that population nonessential.

Response: The Service's final rule that established regulations for experimental populations (49 FR 33885) defines an essential experimental population as " * * * an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild." All other experimental populations are to be classified as nonessential (i.e., one whose loss would not be likely to appreciably reduce the likelihood of the survival of the species in the wild). As explained under Issue 1, the loss of the nonessential experimental population in north-central Montana will not appreciably reduce the likelihood of the survival of the species in the wild because other surplus black-footed ferrets in captivity could be used to reestablish this population or create additional populations in the wild. This is based on the success of the captive breeding program and expected availability of captive-bred offspring for current and future reintroductions. The Service agrees that a population of genetically redundant individuals does not automatically make that population nonessential but believes in this case the designation is appropriate.

Issue 7: One commenter believed that the Service should at least recognize the portion of ferret population on Federal lands as essential.

Response: As explained under Issue 1, the Service considers the captive ferret population to be the population which is essential to the survival of the species in the wild, because it produces the surplus animals needed for currently proposed reintroduction efforts. Failure or loss of the captive population would jeopardize all future reintroductions and the survival of the species itself. However, failure of the Montana reintroduced population would not directly affect the captive population or future ferret reintroductions. Thus, the Service sees little justification for designating a portion of the Montana population (in this case, the portion on Federal land) as essential experimental, since that portion would not be biologically segregated from the balance of the population, nor would it be essential to the survival of the species in the wild.

Issue 8: One commenter indicated that the nonessential experimental

designation is being proposed only to counter local opposition to black-footed ferret recovery and that this opposition is really countered by the majority of Americans' support for recovery of all endangered species.

Response: As explained under Issue 2, Congress incorporated the use of experimental populations into the Act in 1982 for the specific purpose of providing the Service with flexibility in reintroducing endangered or threatened species back into their historical habitat for the purpose of conservation of such species. The Service appreciates this flexibility, for in this case as in others it allows recovery to proceed at a faster pace than would be possible if the Service had to overcome the opposition to reintroducing the animals as endangered. Furthermore, because sufficient safeguards are built into reintroduction and management plans, the Service believes that emphasis is better placed on reintroducing captive animals into the wild to establish populations and bring about recovery as soon as possible, than on arguing about the term under which the animals will be reintroduced.

The Service agrees that there is a high degree of support from the American public for the recovery of endangered species. However, opposition to the reintroduction of an endangered or threatened species is often most pronounced from residents of the area in which a reintroduction will occur. As discussed earlier, it was this opposition that persuaded Congress to amend the Act in 1982 to allow for experimental populations.

Issue 9: One commenter stated that the captive population has kept this species from extinction but reintroduction to the wild is necessary for long-term survival and successful reintroduction cannot be accomplished with a nonessential designation.

Response: Because no wild ferret populations have been found since the last individuals in the Meeteetse, Wyoming, population were taken into captivity in 1986 and 1987 to save them from canine distemper, the captive population may indeed have saved the species from extinction. Reintroduction is certainly necessary to bring about long-term survival in the wild. However, the Service believes that successful reintroduction can be accomplished with a nonessential designation, based on the Management Plan and the accompanying special rule. The 1988 Recovery Plan states as one of its recovery goals, the development of 10 populations. The recovery plan does not state under what designation those populations must be.

Issue 10: One commenter pointed out that the proposed rule states that, "As additional wild populations become established, the captive population will diminish in relative importance and wild populations will increase in relative importance in the overall species recovery effort." This places an increased importance on the Montana population, thus making it all the more essential to recovery of the species "in the wild."

Response: The Service agrees that as wild populations become established, and the number of animals available in the wild increases, the captive population will diminish in relative importance to survival of the species in the wild. However, at this time loss of the captive population would be catastrophic, since few wild ferrets (those at the Shirley Basin site) would be available to re-establish the captive population. Furthermore, the captive population will remain important until establishment of the 10 wild populations needed for recovery is accomplished, both as a source of animals for reintroduction and as insurance against stochastic environmental events in wild populations. Conversely, the planned Montana population can be readily established or re-established from the captive population. Thus, the Service considers the captive population to be far more important to the survival of the species in the wild than the planned Montana population. Whether the Montana population is essential to recovery of the species "in the wild" was discussed under Issue 2.

Issue 11: One commenter indicated that (1) continued captivity increases the risk of animals losing important wild survival instincts and reduces the likelihood of successful reintroduction and recovery; (2) the ability for black-footed ferrets within a wild population to maintain their instinctive skills highlights the importance of wild populations; and (3) the added protection of essential designation would better allow animals the freedom to practice these skills.

Response: The Service agrees that it is important to move ahead with the reintroduction of black-footed ferrets produced in captivity as soon as possible to decrease the risk of ferrets losing important survival skills. However, the Service also believes that sufficient protection has been built into the Management Plan and the accompanying special rule in this document to allow a sufficient number of animals to survive to utilize these skills.

Issue 12: Two commenters suggested that full protection of the Act is necessary so the opportunity to designate the Experimental Population Area as critical habitat is provided.

Response: The Service recognizes that critical habitat can be designated for an endangered or essential experimental population, but not for a nonessential experimental population. However, the Service believes that the Management Plan and the accompanying special rule in this document provides sufficient protection for this nonessential experimental population. Furthermore, the Service knows from past experience that the designation of critical habitat often faces significant local opposition. As discussed under Issue 2, the experimental population designation was amended into the Act by Congress in 1982 to alleviate opposition to the reintroduction of species listed under the Act.

Issue 13: One commenter questioned how the Service can declare the black-footed ferret recovered in 10–15 years if all populations in the wild are "nonessential experimental." Will reintroduced ferret populations in other states have full endangered species status? Two commenters objected that the Service did not indicate under what circumstances black-footed ferret populations will be considered "essential" in the future. They believed the Service should discuss biological and social parameters that, when met, will move reintroduced populations from nonessential to essential.

Response: Perhaps the issue of how population designation and recovery goals relate to each other should be clarified. Under the revised Black-footed Ferret Recovery Plan, the species may be downlisted from endangered to threatened when 10 ferret populations, each with at least 30 breeding adults, are established. Thus, downlisting is based on biological parameters (e.g., ferret numbers, density, survival, recruitment, habitat quality and quantity, etc.) and population stability. The Recovery Plan makes no distinction as to how these populations are designated; once biological criteria are satisfied, each reintroduced population will count toward recovery whether it is designated as endangered, essential experimental, or nonessential experimental. Furthermore, it is erroneous to assume that a nonessential experimental population is unprotected. While the special rule under section 4(d) of the Act will allow management flexibility for the planned Montana reintroduction, it also maintains many of the essential protections of the Act. With respect to the second portion of

the question, whether black-footed ferret populations reintroduced into other states will have full endangered status or be designated as essential experimental populations remains to be determined and will be based on the circumstances of each reintroduction.

Issue 14: One commenter indicated that a historic precedent will be set if the Service establishes that once a species has been declared extinct in the wild, and only exists in captive breeding facilities, that it will never again receive full protection of the Act when it is reintroduced into the wild.

Response: The Service disagrees that a historic precedent is being set. The Service has not declared the black-footed ferret extinct in the wild, nor has it said that the species will never again receive full protection of the Act when it is reintroduced into the wild. The designation of future reintroductions of ferrets and other species will depend on the specifics of those situations and not on how the Service designated the Shirley Basin or Montana ferret reintroduced populations.

Issue 15: One commenter suggested that the rule does not address how the Service plans to address long-term viability of ferrets in the wild. The commenter also stated that until then, all reintroductions should be essential.

Response: The Service has addressed the long-term viability of ferrets in the wild through recovery goals and objectives described in the 1988 revised Black-footed Ferret Recovery Plan. This plan identifies objectives that must be met to downlist the species to threatened, which in turn would ensure the long-term viability of the species in the wild. The revised recovery plan reflects current information and recovery objectives, and outlines steps for recovery that, when accomplished, will provide for viable black-footed ferret populations in captivity and within its historical range. These objectives include:

(1) Increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991 (this goal was subsequently changed to 240 and has been achieved);

(2) Establishing a prebreeding census population of 1,500 free ranging black-footed ferret breeding adults in 10 or more populations with no fewer than 30 breeding adults in any population by the year 2010; and

(3) Encouraging the widest possible distribution of reintroduced black-footed ferret populations.

It is the Service's opinion that the Recovery Plan will continue to be revised to reflect future requirements and direction to ensure recovery of the black-footed ferret in the wild. In addition, the Service plans to develop a national strategy for implementing the ferret reintroduction program, based in part on initial reintroduction efforts. This strategy would outline the specific methods and means necessary to achieve recovery objectives cited in the Recovery Plan. See Issue 1 and Issue 2 for a further discussion of essential and nonessential experimental designations.

Issue 16: One commenter suggested that the Service develop an overall strategy regarding ferret reintroduction, which would include criteria for reintroduced population designations and a programmatic plan to implement reintroductions.

Response: The Service agrees. As explained in Issue 15, it is working toward a national reintroduction strategy that will address specific procedures for reaching objectives outlined in the Service's Black-footed Ferret Recovery Plan first developed in 1978 and revised in 1988.

Issue 17: One commenter stated that the Service has not adequately considered what effect potential loss of the experimental population will have on the species as a whole.

Response: The Service stated in the proposed rule that even if all ferrets released in the Montana reintroduction were to succumb to natural or human-caused mortality factors, this would not threaten the continued existence of the species. Unless the biological status of the captive ferret population changes significantly, it is the species' primary population and could readily replace any animals lost in the reintroduction effort. This is consistent with the designation of the Montana ferret reintroduction as a nonessential experimental population and remains the Service's position with respect to the captive population and planned Montana population.

Issue 18: Does the nonessential experimental designation and/or the Management Plan for the north-central Montana reintroduction provide adequate protection of ferret habitat? One commenter stated that it did not. Another commenter suggested the nonessential experimental designation appears to be an attempt to avoid restrictions on the kinds of human activities that led to loss of black-footed ferrets in the first place. Two commenters expressed concern that prairie dog shooting, predator trapping, off-road vehicle use, lead shot poisoning, and accidental trapping will adversely affect black-footed ferrets.

Response: The Service and the Department have worked with landowners and land users to develop a management system wherein black-footed ferrets and human activities can coexist. This does not compare to human activities in black-footed ferret habitat in the past, which were relatively unregulated. If mixed-ownership sites can be used successfully for reintroduction, this is likely to increase local acceptance at future reintroduction sites, augment the number of sites deemed potentially suitable for reintroduction purposes, and increase the species' chances for recovery.

The Charles M. Russell National Wildlife Refuge will serve as a refugium in the Reintroduction Area where prairie dog shooting, off-road vehicle use, predator trapping, and trapping will be prohibited. On BLM lands, these activities are addressed in the Judith-Valley-Phillips Resource Management Plan and Environmental Impact Statement (JVP–RMP/EIS) (BLM 1991). BLM is committed to managing existing prairie dog towns and distribution on its lands for black-footed ferrets and associated species. BLM plans to designate prairie dog towns on BLM land within identified reintroduction areas as Areas of Critical Environmental Concern. BLM also plans to manage prairie dog shooting before and after ferret reintroduction; prairie dog shooting may temporarily be prohibited in prairie dog towns where black-footed ferret reintroduction is occurring, and would be managed in towns subsequently occupied by ferrets.

Issue 19: Has there been adequate coordination with the affected public during planning and consideration of this ferret reintroduction? One commenter questioned this and suggested that the Department of the Interior should increase local and State involvement before embarking on a project of this magnitude. Another commenter recommended that a Citizen's Steering Committee be part of black-footed ferret reintroduction efforts in the future.

Response: The North-central Montana Working Group first introduced the concept of ferret recovery to the general public at an open meeting in southern Phillips County in 1985. BLM subsequently initiated efforts to identify and address concerns of the public through the formation of a Prairie Dog/Black-footed Ferret Coordinated Resources Management Planning Group as part of the ongoing JVP–RMP/EIS. Additionally, during the period of July 15 to October 5, 1990, the Proposed Action was discussed with 53 ranchers having private land and/or BLM-administered grazing leases within the Reintroduction Area. Information

regarding the JVP–RMP/EIS process and the black-footed ferret reintroduction proposal was provided to ranchers by Department, BLM, and Service biologists. Public meetings in Montana were held in Missoula on December 2, 1991; Malta on December 9; Fort Belknap on December 10; Billings on December 11; and Miles City on December 12. These meetings offered the general public an opportunity to review and comment on the reintroduction proposal.

Procedures the Service used to disseminate notice of the reintroduction and copies of the proposed rule to designate the Montana ferret population as a nonessential experimental population, together with the draft environmental assessment, were described earlier. Copies of the final rule, Management Plan, and final environmental assessment will be provided to landowners, land users, and others requesting copies.

The Department and the Service intends to develop reasonable measures to accommodate landowners and land users still concerned about possible negative impacts to their operations as a result of ferret reintroduction.

As the Montana black-footed ferret reintroduction progresses, the Service will utilize recommendations from the Working Group to help guide the reintroduction. In addition, the Department has formed a local Steering Committee to assist in implementing the Management Plan. The Steering Committee consists of representatives of landowner, business, and other interest groups.

Issue 20: Will the government change the nonessential experimental designation sometime in the future? This concern was expressed by one commenter.

Response: Once this final rule goes into effect, changing the nonessential experimental designation of the north-central Montana ferret population would require a new rulemaking process, which would include a proposed rule, a public comment period, public meetings, National Environmental Policy Act compliance, and other documentation before a final rule to change the designation could be published. Under the experimental population regulations (50 CFR 17 Subpart H), any rule designating an experimental population must provide "* * * a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species." The 5-year evaluation noted in section 17.84(g)(10) of the proposed rule is intended to be a milestone in this required periodic review and evaluation process, and will be a review of the biological success of the reintroduction effort. If determined to be less than successful, the Service and the Department will modify the reintroduction protocol and/or the strategies within the Management Plan to improve ferret survival and/or recruitment, with the involvement of affected landowners and land managers. If the experiment is extremely unsuccessful, the Service and Department may consider a temporary hold on releasing ferrets into the Reintroduction Area until better release or management techniques are developed. The 5-year evaluation will not include an evaluation to determine whether the population should be reclassified.

The Service does not foresee any likely situation, except for eventual delisting of the species, that would call for altering the nonessential experimental status of the Montana ferret population. Should any such alteration prove necessary, however, it is possible that it would not change ferret management on private lands. If the designation changes and it is necessary to substantially modify ferret management on private lands, any private landowner who consented to ferret reintroduction on his lands would be permitted to terminate his consent and the ferrets would, at such request, be relocated.

Issue 21: Should the final rule incorporate specific management guidance regarding implementation of the experimental population? One commenter recommended that this should be done and suggested that guidance covering prairie dog shooting; leghold traps and snares; use of zinc phosphide, strychnine, and fumigants for prairie dog control; animal damage control; and incidental take provisions be included. Three commenters suggested that ranchers must have control of prairie dogs to prevent them from becoming an economic burden and that control of prairie dogs that move from Federal to private lands should be provided.

Response: Guidance addressing these management issues is included in the Management Plan. The Management Plan is referenced in the accompanying special rule as the document under which the nonessential experimental population will be managed. However, because the Management Plan will be dynamic in nature and updated as necessary, the rule refers to the Management Plan in a general sense rather than incorporating extensive management guidance. This will allow revision of management practices without undertaking a new rulemaking.

Issue 22: Should the agreements between the Service and private landowners contain provisions to require removal of ferrets at the landowners' request and an "escape clause" to allow landowners to terminate agreements? One commenter suggested that any agreement should contain these provisions, as well as provisions regulating access to private property. Two commenters suggested that the reintroduction could adversely affect private property rights through land use restrictions under the Act.

Response: The designation of the reintroduced population as nonessential experimental, the accompanying special rule, and the Management Plan provide a means and system to reintroduce black-footed ferrets without affecting use of private lands. The Management Plan [Land Management Issues, section 1.(a)] states that black-footed ferret reintroduction does not supersede or reduce the right of private landowners to manage their property and that management actions will be implemented on private lands only with landowner approval. Section 1.(d) states that black-footed ferrets on private land in the Experimental Population Area will always be relocated if the affected landowner so requests.

Section 17.81(d) of the experimental population regulations (50 CFR 17, Subpart H) states, "Any regulation promulgated pursuant to this section shall, to the maximum extent practicable, represent an agreement between the Fish and Wildlife Service, the affected State and Federal agencies and persons holding any interest in land which may be affected by the establishment of an experimental population." The Service believes that this special rule acts in part as an agreement between the Service and affected parties. The Department may choose to enter into separate agreements with landowners during implementation of the Management Plan.

The Service and the Department will continue to work directly with affected parties within the framework of the experimental population designation and special rule and the Management Plan to make ferret recovery compatible with landowner and land user needs.

Issue 23: Should oil and gas guidelines be finalized before the north-central Montana nonessential experimental population is designated? One commenter urged that this be done. Another commenter was concerned that private lands that overlay Federal mineral, oil, and gas rights may be

subject to section 7 consultation requirements. (The term "oil and gas guidelines" in this question refers to guidelines being developed by the Service, in cooperation with BLM and the oil and gas industry, to ensure that oil and gas development is compatible with ferret reintroduction).

Response: The draft oil and gas guidelines do not need to be finalized before an initial ferret reintroduction attempt is made at the Montana site. Based on the projected low to moderate oil and gas development potential in the Reintroduction Area, and the siting of primary ferret release areas on the Charles M. Russell NWR, the Service believes there will be no significant conflicts between ferret recovery and ongoing oil and gas development. A general process for dealing with oil and gas development is outlined in the Management Plan, and mitigation measures will be negotiated on a case-by-case basis if a development proposal has the potential to adversely impact ferrets or their habitat.

Issue 24: One commenter was concerned as to whether any action that could be deemed a "taking" of a black-footed ferret will result in prosecution with civil or criminal penalties.

Response: The Service agrees that this is a legitimate concern and has included a provision in the special rule to allow for the "incidental take" of ferrets (i.e., take that results from, but is not the purpose of, the carrying out of otherwise lawful activities). Discussion regarding incidental take is included earlier in this rule in the Management section under "Mortality."

Issue 25: Are the boundaries of the Experimental Population Area appropriate? Three commenters were concerned that the Experimental Population Area was too large. Another commenter thought the Experimental Population area was too small and that released black-footed ferrets would leave the area. Another questioned whether black-footed ferrets ever occurred within the Experimental Population Area.

Response: Black-footed ferrets were historically found throughout eastern Montana. Forty-four specimens collected between 1887 and 1984 were from Montana, which includes Phillips County. In 1983, a black-footed ferret skull was found within the Experimental Population Area on the Fort Belknap Indian Reservation.

The Experimental Population Area boundaries were drawn to include all potential black-footed ferret habitat (prairie dog colonies) within the North-central Montana Prairie Dog Complex. The Service believes that the lack of suitable habitat (i.e., contiguous prairie dog colonies or complexes) on the north, east, and west and the Missouri River on the south should deter the movement and establishment of black-footed ferrets outside the Experimental Population Area.

Section 17.84(9)(ii) of this rule describes disposition of black-footed ferrets found outside the Experimental Population Area in Montana.

Issue 26: Should the primary purpose of the Montana reintroduction be to test release techniques or to establish a viable black-footed ferret population? One commenter suggested that the primary purpose of the reintroduction should be to establish a black-footed ferret population, and two commenters thought offspring of reintroduced black-footed ferrets should be used for future reintroductions. One commenter also disagreed with the use of radio-telemetry to monitor ferrets, suggesting that radio collars adversely affect ferret behavior, thus increasing early mortality. This commenter also suggested that lack of predator monitoring would confound the meaning of predation-caused mortality data, that sufficient data already exists to demonstrate expected behavior of cage-reared ferrets, and that other, less obtrusive techniques than radio collars are available to monitor the reintroduction effort. The commenter also believed the only difference between hard and soft release is that one group of ferrets will be held 127 days and another group 136 days. One commenter thought that telemetry could be used as a tool to increase ferret survival by returning ferrets to the release colony as soon as they leave the site.

Response: The purpose of the reintroduction is to implement a primary recovery action for the black-footed ferret and to evaluate release techniques. The Montana release will test ferret reintroduction techniques and, if fully successful, will result in a wild population within 5 years.

Releases of black-footed ferrets are considered experimental, both by legal definition and according to the chronological sequence of technique development described in the revised Black-footed Ferret Recovery Plan. The Recovery Plan (section 413) stresses identification of variables that could affect the outcome of release and measurement of the effect of those variables. The Recovery Plan also suggests employing valid statistical design for the experiments. Sections 42 and 43 detail experimental release needs and suggest reliance on mark/recapture and radio-telemetry. Section 44 describes operational reintroduction of ferrets. The recovery plan suggests that the first three releases should evaluate reintroduction success and release techniques. The Service does not interpret this to mean that ferret populations cannot become established during the initial releases, or even that the probability of establishment of a population will be lower. It does mean that learning about the process has a high priority in the Montana release. Testing rearing methodology and release techniques and establishing a viable black-footed ferret population are not mutually exclusive goals.

Testing of manipulative research methods on black-footed ferrets has historically generated much discussion. A cursory review of the literature turned up 11 papers (representing 10 authors in the period 1968–1974) suggesting increased use of manipulative methods on ferrets. Suggestions for this type of research came during a period when the black-footed ferret was regarded as nearly extinct; consequently, the risk/reward evaluation must have been greatly influenced by the perceived high value of each individual animal. Currently, genetically redundant black-footed ferrets are being produced in captivity. Nevertheless, manipulative research may be more valuable during the experimental reintroduction phase of the recovery program than at any previous time or at any time in the future. Problems identified at this time can be corrected and reintroduction strategies for future reintroductions can be refined.

One problem identified during the Wyoming ferret release was retaining animals at or near the reintroduction site. Loss of ferrets during this release was primarily due to long distance dispersal and death, with the latter mostly due to predation. Pre-release conditioning methods show promise in reducing dispersal, and a variation of pre-release conditioning is a proposed part of the experimental design of the Montana reintroduction. Soft-releases (i.e., providing cages, an acclimation period, and post-release food supply) have been used exclusively in past ferret releases at considerable effort and expense. There has been little assessment of the benefits of soft release, because such assessments must be comparative and no other release techniques have been tested. The experimental design for the Montana release includes the traditional soft release and a hard release (no acclimation period and no supplemental food). The contention that the survival of black-footed ferrets may be enhanced by holding animals for 10 days at the

release site to allow for acclimation and orientation is one of the elements being tested and is part of the experimental design. Ultimately, the goal is to compare efficiency of the three techniques (soft release, hard release, and hard release with pre-release conditioning) in terms of ferret establishment and survival at the reintroduction site relative to costs. In a more immediate sense, statistical null hypotheses being tested relate to lack of significant differences between the three groups in terms of several measurable behaviors. If sufficient black-footed ferrets are available, another group of black-footed ferrets will be released in an identical manner but without being radio-collared. Spotlighting, snow tracking and mark/recapture methods will be used to monitor mid- and long-term survival of both groups of animals.

Black-footed ferret releases in Montana will be the first reintroduction of this species in black-tailed prairie dog towns. The Service believes it is worthwhile to obtain as much detailed data as possible on black-footed ferret behavior, dispersal, and mortality within this habitat type. Radio-telemetry will provide the most detailed data. One of the recognized tradeoffs when using radio-telemetry is potential additional risk to the collared animals. Actual risk has not been assessed, but no mortality due to radio collars has been documented in 5 years of field studies on black-footed ferrets or 5 additional years of work on Siberian ferrets in Asia and the United States. Problems with radio collars (e.g., mud accumulation and degradation of material) have been greatly reduced during years of development and testing, and observations of telemetered ferrets in captivity and in the wild has not shown that radio collars adversely affect behavior.

Radio-telemetry also has been used to rescue and/or identify dispersing animals that may benefit by returning them to the release site. A radio-tagged black-footed ferret in Wyoming that was rehabilitated and relocated in 1991 was one of the two females that reproduced the following year.

Issue 27: One commenter suggested that all black-footed ferrets be released on Federal lands. Another suggested that, because private lands encompass 36 percent of the Experimental Population Area, private landowners are essential to the reintroduction program. A third suggested that endangered species protection can be better achieved by providing incentives to landowners rather than instituting land-use restrictions.

Response: The initial release of black-footed ferrets is being planned on Charles M. Russell NWR (Federal land). The Service also envisions that future releases would most likely be on national wildlife refuge land or Federal lands administered by the BLM. Black-footed ferrets would not be released on private lands without the support and permission of the landowner. The Service agrees that cooperation of private landowners is an essential part of the Montana black-footed ferret reintroduction program. The stated goal of the Management Plan is "To promote the recovery and delisting of the black-footed ferret (*Mustela nigripes*) by reintroducing and establishing a free-ranging, cooperatively managed, black-footed ferret population in the North-central Montana Complex in a way that is compatible with existing local economies and lifestyles and to maintain a positive working relationship with the local landowners." Strategies formulated in the Management Plan avoid conflicts with landowner operations. Black-footed ferret reintroduction does not supersede or reduce the right of private landowners to manage their property. Cooperative management of black-footed ferret habitat (prairie dog colonies) on private rangelands is encouraged. However, the use of private lands is not necessary for this black-footed ferret reintroduction.

Issue 28: One commenter expressed concern about the apparent linkage of the Montana rule to the Wyoming rule. The respondent understood that each reintroduction would be evaluated separately and a separate rulemaking would be completed for each site.

Response: The Service agrees. However, to conserve printing costs during the annual updating of title 50 of the U.S. Code of Federal Regulations, provisions common to both reintroductions are combined together and stated only once rather than repeating them for each Experimental Population Area in the accompanying special rule. But, provisions specific only to the Montana Experimental Population Area are presented in section 17.84(g)(9)(ii) of the special rule.

Issue 29: Four commenters questioned the Federal government's use of Pyreone dust to treat prairie dog burrows in an attempt to manage an active sylvatic plague epizootic. One commenter supported the effort.

Response: The Service and the BLM, after reviewing data on changes occurring since 1988 in prime black-footed ferret habitat on national wildlife refuge lands and public rangelands within the Experimental Population Area, implemented a program during June 1993 to treat fleas in prairie dog burrows on two potential black-footed ferret release sites. Data collected in 1992 showed a 52 percent reduction in total prairie dog acreage within the Reintroduction Area and elimination of three of five potential release sites as result of documented sylvatic plague. The treatment of prairie dog burrows was implemented on Federal lands as part of the Federal government's commitment to manage prairie dog populations at 1988 population levels. An environmental assessment was completed and a Finding of No Significant Impact and Record of Decision were signed by the Charles M. Russell National Wildlife Refuge Manager on May 20, 1993, and the BLM, Lewistown District Manager on May 24, 1993.

Issue 30: One commenter believed there is no documented evidence that conservation of black-footed ferrets will be promoted through reintroduction and suggested that further reintroduction be delayed until reintroductions in Wyoming are proven to be a success. An alternate position was taken by two commenters who were concerned that black-footed ferrets in the captive population may be euthanized because breeding facilities are nearing capacity, and recommended that additional black-footed ferrets be released in the wild rather than establishing another captive facility.

Response: The Service disagrees that conservation of black-footed ferrets will not be promoted through reintroduction into the wild. The Black-footed Ferret Recovery Plan was updated in 1988 to provide a more up-to-date blueprint for actions to recover the species. Among other changes, the species' recovery goal was updated to include establishment of 10 or more black-footed ferret populations, each with at least 30 breeding adults (see Issue 15).

The Service is actively pursuing these recovery goals by encouraging establishment of cooperatively developed reintroduction sites, and results from black-footed ferret reintroduction in Wyoming in 1991 and 1992 are encouraging. Delays in re-establishing black-footed ferrets in the wild would not be in the long-term interest of recovery of this species in the wild.

The Service's intent is to secure sufficient release sites so that black-footed ferrets in excess of the captive population needs can be released in the wild. The Service does not envision that the captive population will produce black-footed ferrets in excess of those needed for the reintroduction program,

scientific purposes and display, and has no plans to euthanize animals in captivity.

Issue 31: Should the Service use a 50 percent reduction in the ferret habitat rating (Biggins et. al. 1993) as a criteria for re-evaluation of the Montana reintroduction program?

Response: The Service believes that re-evaluation of the program when a 50 percent reduction in the black-footed ferret family rating has occurred is appropriate. A 50 percent reduction in the black-footed ferret habitat rating index does not mean the Reintroduction Area would not be a viable reintroduction site, only that the quality of remaining habitat and viability of the site should be reassessed. Black-footed ferret habitat in the Reintroduction Area is currently being surveyed and the black-footed ferret habitat rating index will be determined using the 1994 data. If a 50 percent reduction in black-footed ferret family rating has occurred, the viability of the site will be reevaluated prior to the scheduled 1994 release.

Issue 32: Should the reintroduction protocol section in the proposed rule be discussed in more detail? One commenter suggested it should be.

Response: The Service does not believe it is necessary to provide more detail in the special rule. The referenced section describes the anticipated release strategy and techniques that will be used. Site specific details will be modified annually prior to each year's release and will utilize information obtained from previous releases. Detailed release methods for each year's release in the Montana program will be included in a protocol prepared prior to each release.

Issue 33: One commenter suggested that the following language be added to the rule: "There will be no loss of livestock AUM's [Animal Unit Months] on BLM land in the reintroduction area due to ferret reintroduction."

Response: Part 7 of the Supplementary Information section of this rule addresses grazing on public lands, stating: "No additional grazing restrictions will be placed on BLM lands with grazing allotments in the Reintroduction Area as a result of ferret reintroduction."

Issue 34: One commenter disagreed with the statement in the rule that, "Decreased animal unit months for livestock would not benefit prairie dog populations and would not be recommended as a tool for ferret management."

Response: Grazing by livestock does not in itself adversely affect prairie dog populations. Conversely, livestock grazing can create conditions that enhance black-tailed prairie dog populations by reducing grass cover and increasing the distance across which prairie dogs can spot and escape predators.

Issue 35: Four commenters were opposed to the money being spent on ferret reintroduction and suggested that the money could better be spent on access roads or recreation sites on the Charles M. Russell National Wildlife Refuge. Four persons suggested the reintroduction will affect the economic stability of Phillips County and did not support changes in current recreation, grazing, prairie dog shooting, hunting, or potential bentonite mining activities.

Response: The Service is responsible under the Act for recovering the black-footed ferret. Because there are no known natural wild populations, reintroductions are necessary to recover the species.

The Service disagrees that the economic stability of Phillips County will be affected as a result of the black-footed ferret reintroduction. Some increase in visitor use of the Reintroduction Area by researchers and members of the public interested in observing or photographing black-footed ferrets is anticipated when ferrets are reintroduced. The level of this increase cannot be determined nor can the consequences to the local economy, though economic impacts of increased visitor use is likely to be beneficial rather than adverse. No significant changes in recreation, grazing, prairie dog shooting, hunting, or potential mining activities have been projected. The Management Plan addresses how each of these activities will be managed within the Reintroduction Area.

Issue 36: Two commenters felt that black-footed ferrets should be given full protection under the Act as a means of conserving the long-term viability of the entire prairie dog grassland ecosystem.

Response: Although conserving the long-term viability of the entire prairie dog grassland ecosystem may be an admirable goal, the purpose of this nonessential experimental population is to implement a recovery action for the black-footed ferret. The reasons for not providing reintroduced ferrets full protection under the Act are discussed earlier in this rule.

Issue 37: One commenter suggested that more than one black-footed ferret probably died from the plague in Wyoming.

Response: To the best of the Service's knowledge, only one black-footed ferret died of sylvatic plague in Wyoming.

Issue 38: One commenter expressed support for the Baucus-Chafee Endangered Species Act reauthorization bill. The commenter also supported changes in the Act that would include economic and social impact studies to determine the extent of adverse economic effects resulting from listing of threatened and endangered species.

Response: This rulemaking does not address reauthorization of the Act.

National Environmental Policy Act

A final environmental assessment as defined under the authority of the National Environmental Policy Act of 1969 has been prepared and is available to the public at the Service offices identified in the **ADDRESSES** section. This assessment formed the basis for the decision that the planned Montana black-footed ferret reintroduction is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Required Determinations

This final rule was not subject to Office of Management and Budget review under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action and the rule contains no record-keeping requirements, as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

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Authors

The principal authors of this rule are Dennis Christopherson and Ronald Naten (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by revising the existing two entries for "Ferret, black-footed" under "MAMMALS" to read as shown below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*		*	*
Ferret, black-footed	*Mustela nigripes*	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population below.	E	1, 3, 433, 543, 544	NA	NA
Do	do	do	U.S.A. (specific portions of Wyoming, Montana, and South Dakota).	XN	433, 543, 544	NA	17.84(g)
*	*	*	*	*		*	*

3. Section 17.84 is amended by revising the text of paragraph (g) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(g) Black-footed ferret (*Mustela nigripes*)

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i), (g)(9)(ii), and (g)(9)(iii) of this section are nonessential experimental populations. Each of these populations will be managed in accordance with their respective management plans.

(2) No person may take this species in the wild in the experimental population areas except as provided in paragraphs (g)(3), (4), (5), and (10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under § 17.32 may take black-footed ferrets in the wild in the experimental population areas.

(4) Any employee or agent of the Service or appropriate State wildlife agency, who is designated for such purposes, when acting in the course of official duties, may take a black-footed ferret from the wild in the experimental population areas if such action is necessary:

(i) For scientific purposes;

(ii) To relocate a ferret to avoid conflict with human activities;

(iii) To relocate a ferret that has moved outside the Reintroduction Area when removal is necessary to protect the ferret, or is requested by an affected landowner or land manager, or whose removal is requested pursuant to paragraph (g)(12) of this section;

(iv) To relocate ferrets within the experimental population areas to improve ferret survival and recovery prospects;

(v) To relocate ferrets from the experimental population areas into other ferret reintroduction areas or captivity;

(vi) To aid a sick, injured, or orphaned animal; or

(vii) To salvage a dead specimen for scientific purposes.

(5) A person may take a ferret in the wild within the experimental population areas provided such take is incidental to, and not the purpose of, the carrying out of an otherwise lawful

activity and if such ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct. Such conduct will not be considered "knowing take" for purposes of this regulation, and the Service will not take legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

(6) Any taking pursuant to paragraphs (g)(3), (4) (vi) and (vii), and (5) of this section must be reported immediately to the appropriate Service Field Supervisor, who will determine the disposition of any live or dead specimens.

(i) Such taking in the Shirley Basin/Medicine Bow experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming (telephone: 307/772–2374).

(ii) Such taking in the Conata Basin/Badlands experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224–8693).

(iii) Such taking in the north-central Montana experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Helena, Montana (telephone: 406/449–5225).

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any ferret or part thereof from the experimental populations taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraphs (g)(2) and (7) of this section.

(9) The sites for reintroduction of black-footed ferrets are within the historical range of the species.

(i) The Shirley Basin/Medicine Bow Management Area is shown on the attached map and will be considered the core recovery area for the species in southeastern Wyoming. The boundaries of the nonessential experimental population will be that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany Counties (see Wyoming map). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will comprise the nonessential experimental population thereafter.

(ii) The Conata Basin/Badlands Reintroduction Area is shown on the attached map for South Dakota and will be considered the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area will be north of State Highway 44 and BIA Highway 2 east of the Cheyenne River and BIA Highway 41, south of I–90, and west of State Highway 73 within Pennington, Shannon, and Jackson Counties, South Dakota. Any black-footed ferret found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of black-footed ferrets in the Reintroduction Area. A black-footed ferret occurring outside the experimental population area in South Dakota would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following action if necessary:

(A) If an animal is genetically determined to have originated from the experimental population, it may be returned to the Reintroduction Area or to a captive facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine black-footed ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(iii) The North-central Montana Reintroduction Area is shown on the attached map for Montana and will be considered the core recovery area for this species in north-central Montana. The boundaries of the nonessential experimental population will be those parts of Phillips and Blaine Counties, Montana, described as the area bounded on the north beginning at the northwest corner of the Fort Belknap Indian Reservation on the Milk River; east following the Milk River to the east Phillips County line; then south along said line to the Missouri River; then west along the Missouri River to the west boundary of Phillips County; then north along said county line to the west boundary of Fort Belknap Indian Reservation; then further north along said boundary to the point of origin at the Milk River. All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will thereafter comprise the nonessential experimental population. A black-footed ferret occurring outside the experimental area in Montana would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may be done in the following manner if necessary.

(A) If an animal is genetically determined to have originated from the experimental population, it would be returned to the reintroduction area or to a captive facility.

(B) If an animal is determined not to be genetically related to the experimental population, then under an existing contingency plan, up to nine ferrets may be taken for use in the captive breeding program.

(10) The reintroduced populations will be continually monitored during the life of the project, including the use of radio-telemetry and other remote sensing devices, as appropriate. All released animals will be vaccinated against diseases prevalent in mustelids, as appropriate, prior to release. Any animal which is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or the Department or their agents and given appropriate care. Such an animal may be released back to its respective reintroduction area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(11) The status of each experimental population will be re-evaluated within the first 5 years after the first year of release of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of individuals released into the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described areas. Once recovery goals are met for delisting the species, a rule will be proposed to address delisting.

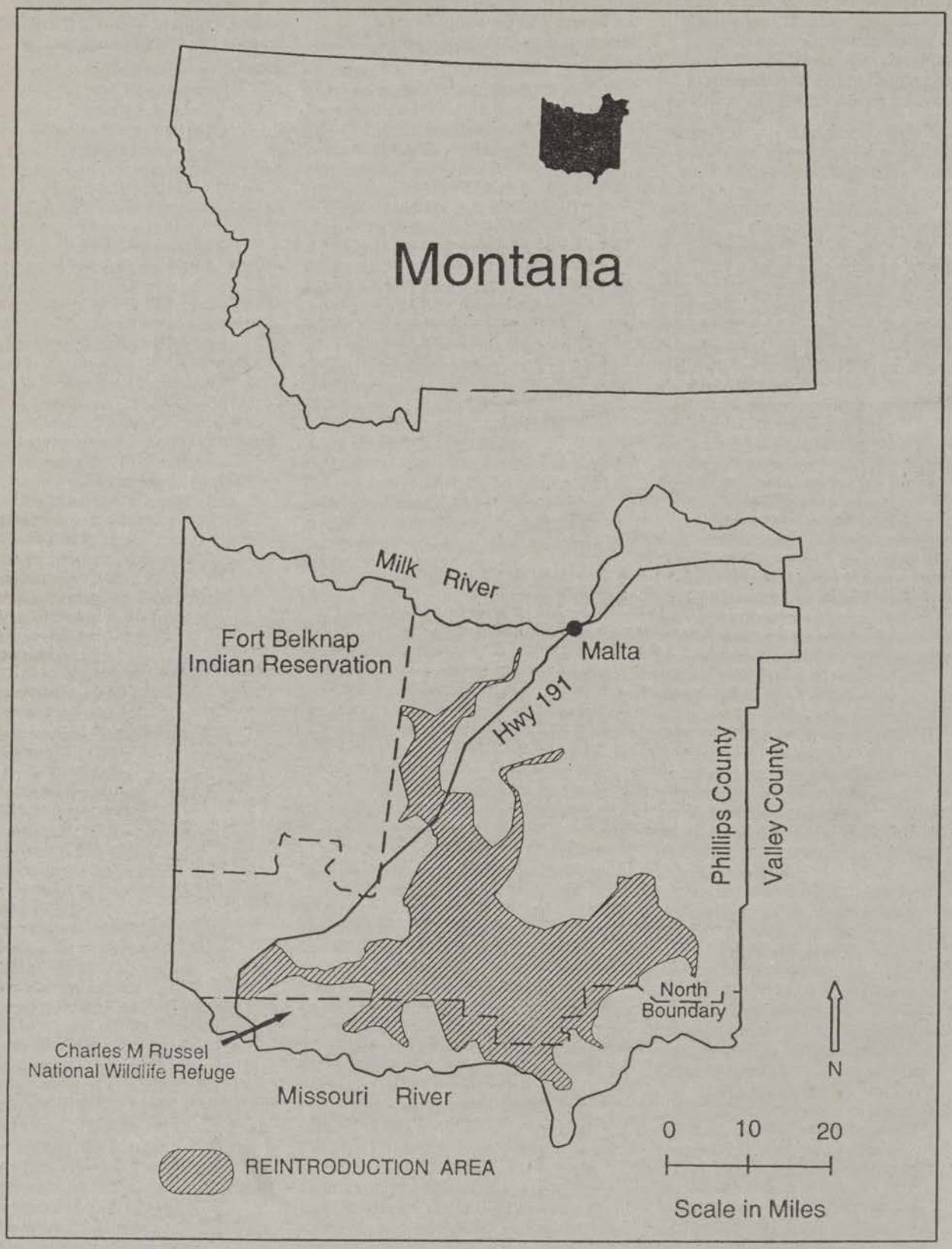
(12) This 5-year evaluation will not include a re-evaluation of the "nonessential experimental" designation for these populations. The Service does not foresee any likely situation which would call for altering the nonessential experimental status of any population. Should any such

alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any private landowner who consented to the introduction of black-footed ferrets on his lands will be permitted to terminate his consent and the ferrets will be, at his request, relocated pursuant to paragraph (g)(4)(iii) of this rule.

* * * * *

4. Section 17.84 is amended by adding a map to follow the existing two maps at the end of paragraph (g).

BILLING CODE 4310-55-P



BILLING CODE 4310–55–P

Dated: August 9, 1994.

Robert P. Davison,

Acting Assistant Secretary, Fish, Wildlife and Parks.

[FR Doc. 94–20037 Filed 8–17–94; 8:45 am]

BILLING CODE 4310–55–P

federal register

Thursday
August 18, 1994

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1994.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 65 rescission proposals and 12 deferrals contained in six special messages for FY 1994. These messages were transmitted to Congress on October 13, November 1, and November 19, 1993; and on February 7, May 2, and June 8, 1994.

Rescissions (Attachments A and C)

As of August 1, 1994, 65 rescission proposals totaling $3,172.2 million had been transmitted to the Congress. Congress approved 45 of the Administration's rescission proposals in P.L. 103–211. A total of $1,286.7 million of the rescissions proposed by the President was rescinded by that measure. There are no rescission proposals pending before the Congress. Attachment C shows the status of the FY 1994 rescission proposals.

Deferrals (Attachments B and D)

As of August 1, 1994, $2,216.6 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1994.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the Federal Registers cited below:

58 FR 54256, Wednesday, October 20, 1993
58 FR 59517, Tuesday, November 9, 1993
58 FR 63264, Tuesday, November 30, 1993
59 FR 7122, Monday, February 14, 1994
59 FR 24006, Monday, May 9, 1994
59 FR 32068, Tuesday, June 21, 1994

Alice M. Rivlin,
Acting Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	3,172.2
Rejected by the Congress.....	-1,885.5
Amounts rescinded by P.L. 103-211, the FY 1994 Emergency Supplemental Appropriations Act.....	-1,286.7
Currently before the Congress.....	0.0

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	8,625.8
Routine Executive releases through August 1, 1994.. (OMB/Agency release of $6,409.7 million, partially offset by cumulative positive adjustment of $452 thousand.)	-6,409.2
Overturned by the Congress.....	---
Currently before the Congress.....	2,216.6

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of August 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Foreign military financing grants	R94-1		40,000	11-1-93	*			
	R94-1A		25,562	2-7-94	*		65,562	P.L. 103-211
Economic support fund	R94-2		90,000	11-1-93	*		61,350	P.L. 103-211
Military assistance	R94-38		438	2-7-94	*		438	P.L. 103-211
Agency for International Development								
Development assistance fund	R94-3		160,000	11-1-93	*		104,019	P.L. 103-211
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R94-4		16,233	11-1-93	16,233	3-4-94		
Buildings and facilities	R94-5		8,460	11-1-93	8,460	3-4-94		
Cooperative State Research Service								
Cooperative State Research Service	R94-6		30,002	11-1-93	24,268	3-4-94	5,734	P.L. 103-211
Buildings and facilities	R94-7		34,000	11-1-93	31,103	3-4-94	2,897	P.L. 103-211
Agricultural Stabilization and Conservation Service								
Salaries and expenses	R94-8		12,167	11-1-93	12,167	3-1-94		
Soil Conservation Service								
Conservation operations	R94-9		12,167	11-1-93	12,167	3-1-94		
Farmers Home Administration								
Salaries and expenses	R94-10		12,167	11-1-93			12,167	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of August 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Rural Development Administration and Farmers Home Administration								
Rural housing insurance fund program account.....	R94-41		15,645	2-7-94			15,645	P.L. 103-211
Agricultural credit insurance fund program account.....	R94-39		5,094	2-7-94			5,094	P.L. 103-211
Rural Electification Administration								
Rural electrification and telephone loans program account.....	R94-11		6,445	11-1-93	6,445	3-1-94		
	R94-40		5,688	2-7-94	2,383	3-1-94	3,305	P.L. 103-211
Food and Nutrition Service								
Commodity supplemental food program.....	R94-12		12,600	11-1-93	2,600	3-1-94	10,000	P.L. 103-211
Foreign Assistance Programs								
Public Law 480 grants - Titles I (OFD), II, and III....	R94-42		49,600	2-7-94	20,000	4-29-94	29,600	P.L. 103-211
Public Law 480 program account.....	R94-43		35,400	2-7-94	12,500	3-14-94	22,900	P.L. 103-211
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Operations, research, and facilities.....	R94-13		6,000	11-1-93	6,000	3-1-94		
Construction.....	R94-14		4,000	11-1-93	1,000	3-1-94	3,000	P.L. 103-211
International Trade Administration								
Operations and administration.....	R94-15		2,000	11-1-93			2,000	P.L. 103-211
DEPARTMENT OF DEFENSE								
Procurement								
Missile procurement, Army.....	R94-44		48,000	2-7-94	48,000	3-24-94		
Aircraft procurement, Navy.....	R94-45		51,700	2-7-94	41,700	3-17-94	10,000	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of August 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Shipbuilding and conversion, Navy	R94-46		50,000	2-7-94	50,000	3-25-94		
Aircraft procurement, Air Force	R94-47		105,600	2-7-94	92,800	3-30-94	12,800	P.L. 103-211
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation, Defense-wide	R94-48		50,000	2-7-94	40,000	3-26-94	10,000	P.L. 103-211
Military Construction								
Military construction, Army	R94-16		116,134	11-1-93	93,815	3-1-94	22,319	P.L. 103-211
Military construction, Air Force	R94-17		85,094	11-1-93	60,307	3-1-94	24,787	P.L. 103-211
Military construction, Army Reserve	R94-18		19,807	11-1-93	17,256	3-1-94	2,551	P.L. 103-211
Military construction, Naval Reserve	R94-19		4,438	11-1-93	3,812	3-1-94	626	P.L. 103-211
Military construction, Air Force Reserve	R94-20		18,759	11-1-93	16,897	3-1-94	1,862	P.L. 103-211
Military construction, Army National Guard	R94-21		251,854	11-1-93	244,286	3-1-94	7,568	P.L. 103-211
Military construction, Air National Guard	R94-22		105,138	11-1-93	98,951	3-1-94	6,187	P.L. 103-211
DEPARTMENT OF THE ARMY-CIVIL								
Army Corps of Engineers								
General investigations	R94-23		24,970	11-1-93	24,970	3-1-94		
Construction, general	R94-24		97,319	11-1-93	97,319	3-1-94		
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R94-25		97,300	11-1-93	97,300	3-1-94		
	R94-49		10,000	2-7-94			10,000	P.L. 103-211
Uranium supply and enrichment activities	R94-25		42,000	11-1-93			42,000	P.L. 103-211

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of August 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R94-26		180,000	11-1-93	180,000	3-1-94		
Homeownership and opportunity for people everywhere grants (HOPE grants)	R94-50		66,000	2-7-94			66,000	P.L. 103-211
DEPARTMENT OF INTERIOR								
Bureau of Reclamation								
Construction	R94-27		16,000	11-1-93	16,000	3-4-94		
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R94-28		600	11-1-93	600	2-28-94		
Buying power maintenance	R94-51		8,800	2-7-94			8,800	P.L. 103-211
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R94-29		2,750	11-1-93	2,000	3-1-94	750	P.L. 103-211
Facilities and equipment	R94-30		40,257	11-1-93			40,257	P.L. 103-211
Grants-in-aid for airports (Airport and airway trust fund)	R94-56		488,200	2-7-94			488,200	P.L. 103-211
Federal Transit Administration								
Discretionary grants	R94-31		52,037	11-1-93	51,228	3-1-94	809	P.L. 103-211
Federal Highway Administration								
Highway demonstration projects	R94-32		187,827	11-1-93	12,858	1-28-94		
	R94-32A		-12,858	2-7-94	174,969	2-28-94		

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of August 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Federal Railroad Administration								
Railroad research and development	R94-55		17,000	2-7-94			17,000	P.L. 103-211
Coast Guard								
Operating expenses	R94-57		5,000	2-7-94	5,000	4-18-94		
Acquisition, construction, and improvements	R94-58		2,000	2-7-94	2,000	4-18-94		
Office of the Secretary								
Rental payments	R94-59		1,781	2-7-94			1,781	P.L. 103-211
Payments to air carriers (Airport and airway trust fund)	R94-60		10,067	2-7-94			10,067	P.L. 103-211
DEPARTMENT OF THE TREASURY								
Financial Management Service								
Biomass energy development	R94-61		16,275	2-7-94			16,275	P.L. 103-211
GENERAL SERVICES ADMINISTRATION								
Public Buildings Service								
Federal buildings fund	R94-33		126,022	11-1-93	126,022	3-1-94		
	R94-33A		1,669	2-7-94	1,669	3-15-94		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R94-62		88,000	2-7-94	25,000	2-29-94	63,000	P.L. 103-211
Space flight, control, and data communications	R94-63		32,000	2-7-94			32,000	P.L. 103-211
Construction of facilities	R94-64		25,000	2-7-94			25,000	P.L. 103-211
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R94-34		13,100	11-1-93	13,100	3-1-94		

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of August 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
OTHER INDEPENDENT AGENCIES								
Board for International Broadcasting								
Israel relay station	R94-65		1,700	2-7-94			1,700	P.L. 103-211
National Science Foundation								
Academic research infrastructure	R94-66		10,000	2-7-94	5,000	3-7-94	5,000	P.L. 103-211
Nuclear Regulatory Commission								
Salaries and expenses	R94-67		12,700	2-7-94			12,700	P.L. 103-211
State Justice Institute								
Salaries and expenses	R94-35		6,775	11-1-93				
United States Information Agency								
Salaries and expenses	R94-36		3,000	11-1-93	1,000	3-1-94	2,000	P.L. 103-211
North/South Center	R94-37		8,700	11-1-93	7,700	3-1-94	1,000	P.L. 103-211
TOTAL RESCISSIONS		0	3,172,183		1,806,885		1,286,750	

* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1994 Deferrals - As of August 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 8-1-94
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D94-1	394,175		10-13-93					
	D94-1A		1,164,562	11-19-93					
	D94-1B		23,725	2-7-94	796,496			452	786,419
Foreign military financing grants	D94-9	3,137,279		11-19-93	2,520,132				617,147
Foreign military financing program account	D94-10	46,530		11-19-93	38,118				8,412
Agency for International Development									
Demobilization and transition fund	D94-2	8,000		10-13-93					8,000
International disaster assistance, executive	D94-11	118,059		11-19-93	115,147				2,912
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D94-3	461,639		10-13-93					
	D94-3A		45,102	6-8-94					506,741
Expenses, brush disposal	D94-4	40,195		10-13-93					
	D94-4A		8,230	6-8-94					48,425
Timber salvage sales	D94-5	256,897		10-13-93	52,483				204,414
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D94-6	1,852		10-13-93	390				1,462
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D94-7	7,317		10-13-93					
			2	5-2-94					7,319

ATTACHMENT D
Status of FY 1994 Deferrals - As of August 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 8-1-94
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93					
	D94-8A		49,261	11-19-93	51,061				25,300
GENERAL SERVICES ADMINISTRATION									
Public Buildings Service									
Public buildings fund	D94-12	2,835,860		11-19-93	2,835,860				0
TOTAL, DEFERRALS		7,334,903	1,290,883		6,409,686	0		452	2,216,551

[FR Doc. 94–20240 Filed 8–17–94; 8:45 am]
BILLING CODE 3110–01–C

federal register

Thursday
August 18, 1994

Part VI

Department of Justice

Office of Justice Programs

Meeting of the Coalition for Juvenile Justice; Notice

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention; Meeting of the Coalition for Juvenile Justice

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. app. I), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) announces the meeting of the Coalition for Juvenile Justice. This conference will begin at 11:00 a.m. on September 22, 1994, and end at 11:30 a.m. on September 25, 1994. This advisory committee, chartered as the Coalition for Juvenile Justice, will meet at the Radisson at Keystone Crossing, 8787 Keystone Crossing, Indianapolis, Indiana 46240. The purpose of this meeting is to discuss and adopt recommendations from members regarding the committee's responsibility to advise the OJJDP Administrator, the President and the Congress about State perspectives on the operation of the Office of Juvenile Justice and Delinquency Prevention and Federal legislation pertaining to juvenile justice and delinquency prevention.

This meeting will be open to the public.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 94–20253 Filed 8–17–94; 8:45 am]

BILLING CODE 4410–18–P

federal register

Thursday
August 18, 1994

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR part 955

Public and Indian Housing: Indian Loan Guarantee Program; Housing Financing on Restricted Lands; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 955

[Docket No. R-94-1730; FR-3614-I-01]

RIN 2577-AB40

Loan Guarantees for Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth regulations to implement the Indian Loan Guarantee Program authorized by section 184 of the Housing and Community Development Act of 1992. The purpose of the program is to provide loan guarantees that will make private financing available to Native Americans in restricted lands where no source of financing is currently available.

DATES: Effective date: September 19, 1994.

Comments due date: October 17, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Native American Programs, Room B-133, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 755-0032 (voice) or (202) 708-0850 (TDD for speech or hearing impaired individuals). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

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 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The public reporting burden for each of these collections of information is estimated to include the time for reviewing and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for HUD, Washington, DC 20503.

II. Background

Section 184 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992) authorized the establishment of the Indian Housing Loan Guarantee Fund (the Fund) to provide access to sources of private financing to Indian families and Indian housing authorities who otherwise could not acquire housing financing because of the unique legal status of Indian trust land. In general, these lands, held in trust by the United States for the benefit of an Indian or Indian tribe, are inalienable. Trust lands under this program also include lands to which the title is held by an Indian tribe subject to a restriction against alienation imposed by the United States. Because titles to individual plots do not convey, and liens do not attach, conventional mortgage lending practices do not operate in this forum.

The Fund addresses these obstacles to mortgage financing by guaranteeing loans made to Indian families or Indian housing authorities to construct, acquire, or rehabilitate 1- to 4-family dwellings that are standard housing and are located on trust land or land located in an Indian or Alaska Native area. Loans may be made by any lender approved by the Secretary of Housing and Urban Development, the Secretary of Agriculture, or the Secretary of Veterans Affairs; or, any lender which is supervised, approved, regulated or insured by any agency of the Federal Government.

Although HCDA 1992 authorized the establishment of the Loan Guarantee Fund for fiscal years 1993 and 1994, no funds were appropriated until 1994. One million dollars was appropriated in FY 1994 to capitalize the guarantee fund allowing the Department to extend $7 million in loan guarantees.

The traditional Indian Housing program targets and serves the neediest among the Native American population—the low- and very low-income families. While a large number of Native Americans fall into these income groups, there are families who live on reservations, or who wish to return to their Native land, whose incomes would allow them to afford a home loan, but who cannot construct a home in Indian country because of the unique legal status of Indian land. The Indian Loan Guarantee program will assist these persons in attaining homeownership on their native land.

Notwithstanding the availability of mortgage insurance under the Federal Housing Administration's Section 248 program, the private lending market has been reluctant to provide mortgage money in Indian country. The limited use of that program has been due in large part to the lack of awareness of the availability of mortgage insurance by both borrowers and lenders. In addition, until very recently the program was limited in applicability because it did not allow insurance of the construction loan, and it adheres to the underwriting, mortgage credit, and appraisal standards of the non-Indian, single-family mortgage insurance program. These standards may not be appropriate in Indian country. A real deterrent of Section 248 for Indian tribes is the potential for transfer of the home to a non-Indian in the event of default and foreclosure. The new program under this interim rule has features that are more appropriate for the Native American culture, and the potential for a unit to be transferred to a non-Indian is avoided.

Perhaps the most significant feature of the statute authorizing this new program is that it permits loans to be secured by any collateral authorized under Federal, State, or local law. This innovative approach addresses the basic difference in providing housing loans for Indian trust lands, the fact that interests in these land are encumbered in ways that land interests in conventional mortgage markets are not. This element of uncertainty has certainly played a role in the failure of private lenders to provide mortgage services for Indian trust lands. This interim rule, in addition to making loan guarantees available, makes clear, at § 955.111, that

the collateral for loans to construct, acquire, or rehabilitate one- to four-family dwellings on trust land need not consist of real property and the improvements upon it, but may consist of anything of value determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to the restrictions of trust lands against alienation; a first or second mortgage on property other than trust land; personal property; or cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined. This use of various forms of collateral is consistent with the targeting of moderate income families, as discussed above, as the primary beneficiaries of this program.

This interim rule follows the statutory language very closely, and imposes additional regulatory requirements only where necessary to implement the program. The statute provides that a loan may be guaranteed for approval under this program only where "there is a reasonable prospect of repayment of the loan." The interim rule, therefore, adds a number of requirements taken from the Department's conventional mortgage programs to address this issue.

One requirement that is added, at § 955.111(b)(3), is to tie loan eligibility, where trust land is the collateral for the loan, to the presence of eviction procedures. Before HUD will issue any commitment to guarantee such a loan on Indian land, the tribe having jurisdiction over such property must certify to the Department that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

In other instances where the statute has placed the interpretation of a provision within the Department's discretion, the Department has attempted to provide the broadest interpretation, as discussed below.

The law allows the guarantee to cover "up to" 100 percent of the unpaid principal and interest. The regulation provides, at § 955.113(a), for 100 percent coverage. This position is based on the FHA mortgage insurance programs which insure 100 percent of the principal and interest and provide for payment of other allowable expenses in the event of a claim.

A loan term of "up to" 30 years is allowed at § 955.105(b)(1), as permitted by the statute, but is not required, because there may be instances where terms less than 30 years will be desirable to both the borrower and lender. The Department has determined that this program should have the flexibility to guarantee most standard loan products, with the exception of adjustable rate mortgages. In a totally new lending environment, the uncertainty of an adjustable rate would create an unnecessary risk to the borrower, the lender and the Department.

Section 184 requires the Department to set forth requirements for standard housing. These requirements are established at § 955.107(b)(1), and conform with those established for the FHA single family mortgage insurance programs.

Other Matters

Justification for Interim Rulemaking

The Department has determined that this interim rule should be adopted without the delay occasioned by requiring prior notice and comment. This interim rule simply constitutes the implementation of statutory language with the exercise of little or no discretion on the part of the Department. As such, prior notice and comment are unnecessary under 24 CFR Part 10. Section 955.125 is added to implement a Department-wide policy that provides for the expiration of interim rules within a set period of time if they are not issued in final form before the end of the period. The expiration period may be extended by notice published in the **Federal Register**. The expiration date for this interim rule is July 31, 1995.

Impact on Small Entities

The Department, 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. Specifically, this interim rule implements a loan guarantee program targeted to a very specific population, and is not expected to affect a substantial number of small entities.

Environmental Review

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.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the interim rule is not subject to review under the order. Specifically, the requirements of this interim rule are directed to individual borrowers and financial institutions.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule has potential for significant impact on family formation, maintenance, and general well-being. The Indian Loan Guarantee Program will make it possible for Native American families to build or acquire homes on their Native lands where homeownership opportunities have been very limited in the past. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

Regulatory Agenda

This interim rule was listed as item 1682 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20469) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Public Reporting Burden

The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements:

Sections	No. of respondents	Frequency respondents	Estimated average response time (in hours)	Estimated annual burden (in hours)
Reporting burden:				
Individuals 955.105	150	1	2	300
Lending Institutions 955.113, 955.115, 955.119, 955.123	15	10	8	1,200
Tribes 955.105	15	1	1	15
Total reporting burden				1,515
Recordkeeping burden: 955.105, 955.115, 955.119, 955.123	15	12	.24	43.2
Total recordkeeping burden				43.2

List of Subjects in 24 CFR Part 955

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

Accordingly, chapter IX of title 24 of the Code of Federal Regulations is amended by adding a new part 955, consisting of §§ 955.101 through 955.125, as follows:

PART 955—LOAN GUARANTEES FOR INDIAN HOUSING

Sec.
955.101 Applicability and scope.
955.103 Definitions.
955.105 Eligible loans.
955.107 Eligible housing.
955.109 Eligible lenders.
955.111 Eligible collateral.
955.113 Certificate of guarantee.
955.115 Guarantee fee.
955.117 Liability under guarantee.
955.119 Transfer and assumptions.
955.121 Disqualification of lenders and civil money penalties.
955.123 Payment under guarantee.
955.125 Expiration of interim rule.

Authority: 42 U.S.C. 1715z–13a and 3535(d).

§ 955.101 Applicability and scope.

(a) *General.* Under the provisions of section 184 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), the Department of Housing and Urban Development has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes to be owned by Native Americans on restricted Indian lands. This part describes the eligibility of borrowers, lenders and property, as well as the benefits of the Indian Loan Guarantee Program.

(b) *Other HUD regulations and requirements.* The provisions of this part are supplemented by parts in other chapters of title 24 of the Code of Federal Regulations, as applicable.

§ 955.103 Definitions.

Default means the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, and such failure continues for a period of more than 30 days.

Department means the U.S. Department of Housing and Urban Development (HUD).

Guarantee Fund means the Indian Housing Loan Guarantee Fund established under section 184(i) of the Housing and Community Development Act of 1992.

Indian means any person recognized as being Indian or Alaska Native by an Indian tribe, the Federal Government, or any State, and includes the term "Native American".

Indian area means the area within which an Indian housing authority is authorized to provide housing.

Indian Housing Authority (IHA) means any entity that is authorized to engage in or assist in the development or operation of low-income housing for Indians and that is established either:

(1) By exercise of the power of self-government of an Indian tribe independent of State law; or

(2) By operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Mortgage as used in this part, means a first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or another term used in a particular jurisdiction, as well as the credit instrument, or note, secured thereby.

Principal residence means the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at any one time.

Secretary means the Secretary of Housing and Urban Development.

Standard housing means a dwelling unit or housing that complies with the requirements established in this part.

Tribe means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Trust land means land, title to which is held by the United States for the benefit of an Indian or Indian tribe; or, land, title to which is held by an Indian tribe, subject to a restriction against alienation imposed by the United States.

§ 955.105 Eligible loans.

(a) *Eligible borrowers.* A loan guaranteed under this part may be made to a borrower that is:

(1) An Indian who will occupy it as a principal residence and who is otherwise qualified under this part; or

(2) An Indian Housing Authority.

(b) *Terms of loan.* The loan shall:

(1) Be made for a term not exceeding 30 years;

(2) Bear interest (exclusive of the guarantee fee and service charges, if any) at a fixed rate agreed upon by the borrower and the lender and determined by the Department to be reasonable, which may not exceed the rate generally charged in the area (as determined by the Department) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government.

(c) *Maximum mortgage amounts.* (1) A principal obligation may not exceed:

(i) An amount equal to the sum of:

(A) 97 percent of the first $25,000 of the appraised value of the property, as of the date the loan is accepted for guarantee; and

(B) 95 percent of such value in excess of $25,000; and

(ii) Amounts approved otherwise by the Department under this section.

(2) The balance of the purchase price must involve a payment on account of the property that may be:

(i) In cash or other property of equivalent value acceptable to the lender and the Department; or

(ii) The value of any improvements to the property made through the skilled or unskilled labor of the borrower,

appraised in accordance with generally acceptable practices and procedures.

(d) *Construction advances.* The Department may guarantee loans from which advances will be made during construction. The Department will provide guarantees for advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the commitment;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage shall bear interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

(e) *Prohibited loans.* Adjustable rate mortgages are not permitted under this program.

§ 955.107 Eligible housing.

(a) *In general.* A loan guaranteed under this part may be used for the construction, acquisition, or rehabilitation of 1- to 4-family dwellings located on trust land or land located in an Indian area.

(b) *Safety and quality standards.* Loans guaranteed under this part shall be made only on dwelling units which meet safety and quality standards set forth herein. Each unit must:

(1) Be decent, safe, sanitary, and modest in size and design;

(2) Conform with applicable general construction standards for the region;

(3) Contain a heating system that:

(i) Has the capacity to maintain a minimum temperature in the dwelling of 65 degrees Fahrenheit during the coldest weather in the area;

(ii) Is safe to operate and maintain;

(iii) Delivers a uniform distribution of heat; and

(iv) Conforms to any applicable tribal heating code or, if there is not applicable tribal code, an appropriate county, State, or National code;

(4) Contain a plumbing system that:

(i) Uses a properly installed system of piping;

(ii) Includes a kitchen sink and a partitional bathroom with lavatory, toilet, and bath or shower; and

(iii) Uses water supply, plumbing and sewage disposal systems that conform to any applicable tribal code or, if there is no applicable tribal code, the minimum standards established by the applicable county or State;

(5) Contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any applicable tribal code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(6) Be not less than:

(i) 570 square feet in size, if designed for a family of not more than 4 persons;

(ii) 850 square feet in size, if designed for a family of not less than 5 and more than 7 persons; and

(iii) 1020 square feet in size, if designed for a family of not less than 8 persons; or

(iv) The size provided under the applicable locally adopted standards for size of dwelling units; except that the Department, upon the request of a tribe or Indian housing authority, may waive the size requirements under this paragraph; and

(7) Conform with the energy performance requirements for new construction established by the Department under section 526(a) of the National Housing Act (12 U.S.C. 1735f–4).

§ 955.109 Eligible lenders.

The loan shall be made only by a lender approved by and meeting qualifications established in this part, except that loans otherwise insured or guaranteed by any agency of the Federal Government, or made by an organization of Indians from amounts borrowed from the United States shall not be eligible for guarantee under this part. The following lenders are deemed to be approved under this part:

(a) Any mortgagee approved by the Department of Housing and Urban Development for participation in the single family mortgage insurance program under title II of the National Housing Act (12 U.S.C. 1707).

(b) Any lender whose housing loans under chapter 37 of title 38, United States Code are automatically guaranteed pursuant to section 1802(d) of such title.

(c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 (42 U.S.C. 1441).

(d) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government.

§ 955.111 Eligible collateral.

(a) *In general.* A loan guaranteed under this part may be secured by any collateral authorized under Federal, State, or tribal law and determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to the restrictions of trust lands against alienation;

(2) A first or second mortgage on property other than trust land;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) *Trust land as collateral.* If trust land is used as collateral for the loan, the following additional provisions apply:

(1) *Approved Lease.* Any land lease for a unit financed under this part must be on a form approved by both HUD and the Bureau of Indian Affairs, U.S. Department of Interior.

(2) *Assumption or sale of leasehold.* If a leasehold is used as security for the loan, the loan form must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Department through foreclosure of the guaranteed mortgage. A mortgagee other than the Department must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Department, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by the Department.

(3) *Priority of loan obligation.* Any tribal government whose courts have jurisdiction to hear foreclosures must enact a law providing for the satisfaction of a loan guaranteed or held by the Department before other obligations (other than tribal leasehold taxes against the property assessed after the property is mortgaged) are satisfied.

(4) *Eviction procedures.* Before HUD will guarantee a loan secured by trust land, the tribe having jurisdiction over such property must certify to the Department that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) *Enforcement.* If the Department determines that the tribe has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans for tribal members except pursuant to existing commitments. Adequate enforcement is demonstrated where prior evictions have been completed within 60 days after the date of the notice by HUD that foreclosure was completed.

(ii) *Review.* If the Department ceases issuing guarantees in accordance with the first sentence of paragraph (c)(1) of this section, HUD shall notify the tribe of the reasons for such action and that the tribe may, within 60 days after notification of HUD's action, file a written appeal with the Field Office of Native American Programs (FONAP) Administrator. Within 60 days after notification of an adverse decision of the appeal by the FONAP Administrator, the tribe may file a written request for review with the headquarters Director, Office of Native American Programs (ONAP). Upon notification of an adverse decision by the ONAP Director, the tribe has 60 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the tribe may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration. (Any other administrative actions determined to be necessary to debar a tribe from participating in this program will be subject to the formal debarment procedures contained in 24 CFR part 24).

§ 955.113 Certificate of guarantee.

(a) *Extent of guarantee.* A certificate issued in accordance with this section guarantees 100 percent of the unpaid principal and interest of the underlying loan.

(b) *Approval process.* Before the Department approves any loan for guarantee under this part, the lender shall submit the application or the loan to the Department for examination. If the Department approves the loan for guarantee, the Department will issue a certificate under this part as evidence of the guarantee.

(c) *Standard for approval.* (1) The Department may approve a loan for guarantee under this part and issue a certificate under this section only if the Department determines there is a reasonable prospect of repayment of the loan based on criteria established pursuant to this part.

(2) The Department will assure that the value of the property has been established in accordance with current regulatory and administrative requirements.

(3) Before approval of a loan for guarantee, the Department will assure that all required environmental reviews pursuant to 24 CFR Part 50 have been performed and, if necessary, all findings have been successfully resolved.

(d) *Effect.* A certificate of guarantee issued under this section by the Department shall be conclusive evidence of the eligibility of the loan for guarantee under the provisions of this part and the amount of such guarantee. Such evidence shall be incontestable in the hands of the bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Department as security for such obligations.

(e) *Fraud and misrepresentation.* Nothing in this part may preclude the Department from establishing:

(1) Defenses against the original lender based on fraud or material misrepresentation; and

(2) Establishing partial defenses, based upon regulations in effect on the date of issuance or disbursement (whichever is earlier), to the amount payable on the guarantee.

§ 955.115 Guarantee fee.

The lender shall pay to the Department, at the time of issuance of the guarantee, a fee for the guarantee of loans under this section, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

§ 955.117 Liability under guarantee.

The liability under a guarantee provided in accordance with this part shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement.

§ 955.119 Transfer and assumptions.

Notwithstanding any other provision of law, any loan guaranteed under this part, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

§ 955.121 Disqualification of lenders and civil money penalties.

(a) *General.* If the Department determines that any lender or holder of a guarantee certificate under § 955.113 has failed to maintain adequate accounting records, to adequately service loans guaranteed under this section to exercise proper credit or underwriting judgement, or has engaged in practices otherwise detrimental to the interest of a borrower or the United States, the Department may:

(1) Refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

(2) Bar such lender or holder from acquiring additional loans guaranteed under this section; and

(3) Require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this section.

(b) *Civil money penalties for intentional violations.* If the Department determines that any lender or holder of a guarantee certificate under § 955.113 has intentionally failed to maintain adequate accounting records, to adequately service loans guaranteed under this section, or to exercise proper credit or underwriting judgement, the Department may impose a civil money penalty on such lender or holder in the manner and amount provided under section 536 of the National Housing Act (12 U.S.C. 1735f–14) with respect to mortgagees and lenders under such Act.

(c) *Payment of loans made in good faith.* Notwithstanding paragraphs (a) and (b) of this section, the Department may not refuse to pay pursuant to a valid guarantee on loans of a lender or holder barred under this section if the loans were previously made in good faith.

§ 955.123 Payment under guarantee.

(a) *Lender options.* (1) *General.* In the event of default by the borrower on a loan guaranteed under this part, the holder of the guarantee certificate shall provide written notice of the default to the Department. Upon providing this notice, the holder of the guarantee certificate will be entitled to payment under the guarantee (subject to the provisions of this part) and may proceed to obtain payment in one of the following manners:

(i) *Foreclosure.* The holder of the certificate may initiate foreclosure proceedings in a court of competent jurisdiction (after providing written notice of such action to the Department) and upon a final order by the court authorizing foreclosure and submission to the Department of a claim for payment under the guarantee, the Department will pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined in accordance with § 955.117) plus reasonable fees and expenses as

approved by the Department. The Department will be subrogated to the rights of the holder of the guarantee and the lender holder shall assign the obligation and security to the Department.

(ii) *No foreclosure*. Without seeking a judicial foreclosure (or in any case in which a foreclosure proceeding initiated under paragraph (a)(1)(i) of this section continues for a period in excess of 1 year), the holder of the guarantee may submit to the Department a claim for payment under the guarantee and the Department will only pay to such holder for a loss on any single loan an amount equal to 90 percent of the pro rata portion of the amount guaranteed (as determined in accordance with § 955.117). The Department will be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Department.

(2) *Requirements*. Before any payment under a guarantee is made under paragraph (a)(1) of this section, the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note of judgement evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States.

(b) *Assignment by the Department*. Notwithstanding paragraph (a) of this section, upon receiving notice of default on a loan guaranteed under this section from the holder of the guarantee, the Department may accept assignment of the loan if the Department determines that the assignment is in the best interests of the United States. Upon assignment the Department will pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined in accordance with § 955.117). The Department will be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Department.

(c) *Limitations on liquidation*. In the event of a default by the borrower on a loan guaranteed under this section involving a security interest in tribal allotted or trust land, the Department will only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe or tribes. If the Department subsequently proceeds to liquidate the account, the Department will not sell, transfer, otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

§ 955.125 Expiration of interim rule.

This part shall expire and shall not be in effect after July 31, 1995, unless it is published as a final rule or the Department publishes a notice in the **Federal Register** to extend the effective date.

Dated: August 10, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–20250 Filed 8–17–94; 8:45 am]

BILLING CODE 4210–33–P

federal register

Thursday
August 18, 1994

Part VIII

Department of Housing and Urban Development

Office of Assistant Secretary for Public and Indian Housing

Funding Availability for Fiscal Year 1994 for Youth Apprenticeship Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N-94-3800; FR-3649-N-01]

Funding Availability for Fiscal Year 1994 for Youth Apprenticeship Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This notice (NOFA) announces the availability of $10,000,000 for Fiscal Year 1994 for the Youth Apprenticeship Program. Of this available amount, $250,000 shall be used for evaluation activities, and $1,500,000 will be used for a demonstration program.

The Youth Apprenticeship Program provides grants to public housing agencies (PHAs) to initiate with joint labor-management organizations a youth apprenticeship program in "HOPE VI communities" (as defined in this NOFA). Funding for this program is limited to PHAs that have been awarded a grant under the HOPE VI Program and enter into an agreement with an established Youth Corps and other required program partners.

In the body of this NOFA is information concerning the following:

(1) The purpose of the NOFA and information regarding eligibility, available amounts, and program requirements;

(2) The application process, including how to apply and how applications will be evaluated; and

(3) A checklist of all application submission requirements to complete the application process.

DATES: The application due date will be specified in the application kit. An original and two (2) copies of the completed application must be received in the Office of Resident Initiatives, Office of the Assistant Secretary for Public and Indian Housing, Room 4102, 451 7th Street, SW., Washington, DC 20410 no later than 5:00 p.m., local time, on the date specified in the application kit.

The application due date specified in the application kit will provide applicants with at least 90 days to prepare and submit their applications. Applications, portions of applications, or pages of applications may not be submitted by facsimile (FAX).

The application deadline, as specified in the application kit, will be firm. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make timely submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: An application kit may be obtained from the local HUD Office with delegated responsibilities over an applicant housing authority (see the Appendix A to this NOFA for listing), or by calling the HUD Resident Initiatives Clearinghouse toll free number 1-800-955-2232. Telephone requests must include your name, mailing address, or post office address (including zip code), telephone number (including area code), and must refer to document FR-3649. This NOFA cannot be used as the application.

FOR FURTHER INFORMATION CONTACT: Paula Blunt, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, Telephone Number (202) 708-4214 (This is not a toll free number). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300 for information on the program.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1990 (44 U.S.C. 3501-3520). HUD has requested expeditious review of these requirements by OMB. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

I. Purpose and Substantive Description

The purpose of the Youth Apprenticeship Program is to provide Youth Corps and joint labor-management supported training, apprenticeship, and employment to youths living in public and assisted housing in HOPE VI communities. ("HOPE VI" and "HOPE VI community" are defined in Section I.C. of this NOFA.)

The Youth Apprenticeship Program will enable young residents (age 16-30) of HOPE VI communities to enter a ladder of opportunity through a cooperative effort of Youth Corps and joint labor-management initiatives designed to focus on basic job training and employment opportunities leading to self-sufficiency. The program shall provide or be part of a comprehensive strategy to provide paid community service activities through Youth Corps; supportive services; math and literacy training; high school equivalency training; life and work skills development; related classroom instruction; mentoring; and apprenticeship which includes assured post-training employment.

HUD will select a minimum of five to seven HOPE VI grant recipient public housing agencies to receive grants to initiate with joint labor-management organizations a youth apprenticeship program in HOPE VI communities.

Under this program an agreement must be executed by the following parties: the PHA, an established Youth Corps, a local labor organization, and a multi-employer association.

The program must include a Youth Corps component for a minimum of 6 months, and an apprenticeship component which can be the assured post-training employment for a minimum of 30 months. In this program, a participant may move from the Youth Corps component of the program directly into an apprenticeship program (which is considered post-training employment). Applicants have the option of including other pre-employment training as a component of the Youth Apprenticeship Program prior to the apprenticeship. However, a participant must enter an apprenticeship after such training. The particular skills for which the apprenticeship should be provided may include, but are not limited to, areas of construction, repair, and renovation that are related to the physical needs of public housing, such as: the replacement and repair of equipment and fixtures, vacant-unit rehabilitation, the removal of toxic substances, and the abatement and in-place management of lead-based paint and dust.

In this regard, the young people receiving training under this program, through the assured employment required as a core component of the program, will be able to have skills necessary to work for either public housing agencies or contractors in the construction industry.

Section 3 of the 1968 Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) requires that economic opportunities generated by certain HUD financial assistance for housing (including public and Indian

housing) and community development programs shall, to the greatest extent feasible, be given to low- and very-low income persons. The Youth Apprenticeship Program will assist in achieving the objectives of section 3 by preparing youths residing in public and assisted housing for the work force.

A. Authority

The Youth Apprenticeship Program is funded under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for 1994 (Pub.L. 103–124, approved October 28, 1993) (the 1994 Appropriations Act).

B. Allocation Amounts

(1) Funding Availability

In the 1994 Appropriations Act, the Congress appropriated $10 million for youth apprenticeship training activities with joint labor-management organizations (the Youth Apprenticeship Program).

Of the $10 million appropriated, $250,000 shall be used for evaluation activities, which will make $9,750,000 available for the Youth Apprenticeship Program. Of the $9,750,000, $8,250,000 is being made available on a competitive basis under this NOFA.

The Department intends to use $1.5 million for purposes of demonstrating ways of promoting, through Youth Corps and a joint labor/management/community consortium, the long-term welfare of youths living in public and assisted housing. The funding will be awarded to a HOPE VI grantee with a distressed public housing community undergoing a concentrated effort of local revitalization to train public and assisted housing residents to participate in the rehabilitation of distressed and vacant public housing units with guaranteed employment in construction jobs. The Department expects that this funding will demonstrate the importance of job training, followed by assured employment, in contributing to the local neighborhood revitalization.

(2) Restrictions

(a) Each applicant may submit only one application. The maximum grant amount will be between $1.3 and $1.5 million depending on the number of applications funded.

(b) The $10,000,000 authorized under the Youth Apprenticeship Program may not be used for wages in any post-training employment committed under this program except as specified under Section D.(3)(j) of this NOFA.

(c) No more than 15 percent of the total grant amount may be used for administrative costs.

(3) Period of Award

Funds awarded are to be used over a maximum period of six years. However, the grant term may be extended, with approval, when such is necessary for the participants to complete the program.

C. Definitions

Administrative costs means reasonable and necessary costs, as described in and valued in accordance with OMB Circular Nos. A–87 or A–122 as applicable, incurred by a recipient or a sub-grantee or sub-recipient in carrying out a Youth Apprenticeship Program.

Apprenticeship program means a program registered and/or approved by the Department of Labor, Bureau of Apprenticeship and Training (BAT), or by a State Apprenticeship Agency recognized by the BAT, as meeting the basic standards and requirements for approval of such programs as set forth in 29 CFR part 29. Apprenticeship does not include "pre-employment training" as defined elsewhere in this NOFA but is considered post-training employment.

Commitment means documented evidence in the form of a written obligation (on appropriate letterhead) specifying:

(1) The dollar amount and source of funds or other types of resources promised for the program, and their use in the program;

(2) The date of availability and duration of the funds or other types of resources;

(3) The authority by which the commitment is made (such as board resolution, grant award notification, approvals); and

(4) The signature of the appropriate executive officer authorized to commit the resources.

Community service as used in this NOFA means meaningful service on a volunteer basis or through stipends to address unmet human, environmental, educational, and/or public safety needs through Youth Corps.

Eligible applicant. See Section I.D of this NOFA.

Eligible participant means an individual selected to participate in a Youth Apprenticeship Program receiving assistance under this NOFA, who is:

(1) 16–30 years of age; and

(2) A resident of public or assisted housing living in the HOPE VI community. (**Note:** Up to half the participants can be persons already enrolled and participating in the Youth Corps provided they are public or assisted housing residents.)

HOPE VI is the HUD program established pursuant to the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102–389, approved October 6, 1992) (the 1993 Appropriations Act). This program is also referred to as the Urban Revitalization Demonstration Program. A total of thirty-four (34) grants were awarded in FY 1993 and 1994 under the HOPE VI program.

HOPE VI Community is: (1) The HOPE VI development(s) specified in the HOPE VI program; (2) the neighborhood surrounding the HOPE VI development(s); and (3) neighborhoods where HOPE VI replacement units will be located.

Joint labor-management organization means an organization comprised of representatives of employers and their employees, who are represented by a bona fide collective bargaining agent, that has been established to conduct, operate or administer an apprenticeship and/or other job training program; and/or to cooperatively administer other such programs, as may be deemed appropriate for and by the employers and employees.

Post-training employment means employment held by the program participant *after* the completion of the Youth Corps and any other pre-employment training. Post-training employment includes apprenticeship.

Pre-employment training as used in this NOFA means the Youth Corps training and community service, and any other training which may be provided prior to a participant entering an apprenticeship.

Youth Corps is an organization, certified by the National Association of Service and Conservation Corps (NASCC) that provides participants with a six to twelve month, full-time crew-based, highly structured and adult-supervised work and learning experience, and promotes the development of citizenship, life and employment skills.

D. Eligibility

(1) Eligible Applicants

(a) Eligible applicants are PHAs that have been awarded a grant under the HOPE VI Program.

(b) Eligible applicants do not include PHAs awarded a grant under the HOPE VI Program for which:

(i) The Department of Justice has brought a civil rights suit against the applicant PHA, and the suit is pending;

(ii) There has been an adjudication of a civil rights violation in a civil action brought against the PHA by a private individual, unless the PHA is operating in compliance with court order, or

implementing a HUD approved tenant selection and assignment plan or compliance agreement designed to correct the areas of noncompliance.

(iii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(iv) HUD has deferred application processing by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(2) Eligible Activities

A Youth Apprenticeship program must include the activities described in paragraphs (a), (b), (c) and (d) below, and may include the activities listed in paragraphs (e) through (k):

(a) Training and community service through Youth Corps;

(b) Apprenticeship program;

(c) Mentoring;

(d) Data collection for evaluation purposes;

(e) Education and job training services and activities including remedial education, bilingual education; secondary education leading to the attainment of a high school diploma or its equivalent; counseling and assistance in attaining post-secondary education and required financial aid;

(f) Instruction in math and literacy, and life and work skills development;

(g) Supportive services;

(h) Case management;

(i) Job development activities;

(j) Counseling services and related activities; and

(k) Program administration.

(3) Eligible Costs

Eligible costs may include:

(a) Training and community service through Youth Corps;

(b) Mentoring;

(c) Instruction in math and literacy, and life and work skills development;

(d) Case management;

(e) Counseling services and related activities;

(f) Stipends and benefits necessary to enable individuals to participate in the program;

(g) Supportive services such as, but not limited to, transportation, health care, counseling, and child care.

(h) Related fees for job training programs such as, but not limited to, tuition and room and board, if applicable;

(i) Uniforms and tools;

(j) Administrative costs for program administrators, including public housing agencies, Youth Corps and their affiliate organizations, and organizations providing job training and apprenticeships. No more than 15 percent of the total grant amount may be used for administrative costs.

(k) Cost for the grantee to enter into subgrants with the Youth Corps, the joint labor-management organization and non-profit entities or state or local governments which are named in the Youth Apprenticeship Program application.

(l) Data collection for program administration and evaluation.

(4) Ineligible Costs

(a) Building materials and construction costs are ineligible.

(b) The $10,000,000 authorized under the Youth Apprenticeship Program may not be used for wages in any post-training employment committed under this program except as specified under Section I.D.(3)(e) of this NOFA. However, participants may continue to receive supportive services as necessary to enable them to continue participation in the program.

(5) Other Program Requirements

(a) Resident involvement. The Department has a longstanding policy of encouraging PHAs to promote meaningful resident involvement, and to facilitate cooperative partnerships to achieve specific and mutual goals. Therefore, public housing residents and assisted housing residents, through their duly elected resident councils or other representative organizations with membership consisting of residents of assisted housing, must be included in the planning and implementation of this program. The PHA shall develop a process that assures that resident council (RC), resident management corporation (RMC), other resident organization (RO) representatives, and youth are fully involved in the development, through a joint working group, of the PHA's application in response to this NOFA. The PHA shall give full consideration to the comments, input and other concerns of the residents. The process shall include:

(i) Informing residents of the joint labor-management organization and the Youth Corps that will be participating in this program and providing for residents to assist in the development of the application.

(ii) Once a draft application has been prepared, the PHA shall make a copy available for reading in the management office; provide copies of the draft to the resident organization(s) representing the public and assisted housing residents of the HOPE VI community; and provide adequate opportunity for comment by the public and assisted housing residents of the HOPE VI community and refinement of the proposal prior to making the application final.

(iii) Advise the resident organization(s) representing the public and assisted housing residents of the HOPE VI community that resident comments have been received, its response to them, and that the summary and response are available for reading in the management office.

(iv) After HUD approval of a grant, notify the duly elected resident council and/or other representative organization, with membership consisting of residents of assisted housing, representing the residents of the HOPE VI community of approval of the grant and the availability of the HUD approved implementation schedule in the management office for reading; and develop a system to facilitate a regular public and assisted housing resident role in all aspects of program implementation.

(6) Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth in Section II of this NOFA (Checklist of Application Submission Requirements), grantees must comply with the following requirements:

(a) Ineligible contractors. The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(b) Lead-based paint. The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and implementing regulations at 24 CFR parts 35, 965 and 968.

(c) Applicability of OMB Circulars. The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 with respect to the acceptance and use of assistance by private nonprofit organizations.

E. Treatment of Income

Amounts received under training programs funded by HUD are excluded from annual income at 24 CFR 913.106(C)(8)(i).

F. Reports

Each PHA receiving a grant shall submit to HUD an annual progress report (in a format to be provided by HUD) regarding the implementation of this program and the effectiveness of the Youth Apprenticeship Program in meeting its purpose. As part of HUD's evaluation of the program, grantees will be expected to maintain records on each of the participants in the program. Grantees will maintain these records on forms provided by HUD and will make these records available to HUD for use in an evaluation of the Initiative. The initial forms for the participants in the program will include information such as: Social Security number, name; address, telephone number (if available), emergency contact (if available), age, sex, race, family status (head of household/spouse/child/grandchild), number of children/dependents, marital status, current source of income, aid currently receiving, past work experience, and educational background. The grantee will also have to collect on-going courses/programs the individual participated in, their performance; length of Youth Corps component, stipend/pay, attendance, leader/instructor assessment; type of apprenticeship/job development activities, length, attendance, pay, assessment; other services received during the program; and type of employment income. If an individual leaves the program, the grantee will assess the cause of the separation and record that information. Grantees also will cooperate with researchers who will be carrying out an evaluation of this Initiative for the Department.

G. Rating Factors

Each application for a grant award that is submitted in a timely manner, and that otherwise meets the requirements of this NOFA, will be evaluated. Applications will be competitively selected based on the highest scores out of a possible 130 points.

HUD will review and evaluate the application on the following factors:

(1) The extent to which the proposed program represents a sound, coordinated, comprehensive and responsive plan in supporting the overall objective of this program. (Maximum 45 points)

In assigning points for this criterion, HUD shall consider:

(a) Youth Corps. A sound and comprehensive description of the Youth Corps component of this program including but not limited to how the Youth Corps component is linked to other components of the program and will help prepare participants for an apprenticeship. (0–15 points)

(b) Education, training, and post-training employment. A sound and comprehensive description of the education and training components of this program including but not limited to how the education and training components are linked to other components of the program, and how they will help prepare participants for an apprenticeship. Also, a sound and comprehensive description of the apprenticeship and post-training employment components of this program as applicable. (0–15 points)

(c) Supportive Services. A sound and comprehensive description (based on projected need) of the type of supportive services to be provided under this program and how they are linked to other components of the program. (0–15 points)

(2) The extent to which the applicant has identified occupations for which the training and apprenticeship are being developed, and the market for future employment in these fields. (0–15 points)

(3) The PHA's past experience in obtaining and providing opportunities for public and assisted housing youths and its capability to develop and implement a successful youth apprenticeship program within a reasonable time period in an effective manner as demonstrated through past performance and/or achievements in developing youth programs. (0–10 points)

(4) The quality of plans for providing mentors to program participants. (0–15 points)

In assigning points for this criterion, HUD shall consider:

(a) The description of the mentoring program to be provided to program participants. (0–5 points)

(b) The qualifications of the persons/organization(s) to provide the mentoring. (0–5 points)

(c) The length of time mentoring will be provided to program participants. (0–5 points)

(5) The extent of the commitment of other resources toward the implementation of the program. Resources may include direct financial assistance, in-kind services or other resources, such as social services. (0–10 points)

(6) The extent to which the PHA has entered into a partnership with public and assisted housing residents (including youth) in the planning phase for the Youth Apprenticeship Program, and will further include the residents in the implementation of the program. (0–15 points)

(7) The PHA's past experience in implementing HUD's civil rights-related program requirements in providing training and employment opportunities and contracts to business concerns owned by or employing low-income residents in connection with public housing programs. (0–10 points)

(8) The extent to which the commitment by the joint labor-management organization provides more than thirty (30) months of full-time employment (which may be an apprenticeship) upon a participant's completion of the Youth Corps or any other pre-employment training after Youth Corps. (0–10 points)

II. Checklist of Application Submission Requirements

The Application kit will contain a checklist of all application submission requirements to complete the application process. Applications must contain the following information:

A. Applicant Identification.

Name and address (or P.O. Box) of the PHA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process).

B. HOPE VI Certification

Certification that the applicant is a HOPE VI grantee and program participants will be eligible participants as defined in Section I.C. of this NOFA.

C. Program Description

A comprehensive description of the proposed Youth Apprenticeship program including, but not limited to, how the program components link to each other and the number of youths the program will serve. The description should also include the method for assuring post-training employment for a minimum of 30 months.

D. Agreements

A copy of the agreement(s) that has been executed between the PHA, a Youth Corps, a local labor organization, and a multi-employer organization. The agreement(s) must specify the roles and responsibilities of each party to the agreement. At a minimum the agreement should provide for:

(1) Youths 16–30, who meet eligible participant criteria, to participate for a minimum of 6 months in the Youth Corps.

(2) A commitment from a Youth Corps to provide program participants a paid stipend of at least minimum wage.

(3) A commitment from a joint labor-management organization that

immediately following the Youth Corps experience and any other pre-employment training after Youth Corps, participants will enter an apprenticeship program.

(4) A commitment by a joint labor-management organization to provide no less than 30 months of full-time employment (which may be an apprenticeship) upon a participant's completion of the Youth Corps. Include a description of how the joint labor-management organization and the PHA plan to do this.

E. Resident Involvement

A description of the resident involvement in the planning and implementation phases of this program.

F. Outreach Efforts

A description of youth outreach, recruitment and selection efforts.

G. Mentoring Program.

A description of the mentoring program to be provided for program participants.

H. Past Training and Employment Opportunities

A description of the PHA's past experience in implementing HUD's civil rights-related program requirements in providing training and employment opportunities and contracts to business concerns owned by or employing low-income residents in connection with public housing programs.

I. Letters of Commitment for Other Resources

Each letter of commitment should identify all commitments for resources to be made available to the program from the applicable entity. The description shall include where applicable, but is not limited to, the commitment source, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments may include financial assistance, in-kind services, facilities, and other resources for the Youth Apprenticeship Program.

J. Budget and Implementation Schedule

A project budget and implementation schedule. The budget should reflect reasonable costs for proposed activities including but not limited to the estimated costs per program participant; estimated costs for supportive services; estimated costs for participant stipends, uniforms and tools; estimated administrative costs; and estimated costs for data collection for evaluation purposes.

K. Previous Experience

A narrative on the housing authority's past experience in obtaining and providing similar opportunities for public and assisted housing youths.

L. Occupations

A narrative describing the occupations for which training and apprenticeships are being developed and the market for future employment in these occupations.

M. Supportive Services

A description of the need for supportive services and the supportive services to be provided for program participants.

N. Equal Opportunity Requirements

The PHA must certify that it will carry out activities assisted under the program in compliance with:

(i) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity in Housing) and the implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(ii) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(iii) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; and

(iv) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

O. Form HUD–2880

Form HUD–2880 (Applicant/Recipient Disclosure Update Report) must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

P. Certification concerning Funds for Eligible Costs

A certification that funds used to pay for items listed in Section I.E.3 of this NOFA (Eligible Cost) are not duplicate expenses from any other program.

Q. Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

R. Certification regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF-LLL form).

III. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items, such as certifications or assurances, or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the rating factors specified in this NOFA.

IV. Other Matters

A. Environmental Review.

A Finding of No Significant Impact with respect to the environment has

been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, S.W., Room 10276, Washington, D.C. 20410.

B. 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 notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore is not subject to review under the Order. The notice announces the availability of funds to provide young residents of public and assisted housing with job training and employment opportunities.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to assist young persons living in public and assisted housing with better access to education, training and job opportunities to achieve self-sufficiency and independence, and, if the purpose of this notice is achieved, the notice will be beneficial for families. Because the impact on families is considered to be beneficial, no further review is considered necessary.

D. Section 102 HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact counsel at his or her local HUD Office, or Headquarters counsel for the program to which the question pertains.

F. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815 (voice/TDD) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act of Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Dated: August 8, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix A

Names, Addresses, and Telephone Numbers of the Local HUD Offices Where Application Kits for the Youth Apprenticeship Program May Be Obtained

BOSTON, MASSACHUSETTS OFFICE

Public Housing Division, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092, (617) 565–5196

HARTFORD, CONNECTICUT OFFICE

Public Housing Division, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4554

NEW YORK, NEW YORK OFFICE

Public Housing Division, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–0903

NEWARK, NEW JERSEY OFFICE

Public Housing Division, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504, (201) 877–1679

WASHINGTON, DC OFFICE

Public Housing Division, 820 First Street, NE, Washington, DC 20002–4205, (202) 275–7965

PHILADELPHIA, PENNSYLVANIA OFFICE

Public Housing Division, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2550

BALTIMORE, MARYLAND OFFICE

Public Housing Division, City Crescent Building, 10 South Howard Street, 5th Floor, Baltimore, Maryland 21201–2505, (410) 962–2520

PITTSBURGH, PENNSYLVANIA OFFICE

Public Housing Division, Old Post Office Courthouse Building, 700 Grant Street, Pittsburgh, Pennsylvania 15219, (412) 644–6571

ATLANTA, GEORGIA OFFICE

Public Housing Division, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–4815

CARIBBEAN OFFICE

Public Housing Division, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–5252

GREENSBORO, NORTH CAROLINA OFFICE

Public Housing Division, Koger Building, 2306 West Meadowview Road, Greensboro, North Carolina 27407–3707, (919) 547–4038

NASHVILLE, TENNESSEE OFFICE

Public Housing Division, Suite 200, 251 Cumberland Bend Drive, Nashville, Tennessee 37228–1803, (615) 736–5063

CHICAGO, ILLINOIS OFFICE

Public Housing Division, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–1915

CLEVELAND, OHIO OFFICE

Public Housing Division, Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, Ohio 44115–1815, (216) 522–2700

COLUMBUS, OHIO OFFICE

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[FR Doc. 94–20346 Filed 8–17–94; 8:45 am]

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federal register

Thursday
August 18, 1994

Part IX

The President

Notice of August 17—Continuation of Emergency With Respect to UNITA

Federal Register
Vol. 59, No. 159
Thursday, August 18, 1994

Presidential Documents

Title 3—

The President

Notice of August 17, 1994

Continuation of Emergency With Respect to UNITA

On September 26, 1993, by Executive Order No. 12865, I declared a national emergency to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of the National Union for the Total Independence of Angola ("UNITA"), prohibiting the sale or supply by United States persons or from the United States, or using U.S. registered vessels or aircraft, of arms and related material of all types, and petroleum and petroleum products to the territory of Angola, other than through designated points of entry. The order also prohibits the sale or supply of such commodities to UNITA. Because of our continuing international obligations and because of the prejudicial effect that discontinuation of the sanctions would have on the Angolan peace process, the national emergency declared on September 26, 1993, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond September 26, 1994. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to UNITA.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
August 17, 1994.

[FR Doc. 94-20523
Filed 8-17-94; 11:42 am]
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H.R. 4277/P.L. 103–296

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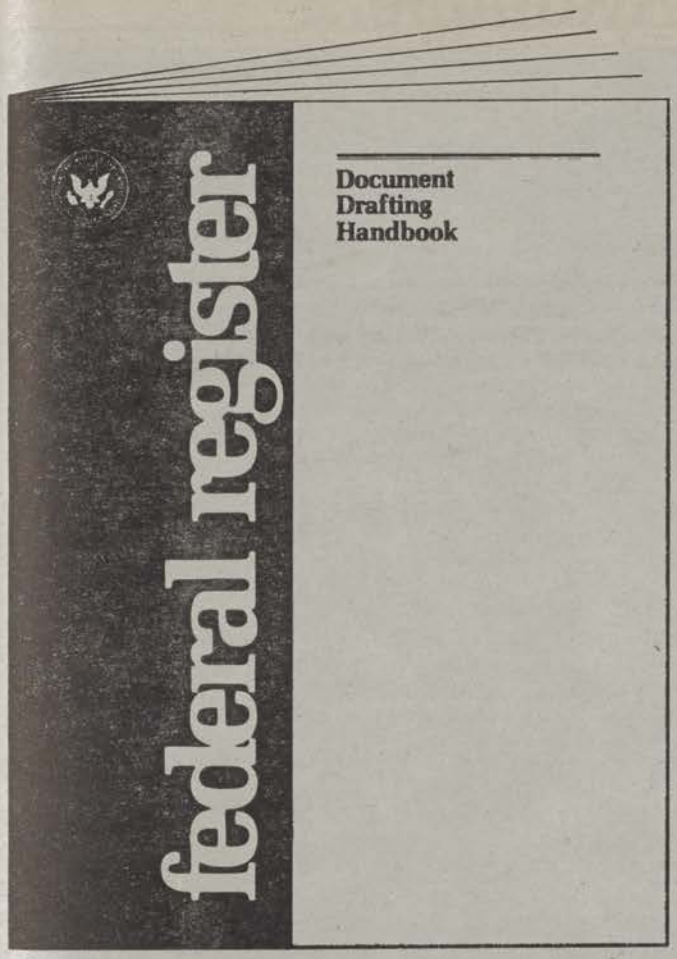

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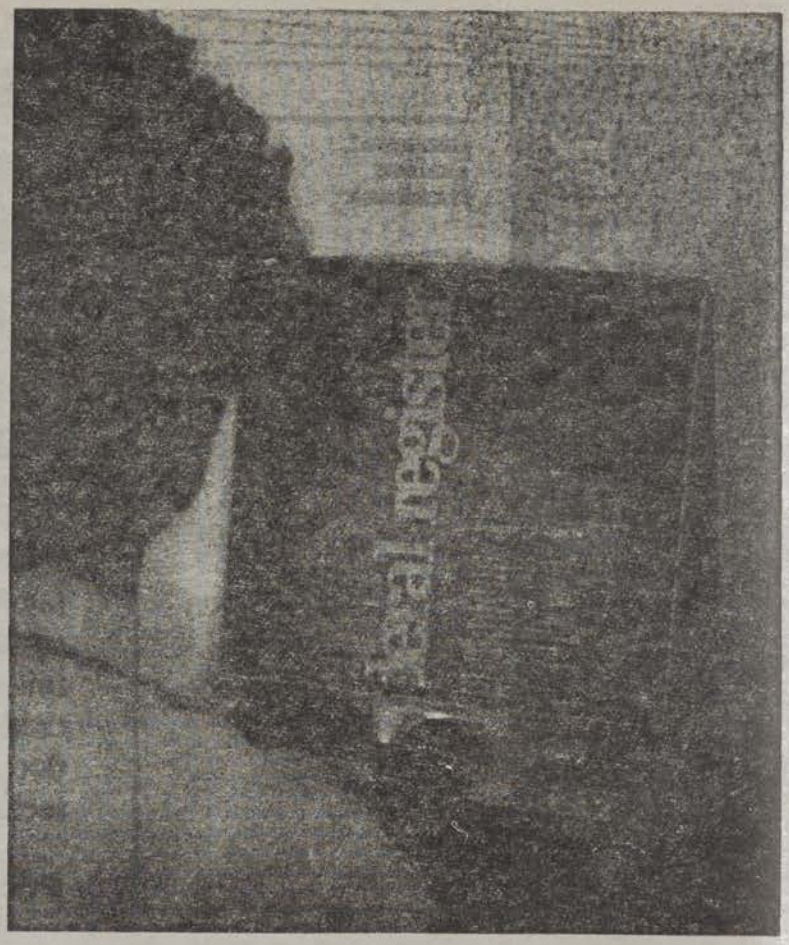

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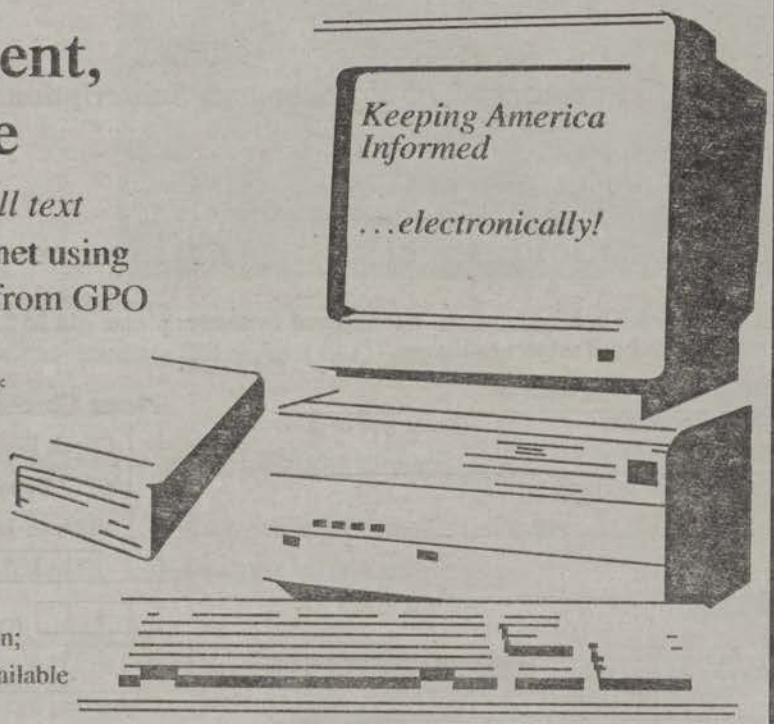

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12 months	$375

*Prices for single work station; multiple work station discounts available

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