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Federal Register

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Federal Register

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206-AE36

Allowances and Differentials; Uniform Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final rules to provide procedures for an agency to establish a higher initial maximum uniform allowance rate in exceptional circumstances. Such a rate is applicable in certain situations where the typical basic uniform required by the agency for the affected category of civilian Federal employees involves a high initial outlay of funds.

EFFECTIVE DATE: September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Bruce W. Valoris, (202) 606-2858.

SUPPLEMENTARY INFORMATION: On May 5, 1993, the Office of Personnel Management (OPM) published proposed regulations (58 FR 26694) that would apply to an employee who is required to wear a uniform by statute, regulation, or an agency's written administrative procedures. OPM invited interested parties to comment during a 60-day period following the publication of the proposed regulations. During the comment period, OPM received comments from seven agencies, two labor organizations, and three employees. Of these commenters, four agencies and one employee supported the regulations as proposed. A summary of the comments and a description of the revisions in the proposed regulations follow.

Definitions

One agency was confused about the definition of "uniform" and believed

the proposed regulatory language implied that shoes, boots, and hats were mandatory items. OPM did not intend to make these items a mandatory part of a uniform. The agency also requested a clearer definition of "protective equipment." OPM has clarified the definition of "uniform" and has provided a statutory cross-reference for protective equipment (5 U.S.C. 7903).

Another agency did not understand the meaning of the term "category of employees." The proposed term was used to refer to a group of employees for whom an agency is establishing a higher initial maximum uniform allowance. The agency asked whether the term means an occupational group, a type of appointment, an organizational category or refers to how often the uniform is worn. To clarify this matter, OPM has added a new definition of "category of employees" to the final regulations to clarify that the term means any group of employees designated by an agency that has the same basic uniform requirements.

Governmentwide Maximum Uniform Allowance Rate

A labor organization commented that the provision authorizing a Governmentwide maximum uniform allowance rate was somewhat ambiguous. The labor organization was concerned that the proposed regulation might allow an agency the option of not paying an annual maintenance uniform allowance to an employee in the years following the payment of a higher initial uniform allowance. The proposed regulation stated that unless a higher initial rate is payable, the head of the agency shall pay an allowance not to exceed \$400 a year or furnish a uniform at a cost not to exceed \$400 a year. In other words, while a higher initial rate is an exception to the annual maintenance rate, the agency head is required to pay a uniform allowance rate when all the regulatory requirements are met. Therefore, OPM believes no change is necessary in the proposed regulation authorizing a Governmentwide maximum uniform allowance.

Notification Process

One agency would prefer to avoid the requirement to publish a higher initial maximum uniform allowance rate in the *Federal Register* for public notice and comment. Instead, the agency would

like freedom to implement changes in agency requirements regarding uniforms without any restrictions. While OPM agrees that agencies need flexibility to administer uniform allowances, OPM believes that the requirement for advance publication and consideration of comments is not overly burdensome. Rather, such publication will foster the development of well-defined agency policies and will provide other agencies, employees, interested parties, and the public an opportunity to consider and comment on Federal civilian uniform allowance policies that may require a high initial outlay of funds. Therefore, OPM has not changed the proposed regulation in this regard.

Two agencies objected to the proposed requirement in § 591.104(c) that OPM must approve the continuation of a higher initial maximum rate in the year following the 1st year the employee becomes subject to wearing a uniform. The agencies argued that the purpose of continuing a higher initial rate for more than 1 year is to spread an extremely high cost over a 2-year period—necessary only in the most unusual situations—and that the process would be administratively burdensome. OPM agrees. The final regulations allow an agency to pay an allowance for an extremely high-cost minimum basic uniform over a 2-year period. This means that agencies may continue to pay the amount of the higher initial maximum uniform allowance rate in the year following the year the employee first becomes subject to wearing a uniform. However, the agency must publish its intention to continue the payments for a 2nd year in the *Federal Register* in accordance with § 541.104(c). The agency may choose to publish its intent in the initial *Federal Register* notice, or it may republish the following year.

New Style or Type of Basic Uniform

Several commenters would like agencies to be able to establish a higher initial maximum uniform allowance rate the 1st year a new style or type of minimum basic uniform is required by an agency if the cost of replacing the obsolete uniform is especially high. The commenters maintain that workers who are required to purchase new basic uniforms involving a high initial outlay of funds should be allowed to benefit from the proposal.

OPM agrees with the commenters that replacement of the obsolete basic uniform when costs are high should be included in the higher initial allowance rate. Therefore, we have added paragraph § 591.104(h) to provide that an agency may use the higher initial maximum uniform allowance procedures to establish a higher initial maximum uniform allowance rate when a new style or type of minimum basic uniform is required for a category of employees.

In a related comment, one agency inquired whether the proposed procedures for a 2nd year of a higher initial rate under § 591.104(c) were intended to address obsolescence of uniform components. It is unlikely that such obsolescence would regularly occur the year following the year the employee first becomes subject to a requirement to wear a uniform or the year following the obsolescence of a minimum basic uniform. OPM has clarified the regulations regarding obsolescence by adding paragraph § 591.104(h) concerning the replacement of an obsolete basic uniform.

Providing a Complete Uniform

One agency requested that another higher initial allowance be allowed at the agency's discretion for individual employee needs, such as a dress uniform, a maternity uniform, a different size, or a uniform burned in a fire. Similarly, a labor organization was concerned that the proposed regulations provide relief only for the 1st year the employee becomes subject to the uniform requirement. However, the labor organization noted that it may take several years to acquire the full complement of required uniform items and suggested extending the higher allowance until the employee acquires the full complement of required uniform items.

The final regulations provide that agencies may spread the higher initial maximum uniform allowance rate over 2 years for a category of employees when the minimum basic uniform is very costly. We believe the combination of the higher initial maximum uniform allowance rate and the ongoing maintenance allowance are sufficient to meet individual needs. Therefore, a change in the regulations is not necessary.

OPM notes that under § 591.104(d)(3), an agency's published notice must list the specific uniform items required by an affected category of employees to ensure that needed items are included and that the selected higher rate represents the average total uniform cost. For example, possible basic

uniform items for a hypothetical category of employees required to serve outdoors part of the time could be: Three shirts, two slacks or skirts, two pairs of boots, one outerwear garment, one pair of gloves, and one hat. If a second year higher initial uniform allowance is required because of great expense, the agency may implement an extension of § 591.104(c).

Agency Administrative Matters

Two agencies and an employee raised several administrative questions that, they suggest, should be resolved in the regulations. One agency asked whether moving an unused initial higher allowance amount from the initial year into the following year would require OPM approval. A higher initial maximum uniform allowance rate applies to the year an employee first becomes subject to a uniform requirement (and may apply to the year following that year under § 591.104(c)). In unusual situations, when an employee who has not purchased the designated uniform has not also been required to wear it, the higher initial allowance could be canceled and reauthorized when the employee actually becomes subject to the uniform requirement.

The other agency stated it would like the regulations to include the methods for paying a recurring uniform maintenance allowance. This would include rules to state the increments in which the allowance would be paid (e.g., biweekly, quarterly, or annually), to whom it should be paid (e.g., the vendor, the employee, or another method), and the appropriate conditions for each method of payment. OPM believes these administrative matters are best determined by each agency in consideration of the methods that best fit the needs of the agency and its employees.

The employee was concerned about circumstances in which it would be inappropriate to wear the designated uniform. For example, could the uniform be worn off duty, or could various parts of the uniform be worn along with personal clothing? Agency policy and employee discretion should determine the proper wearing of a required uniform. OPM does not believe it is necessary or desirable to regulate this matter.

Increase in Governmentwide Maximum Uniform Allowance

An agency commented that it believed OPM was obligated to establish annual inflationary rates for the Governmentwide maximum uniform allowance rate based on the provisions

of the Federal Employees Pay Comparability Act of 1990 (FEPCA). Under section 5902 of title 5, United States Code, as revised by FEPCA, OPM "may, from time to time, by regulation adjust the maximum amount for the cost of uniforms and the maximum allowance for uniforms under section 5901." The agency suggested that the method for such an adjustment should be included in the final rule.

While it is possible for OPM to establish a regulatory formula to implement section 5902, OPM believes such an approach is not required by law and that an adjustment to the maximum uniform allowance is not necessary at this time because the maximum uniform allowance was adjusted recently by statute (FEPCA). In addition, even a regulatory method for adjustment in the Governmentwide maximum uniform allowance rate would not obviate the need for a higher initial maximum uniform allowance when the required uniform involves a high initial outlay of funds. Therefore, OPM has not revised the regulations in this regard.

Eligibility for a Uniform Allowance

An employee believed that certain officer technicians should receive appropriate remuneration under the uniform allowance program in section 5902 of title 5, United States Code, because they are required to wear their military uniform while performing their Federal civilian jobs. This comment applies to the administration of the uniform allowance program within an agency and not the construction of the regulations themselves. Therefore, OPM believes these regulations are not an appropriate place to address the employee's question and agency policies related to this matter.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

James B. King,
Director.

Accordingly, OPM is amending part 591 of title 5 of the Code of Federal Regulations as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

1. The authority citation for part 591 is revised to read as follows:

Authority: 5 U.S.C. 5903, 5941, and 5942; E.O. 10000, 3 CFR, 1943-1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338; E.O. 12748, 3 CFR, 1991 Comp., p. 316.

2. Subpart A is added to read as follows:

Subpart A—Uniform Allowances

Sec.

- 591.101 Purpose.
- 591.102 Definitions.
- 591.103 Governmentwide maximum uniform allowance rate.
- 591.104 Higher initial maximum uniform allowance rate.

Subpart A—Uniform Allowances

§ 591.101 Purpose.

This subpart prescribes the regulations authorized by section 5903 of title 5, United States Code, for the payment of uniform allowances.

§ 591.102 Definitions.

Agency means an "Executive agency," as defined in 5 U.S.C. 105.

Employee means an employee in or under an agency.

Category of employees means any group of employees designated by an agency that has the same basic uniform requirements.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Uniform means a specified article or articles of clothing that may include, but is not limited to, such items as shoes, boots, hats, shirts, slacks, skirts, or outerwear an employee is required by an agency to wear to provide a distinctive and easily identifiable appearance in performing his or her job. A "uniform" does not include protective equipment required for the employee's safety under 5 U.S.C. 7903 or normal business or work attire purchased at the discretion of the employee.

Year means any period of 12 consecutive months designated by an agency as the basis for applying the maximum uniform allowance rates established under this part.

§ 591.103 Governmentwide maximum uniform allowance rate.

Unless a higher initial maximum uniform allowance rate is payable under § 591.104 to an employee who is required by statute, regulation, or an agency's written administrative procedures to wear a uniform, the head of each agency concerned, out of funds available, shall—

- (a) Pay an allowance for a uniform not to exceed \$400 a year; or

- (b) Furnish a uniform at a cost not to exceed \$400 a year.

§ 591.104 Higher initial maximum uniform allowance rate.

(a) The head of an agency may establish one or more initial maximum uniform allowance rates greater than the Governmentwide maximum uniform allowance rate established under § 591.103.

(b) A higher initial maximum uniform allowance rate established under this section may not exceed the average total uniform cost for the minimum basic uniform for the affected employees and, except as provided in paragraph (c) of this section, applies only to the year in which the employee becomes subject to a requirement to wear the uniform.

(c) An agency that establishes one or more higher initial maximum uniform allowance rates under this section may divide the cost of the minimum basic uniform and continue a higher initial maximum uniform allowance for the year following the year the employee first becomes subject to the requirement to wear the uniform, provided the agency publishes a notice of its intention to continue such payments in the *Federal Register* for notice and comment.

(d) Before establishing a higher initial maximum uniform allowance rate under this section, an agency shall publish in the *Federal Register* for notice and comment—

- (1) A description and justification of the circumstances requiring a higher initial maximum uniform allowance rate;
- (2) An estimate of the number of employees affected;
- (3) The specific items required for the basic uniform and the average total uniform cost for the affected employees;
- (4) The amount of the proposed higher initial maximum uniform allowance rate to be paid during the year the employee first becomes subject to the uniform requirement;
- (5) The proposed effective date of the higher initial maximum uniform allowance rate; and,
- (6) The intent of the agency (if any) to divide the cost of a minimum basic uniform and continue to make higher initial maximum basic uniform allowance payments in the year following the year the employee first becomes subject to the uniform requirement.

(e) So that OPM can evaluate agencies' use of this authority and provide the Congress and others with information regarding the use of a higher initial maximum uniform allowance rate, each agency concerned

shall maintain such other records and submit to OPM such other reports and data as OPM shall require.

(f) When OPM determines that an agency is using this authority inappropriately, OPM may require its prior approval before that agency establishes any future higher initial maximum uniform allowance rate.

(g) An agency may increase a higher initial maximum uniform allowance rate only as a result of an increase in the average total uniform cost for the affected employees. Before effecting an increase under this paragraph, an agency shall follow the notice and comment procedures required by paragraph (d) of this section.

(h) To establish a higher initial maximum uniform allowance rate applicable to the initial year a new style or type of minimum basic uniform is required for a category of employees, an agency shall use the higher initial maximum uniform allowance procedures provided under this section.

[FR Doc. 94-20843 Filed 8-24-94; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 93-101-2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables will be required to undergo prescribed treatments for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

We are also making several minor changes to the regulations for the sake of clarity.

EFFECTIVE DATE: August 25, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper or Mr. Peter Grosser, Senior Operations Officers, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56-8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

On May 2, 1994, we published in the *Federal Register* (59 FR 22538-22545, Docket No. 93-101-1) a document in which we proposed to amend the regulations to allow additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of those fruits and vegetables had been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We proposed to allow those importations at the request of various importers and foreign ministries of agriculture and after determining that the fruits or vegetables could be imported under certain conditions with insignificant pest risk. Also in the proposed rule, we proposed to make some minor changes to the regulations for the sake of clarity.

We solicited comments on the proposed rule for a 30-day period ending on June 1, 1994. We received 50 comments by that date. One comment, from a State agricultural agency, supported the proposal. The other 49 comments, from fruit growers and distributors, State agricultural agencies, fruit growers' cooperative associations, and trade associations, opposed the proposal or some of its provisions and/or made recommendations. We carefully considered all of the comments we received. They are discussed below.

Comment: The treatments and other requirements proposed by the Animal and Plant Health Inspection Service (APHIS) for the various fruits and vegetables to be imported would be inadequate in preventing the introduction of exotic pests into the United States.

Response: Prior to proposing that various fruits and vegetables be allowed into the United States, APHIS

researches the pests, including diseases, afflicting those fruits and vegetables in their countries of origin. After reviewing the results of the research on the fruits and vegetables in this proposal, we are confident that the treatments and other requirements proposed as conditions of entry into the United States will be adequate to prevent the introduction of exotic plant pests.

Comment: APHIS is proposing to use methyl bromide as a fumigant in the treatment of imported fruits and vegetables even though the Environmental Protection Agency (EPA), in a final rulemaking published in the *Federal Register* on December 10, 1993 (58 FR 65018-65082), has frozen methyl bromide production at 1991 levels and required the phasing out of domestic use of methyl bromide by the year 2001.

Response: APHIS is aware of the EPA rulemaking on the use of methyl bromide. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation. Our current proposal, however, assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years.

Comment: APHIS should conduct periodic site inspections and treatment assessments at fruit and vegetable treatment facilities to ensure that phytosanitary requirements for imports are being followed.

Response: Treatment facilities are certified and periodically inspected by APHIS.

Comment: APHIS is proposing to allow tomatoes (*Lycopersicon esculentum*) to be imported into the United States from the Almeria province in Spain, where the tomato yellow leaf curl and gemini viruses are present. These viruses could be introduced into the United States through the importation of tomatoes from Almeria.

Response: This rule will allow only tomato fruit from Almeria into the United States. Tomato fruit is not a vector of either virus.

Comment: APHIS has proposed to require the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF) to establish a Mediterranean fruit fly (Medfly) trapping program in order for tomatoes from Almeria, Spain, to be exported to the United States. MAFF would be required to begin trapping 2 months prior to the shipping season and continue trapping until the season's end. APHIS has agreed to allow MAFF to use the Nadel type trap.

APHIS should require MAFF to use McPhail type traps as well as Nadel

traps in order to better detect female flies (McPhail traps use a food lure and attract both male and female flies, while Nadel traps use a sex lure and attract male flies primarily).

Also, possibly, APHIS should require MAFF to use "sticky" traps, which use a no-pest strip to trap flies, rather than Nadel traps, which use a pesticide. Sticky traps are more effective than Nadel traps. Also, APHIS should require MAFF to trap all year long. Though the climate in Almeria is dry and generally inhospitable to the Medfly, irrigation has altered the environment so that the Medfly might survive there year round, not just during the tomato growing season.

Response: In the future, it may be prudent to require MAFF to use McPhail as well as Nadel traps around tomato screenhouses in Almeria. However, in extremely hot and arid climates, such as in Almeria, the food lure used in McPhail traps evaporates within a few days and the trap becomes ineffective. APHIS has yet to resolve this problem. We believe that the Nadel trap will effectively detect any Medfly infestations in Almeria, but we will continue to examine the possibility of requiring the use of the McPhail trap for supplemental trapping.

In regard to possibly requiring that MAFF use "sticky" rather than Nadel traps in Almeria, tests conducted at our Hawaii Methods Development Station indicate that Nadel traps are as effective as "sticky" traps in detecting Medfly infestations. Therefore, we will allow MAFF to use the Nadel trap.

We will not require MAFF to trap for Medfly throughout the year in Almeria. In Almeria, when the tomato shipping season ends in April, the screenhouses are taken down and nothing is grown until the next season. As stated above, the climate is arid and hot and there is very little, if any, indigenous Medfly host material. Furthermore, tomatoes are grown several kilometers from residential areas, where there may be host material in the summer. We do not believe that there could be any Medfly infestation in the tomato growing areas in Almeria outside of the growing season and therefore will not require MAFF to trap for Medflies until 2 months prior to the season and through its end, as stated in the proposal.

Comment: APHIS has not accurately characterized the potential economic impact on domestic growers of allowing the import of various fruits and vegetables. Specifically, APHIS has failed to note the significant economic impact on Florida tomato growers of allowing tomato imports from Almeria, Spain.

Also, APHIS has underestimated the economic impact on California artichoke growers of allowing artichoke imports from Argentina and South Africa. Also, by using the price elasticity for fresh vegetables in general to determine the impact of artichoke imports on domestic artichoke prices, APHIS has underestimated the potential economic impact, especially on California growers.

Response: Spanish officials estimate that tomato imports from Almeria into the United States will range from 440,000 to 660,000 pounds. These imports will occur from December to April and overlap Florida's tomato season, which is November through June. If the volume of tomatoes to be imported from the Almeria Province were to reach 660,000 pounds, it would constitute only about 0.039 percent of Florida's tomato production for the fresh market (estimated at 1.7 billion pounds in 1993 by the National Agricultural Statistics Service). We anticipate, therefore, that the economic impact of these imports on Florida growers will not be significant.

We continue to support our original contention (explained below) that allowing artichokes to be imported into the United States from Argentina and South Africa will not have a significant economic impact on domestic artichoke growers. A price elasticity specifically for artichokes is not available. Regardless, we anticipate that the maximum possible artichoke imports from Argentina will constitute less than one-tenth of one percent of both domestic production and domestic total supply. Moreover, California growers account for nearly all domestic artichoke production. Therefore, we anticipate that these imports will not have a significant economic impact on California growers.

Comment: APHIS has proposed to allow ivy gourd (*Coccinia grandis*) from Jamaica to be imported into the United States without recognizing the pestiferous nature of ivy gourd. The State of Hawaii has declared ivy gourd to be a noxious weed and established a statewide eradication program.

Response: We are adopting this provision of the proposal as part of the final rule without change, as we do not recognize the ivy gourd as a noxious weed under either the Federal Noxious Weed Act or the Federal Seed Act. Furthermore, we do not anticipate that ivy gourd from Jamaica will be imported to Hawaii.

Comment: APHIS is proposing to allow the importation of dasheen (*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp.) from Indonesia

without sampling for exotic nematodes, thus risking the introduction of exotic nematodes into the United States.

Response: In many tubers, including dasheen, parasitic nematodes produce symptoms through their feeding on the cellular contents of the plant; breakdown of tissue is followed by the invasion of secondary fungi and bacteria, causing necrotic lesions to develop. These necrotic and decayed tissues are obvious, visible symptoms that an inspector would look for during an inspection. Therefore, we continue to believe that, for dasheen, visual inspection is adequate to prevent the introduction of nematodes.

Comment: APHIS is proposing to allow blueberries (*Vaccinium* spp.) to be imported from Ecuador and Peru into the United States after treatment only for Medfly. APHIS should not allow blueberries from Ecuador and Peru to be imported until they have undertaken entomological and pathological studies to determine whether other pests may be introduced by the imports.

Response: Prior to proposing that blueberries from Ecuador and Peru be allowed into the United States, APHIS researched the pests afflicting blueberries in those countries. Results of that research indicated that blueberries may be imported into the United States after treatment only for Medfly with little or no risk of introducing exotic plant pests. We believe that visual inspection of the blueberries by APHIS upon arrival will detect the presence of any pests other than Medfly.

Comment: APHIS has proposed to allow fresh litchi (*Litchi chinensis*) from Taiwan to be imported into the United States subject to cold treatment only for fruit flies of the genus *Bactrocera* and for the litchi fruit borer, *Conopomorpha sinensis*. Other exotic pests, not affected by this treatment, may be introduced, including those which infest litchi stems and leaves.

Response: Prior to proposing that litchi from Taiwan be allowed into the United States, APHIS researched the pests afflicting litchi in Taiwan. Results of that research indicated that litchi from Taiwan may be imported into the United States after the prescribed cold treatment with little or no risk of introducing exotic plant pests. We believe that visual inspection of litchi by APHIS upon arrival will detect the presence of any pests other than those killed by the treatment. As for pests afflicting litchi roots and stems, APHIS will only allow litchi fruit into the United States; litchi stems and leaves will be prohibited from entering.

Comment: The cold treatment proposed for litchi will not effectively

eradicate infestations of fruit flies of the genus *Bactrocera* or the litchi fruit borer, *Conopomorpha sinensis*. Furthermore, APHIS needs to specify where cold treatment of fresh litchi from Taiwan will be conducted.

Response: Research conducted by Taiwanese agricultural agencies, the results of which were reviewed and confirmed by USDA, show that the cold treatment proposed for litchi will effectively eradicate infestations of fruit flies of the genus *Bactrocera* and the litchi fruit borer, *Conopomorpha sinensis*. Also, the regulations under § 319.56-2d require that fruit and vegetables requiring cold treatment as a condition of entry into the United States undergo cold treatment either prior to arriving in the United States or upon arrival at designated U.S. ports.

Comment: Taiwanese litchi growers currently use pesticides not approved in the United States. Imported fresh litchi from Taiwan therefore may contain residues of these pesticides and pose a public health risk.

Response: The United States Food and Drug Administration (FDA) samples and tests imported fruit and vegetables for pesticide residues. If residue of a pesticide unapproved in the United States is found in a shipment of imported fruit or vegetables, the shipment is denied entry into the United States.

Comment: APHIS is proposing that cartons in which fresh litchi from Taiwan are packed must be stamped "Not for distribution in FL," in order to prevent the introduction of the pest *Eriophyes lichtii* into Florida. This safeguard will be ineffective, as shipments of imported fresh litchi could be repacked upon arrival into the United States and then diverted into Florida through interstate commerce.

Response: Fresh litchi from Taiwan could be repacked and diverted into Florida in violation of our regulations. We have no information, however, supporting or disproving the assertion that this will occur. We will make every effort to enforce this and all of our regulations. It would be impractical for APHIS not to promulgate a regulation simply because it might be violated.

Comment: APHIS has not accurately characterized the potential economic impact on litchi growers in Florida of allowing fresh litchi to be imported from Taiwan into the United States.

Response: Based on information recently provided in these comments and from elsewhere, we have determined that allowing fresh litchi to be imported into the United States from Taiwan may have a significant economic impact on litchi growers in

Florida. We have performed a more detailed economic analysis, set forth below. However, APHIS has no authority to restrict trade based on its potential economic impact.

Comment: APHIS should not allow fresh longan to be imported into the United States from Taiwan because of the potential introduction of exotic pests and the possible adverse economic impact on domestic longan producers.

Response: Fresh longan fruit is not allowed to be imported into the United States from Taiwan under § 319.56. We have not proposed to allow fresh longan fruit to be imported into the United States from Taiwan.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting, without change, the provisions of the proposal as a final rule.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the *Federal Register*. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the *Federal Register*.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic impact of this rule on small entities.

This final rule will amend the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain foreign countries and localities under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that they could introduce injurious plant pests into the United States. This rule will revise the status of certain commodities from certain countries and localities, allowing their importation into the United States for the first time.

These revisions are based on biological risk analyses that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The risk analyses indicate that the fruits or vegetables listed in this rule, under certain conditions, may be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables will be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. Thus, this action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction into the United States of injurious plant pests by imported fruits and vegetables.

Of the fruits and vegetables to be allowed importation into the United States, domestic production and related import information is available only for artichokes, asparagus, blueberries, sweet cherries, dasheens, plums, pink and red tomatoes, and litchi.

We have used both published elasticities and price flexibilities to estimate the potential economic effects of allowing artichokes, asparagus, blueberries, sweet cherries, dasheens, plums, and pink and red tomatoes to be imported into the United States; both examine the relationship between changes in supply and subsequent changes in price.

Domestic production and import information was not available for the other commodities that could be imported into the United States as a result of this action, because these other commodities are not produced on a large scale domestically. We anticipate, therefore, that allowing these other commodities to be imported into the United States will not have a significant economic impact on domestic producers.

Artichokes

In 1987, 67 domestic producers harvested artichokes; all but one were in California. It is likely that most of these producers would be classified as small entities using Small Business Administration (SBA) criteria (annual gross receipts of \$0.5 million or less). In 1992, domestic producers harvested 118 million pounds of artichokes for the fresh market, with an estimated value of \$39.2 million.

This rule will allow artichokes to be imported into the United States from Argentina and South Africa under certain conditions. Argentina produces approximately 165 million pounds of artichokes annually. We estimate that Argentina could export about 44,000 pounds of artichokes per year over the next 3 years to the United States. This volume of artichoke imports will constitute about 2.0 percent of current total imports to the United States, less than 0.10 percent of current domestic production, and less than 0.10 percent of the current total artichoke supply in the United States (domestic and imports).

Assuming that a less than 0.10 percent increase in the supply of artichokes would lead to an approximately 0.12 percent decrease in the domestic price of artichokes (using the price elasticity for fresh vegetables, -0.320), we estimate that this increase in supply will result in a price decrease of about \$0.038 per hundredweight (cwt), or \$0.00038 per pound, from an original price of \$33.40 per cwt. As a result of the price decrease, there could be a decrease in the total revenue of domestic artichoke producers of about \$45,000, roughly 0.12 percent of their total revenue of \$39.2 million. We anticipate, therefore, that allowing artichokes to be imported into the United States from Argentina will not have a significant economic impact on domestic producers.

Allowing artichokes to be imported from South Africa will have an even smaller impact on domestic producers. Production data for South Africa is not available. South Africa's total exports of artichokes were less than 2,000 pounds in 1991 and less than 700 pounds in 1992. Even if South Africa exported 2,000 pounds annually to the United States, which is unlikely, the price decrease would be negligible, as would be the decrease in total revenue. Therefore, allowing artichokes to be imported from South Africa also will not have a significant economic impact on domestic artichoke producers.

Asparagus

In 1987, 3,033 domestic producers harvested asparagus. It is likely that most of these producers would be classified as small entities by SBA standards. In 1992, domestic producers harvested 135 million pounds of asparagus for the fresh market, with an estimated value of \$116 million.

This rule will allow asparagus to be imported into the United States from Thailand under certain conditions. In 1992, Thailand produced approximately 26.5 million pounds of asparagus and

exported 5.5 million pounds. Japan imported 80 percent of Thailand's asparagus exports (4.4 million pounds), with the remaining 20 percent imported by five other countries. Currently, there is no reported excess supply of asparagus in Thailand.

We expect annual asparagus imports into the United States from Thailand will be minimal, possibly 220,000 pounds, as a result of this rule. This volume of asparagus would constitute about 0.38 percent of current total imports to the United States, about 0.16 percent of current domestic production, and about 0.11 percent of the current total asparagus supply in the United States.

Assuming that an 0.11 percent increase in the supply of asparagus would lead to a decrease of about 0.36 percent in the domestic price of asparagus (using the price elasticity for fresh vegetables, -0.320), we estimate that this increase in supply would result in a price decrease of about \$0.31 per cwt, or \$0.0031 per pound, from an original price of \$86.00 per cwt. As a result of the price decrease, there could be a decrease in total revenue of domestic asparagus producers of about \$415,000, roughly 0.36 percent of the original total revenue of \$116 million. We anticipate, therefore, that allowing asparagus to be imported from Thailand will not have a significant economic impact on domestic asparagus producers.

Blueberries

In 1987, 3,911 farms in 36 states harvested 109.4 million pounds of cultivated blueberries. Additionally, 501 farms in six of the same states harvested 32.6 million pounds of wild blueberries. It is likely that most of these producers would be classified as small entities by SBA standards. In 1992, domestic producers harvested 44.7 million pounds of blueberries for the fresh market, with an estimated value of \$48.0 million.

This rule will allow blueberries to be imported into the United States from Ecuador and Peru under certain conditions. Blueberry production and export data are not available for either Ecuador or Peru. Blueberries are not a formal crop in either country; they only grow wild. There is limited local consumption near the production areas. We anticipate that an insignificant amount of blueberries, if any, will be exported to the United States from either country as a result of this action. We anticipate, therefore, that allowing blueberries to be imported from Ecuador and Peru will not have a

significant economic impact on domestic blueberry producers.

Sweet Cherries

In 1987, 7,171 domestic producers harvested sweet cherries. It is likely that most of these producers would be classified as small entities by SBA standards. In 1992, domestic producers harvested 191 million pounds of sweet cherries produced for the fresh market, with an estimated value of \$115 million.

This rule will allow sweet cherries to be imported into the United States from Mexico. In 1992, Mexico produced approximately 225,000 pounds of cherries, both sweet and sour. We anticipate that any cherry imports from Mexico as a result of this action will be minimal, since presently, most of Mexico's cherry production is consumed locally. However, in the unlikely event that Mexico exported into the United States 225,000 pounds of sweet cherries, it would constitute only about 4.9 percent of current total imports, about 0.12 percent of current U.S. production and about 0.12 percent of the current total sweet cherry supply in the United States (domestic and imports).

Assuming that an 0.12 percent increase in the supply of sweet cherries would lead to a decrease of about 0.054 percent in the domestic price (using the price flexibility for sweet cherries, -0.470), we estimate that this increase in supply would result in a price decrease of about \$0.65 per ton, or \$0.00032 per pound, from an original price of \$1,200 per ton. As a result of the price decrease, there could be a decrease in total revenue of sweet cherry producers of about \$62,000, which is roughly 0.054 percent of the original total revenue of \$115 million. Therefore, we anticipate that allowing sweet cherries to be imported from Mexico will not have a significant economic impact on domestic sweet cherry producers.

Dasheen (Taro)

In 1987, 191 domestic producers harvested dasheen, 187 in Hawaii. It is likely that most of these producers would be classified as small entities by SBA standards. In 1991, domestic producers harvested 7.0 million pounds of dasheen for the fresh market, with an estimated value of \$3.0 million.

This rule will allow dasheen to be imported into the United States from Indonesia. Production and export data for dasheen are not available for Indonesia. Dasheen consumption is limited mostly to the local areas, although Indonesia exports small quantities to Japan, Hong Kong, Korea,

Malaysia, Singapore and Taiwan. We anticipate that very little, if any, dasheen will be exported to the United States as a result of this rule. We anticipate, therefore, that allowing dasheen to be imported from Indonesia will not have a significant economic impact on domestic dasheen producers.

Plums

In 1987, 8,789 domestic producers harvested plums and prunes. It is likely that most of these producers would be classified as small entities by SBA standards. In 1992, domestic producers harvested 537 million pounds of plums and prunes for the fresh market, with an estimated value of \$67.7 million.

This rule will allow plums to be imported into the United States from Uruguay. Plum production and export data is not available for Uruguay, and we anticipate that an insignificant amount of plums will be exported to the United States as a result of this rule. Consequently, we anticipate that allowing plums to be imported from Uruguay will not have a significant economic impact on domestic plum producers.

Tomatoes

In 1987, 14,542 domestic producers harvested tomatoes. It is likely that most of these producers would be classified as small entities by SBA standards. In 1992, domestic producers harvested 3.6 billion pounds of tomatoes for the fresh market, with an estimated value of \$1.3 billion.

This rule will allow pink and red tomatoes to be imported into the United States from the Almeria Province of Spain if they meet with the stringent growing and shipping requirements outlined above. Annual production in the Almeria Province of Spain averages between 4.4 million and 6.6 million pounds. Spanish officials anticipate that annual tomato exports to the United States will range from 440,000 to 660,000 pounds and will occur from December to April.

If the volume of tomatoes to be imported from the Almeria Province were to reach 660,000 pounds, it would constitute about 0.15 percent of current total imports to the United States, about 0.018 percent of current domestic production and about 0.016 percent of the current total tomato supply in the United States (domestic and imports).

Assuming that an 0.016 percent increase in the supply of tomatoes would lead to a decrease of about 0.046 percent in the domestic price (using the price flexibility for tomatoes, -0.355), we estimate that this increase in supply would result in a price decrease of about

\$0.017 per cwt, or \$0.00017 per pound, from an original price of \$36.30 per cwt. As a result of the price decrease, there could be a decrease in total revenue of tomato producers of about \$600,000, which is roughly 0.046 percent of the original total revenue of \$1.3 billion. Therefore, we anticipate that allowing pink or red tomatoes to be imported from Almeria, Spain will not have a significant economic impact on domestic tomato producers.

Litchi

In 1992, about 205 domestic producers harvested litchi. It is likely that most of these producers would be classified as small entities using Small Business Administration (SBA) criteria (annual gross receipts of \$0.5 million or less). In 1992, domestic producers harvested 685,000 pounds of litchi for the fresh market, with an estimated value of \$1.1 million.

This rule will allow fresh litchi to be imported into the United States from Taiwan under certain conditions. Taiwan produces approximately 217 million pounds of litchi annually. In 1993, Taiwan exported close to 15.5 million pounds of fresh litchi, mainly to Hong Kong, Canada, Japan, the Philippines, and Singapore. Exports increased substantially from 1992, when Taiwan exported only 6.6 million pounds of fresh litchi.

APHIS anticipates that Taiwan could export as much as 21,000 pounds of fresh litchi into the United States in 1995; this would constitute only about 19.6 percent of current total imports of fresh litchi, 3.1 percent of current domestic production, and 2.6 percent of current total litchi supply in the United States. If imports of fresh litchi from Taiwan remain at such small percentages of domestic production and total supply, the economic impact on domestic growers will not be significant.

However, if imports increase to a level comparable to those of other importing countries (listed above), domestic growers will be impacted significantly; the amount of fresh litchi imported from Taiwan could exceed the amount produced domestically and prices could subsequently decline drastically as a result of the increased supply. Consumers, however, would benefit from the decreased price and the enhanced access to fresh litchi.

The aggregate economic impact of this rule is expected to be positive. U.S. consumers will benefit from a greater availability of fruits and vegetables. U.S. importers will also benefit from a greater availability of fruits and vegetables to import. It is not likely that any U.S. fruit and vegetable producers

or other small entities will be affected in a significant economic way by the easing of importation restrictions on these particular commodities.

In the course of rulemaking, had we come across evidence indicating that importation of any of the concerned fruits or vegetables would pose a significant risk of plant pest introduction, we would have considered either developing alternative requirements regarding that importation or continuing to prohibit the importation of that fruit or vegetable. However, our initial pest risk assessments and our review of public comments on the proposal indicated that importation of any of the concerned fruit and vegetables would pose an insignificant risk of plant pest introduction.

Executive Order 12778

This rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule will be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of fruits and vegetables under the conditions specified in this rule will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions

of NEPA (40 CFR Parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection 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. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule will be submitted for approval to the Office of Management and Budget.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 is revised to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through August 25, 1994, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

3. The authority citation for part 319 continues to read as follows:

4. In § 319.56-2t, the table is amended by adding, in alphabetical order, the following:

§319.56-2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

Country/locality	Common name	Botanical name	Plant part(s)
Argentina	Artichoke, globe	<i>Cynara scolymus</i>	Immature flower head.
Belize	Mint	<i>Mentha</i> spp.	Above ground parts.
Indonesia	Dasheen	<i>Colocasia</i> spp., <i>Alocasia</i> spp., and <i>Xanthosoma</i> spp.	Tuber (Prohibited entry into Guam due to dasheen mosaic virus. Cartons in which dasheen is packed must be stamped "Not for distribution in Guam.")
Jamaica	Ivy gourd	<i>Coccinia grandis</i>	Fruit.
	Pointed gourd	<i>Trichosanthes dioica</i>	Fruit.
Mexico	Tepeguaje	<i>Leucaena</i> spp.	Fruit.
Peru	Arugula	<i>Eruca sativa</i>	Leaf and stem.
	Chervil	<i>Anthriscus</i> spp.	Leaf and stem.
	Lemongrass	<i>Cymbopogon</i> spp.	Leaf and stem.
	Mustard greens	<i>Brassica juncea</i>	Leaf.
South Africa	Artichoke, globe	<i>Cynara scolymus</i>	Immature flower head.
Spain	Tomato	<i>Lycopersicon esculentum</i>	Green fruit (pink or red fruit from Almeria Province may be imported only in accordance with §319.56-2dd).

5. In §319.56-2t, the table is amended for the Cook Islands and South Korea entries, under the heading *Plant Part(s)*, by adding a sentence to each as follows:

§319.56-2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

Country/locality	Common name	Botanical name	Plant part(s)
Cook Islands			

Country/locality	Common name	Botanical name	Plant part(s)
.	Ginger .....	.....	* * * Cartons in which ginger is packed must be stamped "Not for distribution in PR, VI, or Guam."
South Korea	.	.	.
.	Dasheen .....	.....	* * * Cartons in which dasheen is packed must be stamped "Not for distribution in Guam."

6. In § 319.56-2t, the table is amended for the Israel and Mexico entries, under the heading *Common name*, by removing the word "Garden Rocket" from both entries and adding "Arugula" in its place in both entries.

7. In § 319.56-2x, paragraph (a), the table is amended by adding, in alphabetical order, the following:

§ 319.56-2x Administrative instructions: conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
Ecuador	Blueberry	<i>Vaccinium</i> spp	Fruit.
Israel	Cactus	<i>Opuntia</i> spp	Fruit.
Mexico	Cherry	<i>Prunus avium</i>	Fruit.
Peru	Blueberry	<i>Vaccinium</i> spp.	Fruit.
Taiwan	Litchi	<i>Litchi chinensis</i>	Fruit (Prohibited entry into Florida due to <i>Eriophyes litchii</i> . Cartons in which litchi are packed must be stamped "Not for distribution in FL").
Thailand	Asparagus	<i>Asparagus officinalis</i>	Shoot.
Uruguay	Plum	<i>Prunus domestica</i>	Fruit.

8. A new § 319.56-2dd is added to read as follows:

§ 319.56-2dd Administrative instructions: conditions governing the entry of pink or red tomatoes from Spain.

(a) Pink or red tomatoes (fruit) (*Lycopersicon esculentum*) from Spain may be imported into the United States only under the following conditions:

(1) The tomatoes must be grown in the Almeria Province of Spain in greenhouses registered with, and inspected by, the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF);

(2) The tomatoes may be shipped only from December 1 through April 30, inclusive;

(3) Two months prior to shipping, and continuing through April 30, MAFF must set and maintain Mediterranean

fruit fly (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all areas outside the greenhouses and within 8 kilometers, including urban and residential areas, MAFF must place Medfly traps at a rate of four traps per square kilometer. All traps must be checked every 7 days;

(4) Capture of a single Medfly in a registered greenhouse shall immediately cancel exports from that greenhouse until the source of infestation is determined, all Medflies are eradicated, and measures are taken to preclude any future infestation. Capture of a single Medfly within 2 kilometers of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area or if the single Medfly has been introduced accidentally. Capture of two Medflies

within 2 kilometers of a registered greenhouse and within a 1 month time period shall cancel exports from all registered greenhouses within 2 kilometers of the find, until the source of infestation is determined and all Medflies are eradicated;

(5) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by a flyproof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in flyproof containers for transit to the airport and subsequent shipping to the United States.

(6) MAFF is responsible for export certification inspection and issuance of phytosanitary certificates. A phytosanitary certificate issued by MAFF and bearing the following declaration, "These tomatoes were grown in registered greenhouses in

Almeria Province in Spain," must accompany the shipment.

(b) [Reserved]

Done in Washington, DC, this 19th day of August 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-20989 Filed 8-24-94; 8:45 am]

BILLING CODE 3410-34-P

7 CFR Part 301

[Docket No. 94-030-2]

Mexican Fruit Fly; Treatments for Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Mexican fruit fly regulations by adding a high-temperature forced air treatment for grapefruit. This action will provide an alternative treatment for grapefruit that require treatment to be moved interstate from regulated areas in Texas and California. Adding this treatment will facilitate the interstate movement of grapefruit grown in regulated areas.

EFFECTIVE DATE: September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

In order to prevent the artificial spread of the Mexican fruit fly to noninfested areas, the regulations in 7 CFR 301.64 through 301.64-10 (referred to below as the regulations) restrict the interstate movement of regulated articles from regulated areas in quarantined States. Quarantined States are listed in § 301.64(a), regulated articles are listed in § 301.64-2, and regulated areas are listed in § 301.64-3(c).

Regulated articles are most often certified for interstate movement after an inspector has determined that the regulated article is free from the Mexican fruit fly, or that the premises of origin is free from the Mexican fruit

fly and the regulated article has not been exposed to the pest. There are cases, however, where a regulated article or its premises of origin cannot be determined to be free from the Mexican fruit fly. In such cases, a certificate will be issued if the regulated article is treated in accordance with § 301.64-10, or a limited permit may be obtained to move the regulated article interstate to receive one of the treatments specified in § 301.64-10.

On June 20, 1994, we published in the Federal Register (59 FR 31561-31562, Docket No. 94-030-1) a proposal to add a high-temperature forced air treatment to § 301.64-10 as an alternative treatment for grapefruit (*Citrus paradisi*), one of the regulated articles listed in § 301.64-2. The high-temperature forced air treatment was developed by the Agricultural Research Service of the U.S. Department of Agriculture as an effective alternative treatment against the Mexican fruit fly in grapefruit.

We solicited comments on our proposed rule for a 30-day period ending on July 20, 1994. We received one comment by that date, from a State department of agriculture. The commenter supported our proposed rule with the expectation that the Animal and Plant Health Inspection Service will ensure that the treatment will be conducted in accordance with the approved time and temperature schedule and that treated grapefruit will be identified as such and protected from Mexican fruit fly infestation until it has left the regulated area. We believe that the provisions of § 301.64-4 regarding conditions for the interstate movement of regulated articles from regulated areas and the provisions of § 301.64-5 regarding the issuance of certificates and limited permits for the movement of regulated articles sufficiently address the commenter's expectations. Section 301.64-5 also requires that treatments be monitored by inspectors to assure compliance with the regulations.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

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.

This final rule amends the regulations by adding a high-temperature forced air treatment to the list of approved treatments for Mexican fruit fly in grapefruit.

There are approximately 1,500 citrus grove owners and 50 shippers who stand to benefit by having an additional treatment option for grapefruit to be moved interstate from a regulated area. Adding another treatment will not increase the amount of grapefruit moved from regulated areas in Texas and California because most citrus and other regulated articles moved interstate by owners and shippers qualify for movement without requiring treatment. Treatment becomes necessary only when the regulated articles or their premises of origin cannot be certified as being free from Mexican fruit fly.

Cold treatment and methyl bromide fumigation have been the two treatments available for grapefruit; the availability of the high-temperature forced air treatment will simply provide another treatment option when treatment is required.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are 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 document 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 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.64-10, a new paragraph (e) is added to read as follows:

§ 301.64-10 Treatments.

* * * * *

(e) *Grapefruit*. (1) High-temperature forced air as follows:

(i) Minimum size: 3.5 in (9 cm) in diameter

(ii) Minimum weight: 9.25 oz (262 g)

(iii) Minimum initial pulp temperature: 77 °F (25 °C)

(iv) *Caution*: Grapefruit larger than 3.7 in (9.5 cm) in diameter and 14.2 oz (402 g) in weight may suffer cosmetic damage as a result of this treatment.

(2) These steps must occur in order:

(i) Place the grapefruit in a chamber and seal the chamber.

(ii) Heat air in chamber to 104 °F (40 °C) for 120 minutes.

(iii) Heat air in chamber to 122 °F (50 °C) for 90 minutes.

(iv) Heat air in chamber to 126 °F (52 °C) and maintain temperature until the grapefruit center reaches 118 °F (48 °C).

(3) The treatment must be administered in a sealed, insulated chamber. The air may be heated in the chamber or hot air may be introduced into the chamber.

Done in Washington, DC, this 18th day of August 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-20785 Filed 8-24-94; 8:45 am]

BILLING CODE 3410-34-P

Rural Electrification Administration

7 CFR Parts 1744 and 1753

RIN 0572-AB08

Post-Loan Policies and Procedures Common to Guaranteed and Insured Telephone Loans; Telecommunications System Construction Policies and Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends its post-loan regulations for telephone borrowers to ease borrower reporting requirements and further clarify existing REA policy. In addition, REA amends the telecommunications system construction regulations to relax requirements for minor facilities construction procedures, to make technical corrections and clarifications,

and to reflect minor technical changes such as moving the definitions section from one subpart to another.

EFFECTIVE DATE: This regulation is effective on September 26, 1994.

FOR FURTHER INFORMATION CONTACT:

Orren E. Cameron III, Director, Telecommunication Standards Division, Rural Electrification Administration, U.S. Department of Agriculture, 14th & Independence Avenue SW., room 2835-S, Washington, DC 20250-1500, telephone number (202) 720-8663.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will not:

(1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

REA has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The REA telephone program provides loans to REA borrowers at interest rates and terms that are more favorable than those generally available from the private sector. REA borrowers, as a result of obtaining federal financing, receive economic benefits which exceed any direct economic costs associated with complying with REA regulations and requirements. Moreover, this action liberalizes certain contract requirements by changing contract limits and allowing negotiation of fee schedules which further offsets economic costs.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this final rule have been submitted to OMB for approval. Comments concerning these

requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

REA has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Background

On March 4, 1994, REA published this action as a proposed rule at 59 FR 10327 to clarify existing policy and ease requirements.

REA received no comment on revisions to 7 CFR part 1744, so the final rule is unchanged from the proposed rule.

REA received comments on 7 CFR part 1753 from the United States Telephone Association, TDS Telecom on behalf of 25 TDS-affiliated telephone companies in the southeast, Design South Professionals, Inc., ALLTEL Service Corporation, Coastal Utilities, Inc., Farmers Telephone Cooperative, Inc. (of South Carolina), Citizens Utilities Rural Company, Inc., Carnes, Burkett, Wiltsee & Associates, TDS Telecom (Madison, WI), and Reed Veach Wurdeman & Associates. These comments were taken into consideration in preparing the final rule.

Comment Summary: One commenter suggested that the phrase in § 1753.15(b)(3), "inspection of construction" be changed to

"observation of construction" because the former is considered obsolete within the engineering profession.

Response: The proposed rule did not change this subsection, but REA is revising the Form 217 contract, Engineering and Architectural Services, in a separate effort, and REA is addressing this comment in that revision. The term "inspection of construction" is used in part 1753 in a generic sense, and it clearly describes the engineer's responsibility. The term "observation of construction", without the further definition which would always accompany it in a professional services contract, is too vague. The language in § 1753.15(b)(3) is unchanged in the final rule.

Comment Summary: One commenter observed that the proposed rule did not incorporate language in § 1753.17(c)(1)(B) clarifying REA's policy with regard to state engineering registration laws. This clarifying language was previously offered by the Administrator in a May 10, 1990 letter.

Response: The language requested would state that REA does not under part 1753 attempt to usurp any state engineering registration laws. It has not been REA's intent to usurp state registration laws at any time, so the final rule incorporates the suggested language.

Comment Summary: Most commenters opposed the \$400,000 annual financing limit placed on Form 773 contracts in § 1753.46(c)(3) and § 1753.80(a). Two commenters observed that REA had given no rationale for the proposed limit. Several commenters pointed out that the proposed limit would make it difficult for large REA borrowers to respond quickly to service demands. One commenter argued that since the Form 773 contract is used for central office equipment, buildings, and special equipment, as well as outside plant, using the Form 773 to its \$400,000 limit on outside plant construction would deprive a borrower of this valuable minor construction resource in those other categories. And finally, one commenter argued that restricting use of the Form 773 contract would force borrowers to resort to the Form 515 contract, which the commenter asserted is more complicated and expensive. This commenter argued that REA had presented no studies to support any contention that construction performed under minor construction procedures was more expensive than construction performed under the Form 515 contract.

Response: To understand REA's imposition of the \$400,000 limit, it is useful to view the entire package of

changes in construction procedures in the proposed rule.

REA proposed relaxing the existing \$100,000 limit on individual Form 773 contracts to help that contract close a gap between minor construction procedures and REA's major construction contracts. The Form 773 contract is a very brief agreement, covering only the most basic responsibilities of the parties. The Form 773 contract, unlike REA's major contracts, does not require prior REA approvals of plans and specifications, pricing, or the contract itself. To make the contract as flexible as possible, REA simply provides a space where the borrower fills in the statement of work to be covered by the contract. The contractor may charge for work under the contract in any manner agreed upon: lump sum, on a unit basis, hourly, or other. No provision is made in the contract to require or define a performance bond. The contract was designed as a convenient vehicle for formalizing oral contracts which are common in the industry, but which had historically failed to withstand REA audit scrutiny. The Form 773 was designed by REA in this manner because a primary characteristic of its conception was that it would never exceed a specified limit: \$100,000. Any dispute that might occur involving such a small amount could not pose a significant risk to a borrower or REA's security interest in a borrower. The more sophisticated major contracts, Forms 515, 525, 397 and 157, provide borrowers and REA with necessary protections, and provide borrowers with agreement provisions that have evolved over the years to handle construction administration. These major contracts also facilitate a very important tenet of the successful public sector-private sector partnership that has been the key to the success of the REA Telephone Program: Competition. Without these contracts, and their accompanying forms of specification, competitive bidding would be chaotic, or impossible.

In conjunction with a relaxation of the maximum limit for individual Form 773 contracts, REA imposed the \$400,000 limit. This was intended to limit a borrower's and REA's exposure to risk in the event of a dispute involving one or more of the newly-allowed \$200,000 outside plant Form 773 contracts. REA believes the increase in the limit for individual outside plant Form 773 contracts is appropriate, and believes that some maximum annual limit is needed to protect borrowers and REA from the potential risks of using this

simple contract for complicated projects.

In response to the comment regarding large borrowers, REA has changed the maximum annual limit to allow the limit to exceed \$400,000 under certain circumstances, to permit large borrowers to perform up to 10% of the prior year's total cost for outside plant construction, under the Form 773 contract. It is not REA's intent for the Form 773 contract to be used in lieu of the Form 515 contract for most major projects.

In response to the concern that the maximum annual limit would be consumed by outside plant construction, thereby requiring borrowers to forego other valid uses of the Form 773, REA has established separate, mutually exclusive annual limits for four categories of construction: Outside plant, central office equipment, special equipment, and buildings.

As to the concern that REA's maximum annual limit would cause construction to be performed under the Form 515 contract, and that the Form 515 is more complicated and expensive, REA responds by agreeing that the Form 515 contract is much more complicated than the Form 773 contract, but disagreeing with the suggestion that construction costs are higher under the Form 515. REA intended for the Form 773 contract to be used only in situations of limited risk. REA took the idea initially for the Form 773 contract from telephone operating companies who had developed similar, simple contracts, for use only for small projects. The Form 515 is necessarily more complicated, but it has enabled the rural telephone industry to build plant of exceptionally high quality at costs that over the years have compared favorably with plant costs of far larger companies with much more purchasing leverage. This is largely because the Form 515 facilitates competitive bidding of outside plant construction, which is a fundamentally difficult task.

In response to the suggestion that construction under the Form 773 is less expensive than construction under the Form 515, REA's experience over the years indicates that the reverse is true. However, no specific studies had been performed to compare these costs, so REA has performed a comparison. REA randomly selected 30 Form 773 contracts that had been performed between 1992 and 1994. This sample included only contracts that had been closed and found to meet all REA requirements. Very small projects were excluded from the list. REA then contacted borrowers to obtain additional

information on the work included under the contracts, since that information is not routinely provided to REA. To make a valid comparison, REA discarded from the sample all contracts which did not represent reasonable cross sections of construction units, for example, contracts for road boring, or splicing. Interestingly, only six of the original 30 Form 773 contracts covered general outside plant construction projects which, if proportionally enlarged, would be comparable to typical Form 515 contracts. Costs of these projects were compared to standard mile costs for their states, which are based on average competitively-bid contract costs. The costs for three of the six projects were near the standard mile costs, the cost for one project was approximately 30% over the standard mile cost, and the costs for the remaining two projects were over twice the standard mile costs. These results illustrate one of REA's main concerns with the Form 773 contract. Some projects are performed at reasonable cost. Other projects are performed at costs which may be reasonable under certain circumstances. But some projects, in this small sample one-third of the projects compared, are far above the standard mile costs normally experienced. Under the current limits for individual Form 773 contracts, REA would not be concerned about these higher-than-average costs because such small jobs would not have a significant financial impact on a borrower or REA's security interests in a borrower. However, under the higher individual contract limits proposed by REA, the impact of several higher-than-average cost jobs could be significant. REA therefore has set limits in the final rule, but those limits have been designed to resolve the concerns of most commenters.

List of Subjects

7 CFR Part 1744

Accounting, Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

7 CFR Part 1753

Loan programs-communications, Telecommunications, Telephone.

For reasons set forth in the preamble, 7 CFR chapter XVII is amended as follows:

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

1. The authority citation for part 1744 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1744.40, paragraph (a)(3) is revised to read as follows:

§ 1744.40 Non-act purposes.

(a) * * *

(3) Approval of the request is in the interests of the Government. Generally, it would not be in the Government's interest if the accommodation or subordination is being requested to enable the borrower to avoid complying with such REA policies or procedures, as competitive bid procedures or purchasing equipment acceptable to REA, under 7 CFR part 1753.

* * * * *

§ 1744.21 [Amended]

§ 1744.61 [Removed and reserved]

3. The paragraph designations in §§ 1744.21 and 1744.61 are removed, the definitions in § 1744.21 are put in alphabetical order, the definitions in § 1744.61 are transferred to § 1744.21 in alphabetical order, and § 1744.61 is removed and reserved.

PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

1. The authority citation for part 1753 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1753.5, paragraph (b)(1) is revised to read as follows:

§ 1753.5 Methods of major construction.

* * * * *

(b) *Contract construction.* (1) Whether the contractor is selected through sealed competitive bidding or negotiation, as approved by REA, award of the contract is subject to REA approval.

* * * * *

3. In § 1753.6, paragraph (b) is revised to read as follows:

§ 1753.6 Standards, specifications, and general requirements.

* * * * *

(b) The borrower may use REA loan funds to finance nonstandard construction materials or equipment only if approved by REA in writing prior to purchase or commencement of construction.

* * * * *

4. In § 1753.8, paragraphs (a)(11)(ii), (a)(12)(i), (b)(2), (b)(3), and (b)(4) are

revised, paragraph (b)(5) is removed to read as follows:

§ 1753.8 Contract construction procedures.

(a) * * *

(11) * * *

(ii) If an award is made, the borrower shall award the contract to the lowest responsive bidder, subject to REA approval. The borrower may award the contract immediately upon determination of the lowest responsive bidder if the following conditions are met:

(A) The project is included in an approved loan and adequate funds were budgeted in the loan and are available.

(B) All applicable REA procedures were followed, including those in the Notice and Instructions to Bid in the standard forms of contract.

* * * * *

(12) *Execution of contract:* (i) Upon approval by REA of the award of contract by the borrower, the borrower shall submit to REA three original counterparts of the contract executed by the contractor and borrower.

* * * * *

(b) * * *

(2) For negotiated purchases, borrowers shall use REA contract forms, standards, and specifications.

(3) For all contract forms except REA Form 773:

(i) After a satisfactory negotiated proposal has been obtained, the borrower shall submit it to REA for approval, along with the engineer's recommendation, and evidence of acceptance by the borrower.

(ii) If REA approves the negotiated proposal, the borrower shall submit three copies of the contract, executed by the contractor and borrower, to REA for approval.

(iii) If REA approves the contract, REA shall return one copy of the contract to the borrower and one copy to the contractor.

(4) For REA Form 773, the borrower is responsible for negotiating a satisfactory proposal, executing contracts, and closing the contract. See subparts F and I of this part for requirements for major and minor construction, respectively, on Form 773.

5. In § 1753.9, paragraphs (a) and (c) are revised to read as follows:

§ 1753.9 Subcontracts.

(a) REA construction contract Forms 257, 397, 515, and 525 contain provisions for subcontracting. Reference should be made to the individual contracts for the amounts and conditions under which a contractor

may subcontract work under the contract.

(c) As stated in contract Forms 257, 397, 515, and 525, the contractor shall bear full responsibility for the acts and omissions of the subcontractor and is not relieved of any obligations to the borrower and to the Government under the contract.

6. In § 1753.16, paragraphs (b)(3), (b)(4) and (b)(5) are redesignated as paragraphs (b)(4), (b)(5) and (b)(6), respectively, and a new paragraph (b)(3) is added to read as follows:

§ 1753.16 Architectural services.

(b) ***
 (3) If the fee schedule has to be modified in order for the borrower to obtain adequate architectural services, the borrower shall obtain written REA approval of the revised fee schedule prior to executing contracts.

7. In § 1753.17, paragraphs (c)(1)(i)(B) and (e) are revised to read as follows:

§ 1753.17 Engineering services.

(c)(1) ***
 (i) ***
 (B) The name and qualifications of the employee to be in charge. REA requires this employee to meet the State experience requirements for registered engineers. In the absence of specific State experience requirements, the employee must have at least eight years experience in the design and construction of telecommunication facilities, with at least two years of the work experience at a supervisory level. REA does not require professional registration of this employee, but this does not relieve the borrower from compliance with applicable State registration requirements which may require a licensed individual to perform such services.

(e) The borrower shall obtain status of contract and force account proposal reports from the engineer once each month. The report shall show for each contract or FAP the approved contract or FAP amount, the date of approval, the scheduled date construction was to begin and the actual date construction began, the scheduled completion date, the estimated or actual completion date, the estimated or actual date of submission of closeout documents, and an explanation of delays or other pertinent data relative to progress of the

project. One copy of this report shall be submitted to the GFR.

8. In § 1753.25, a new paragraph (f)(4) is added to read as follows:

§ 1753.25 General.

(f) ***
 (4) 7 CFR part 1792, subpart C, which requires that the building design comply with applicable seismic design criteria. Prior to the design of buildings, borrowers shall submit to REA a written acknowledgement from the architect or engineer that the design will comply.

9. In § 1753.26, paragraph (b) introductory text is revised, paragraph (c) is redesignated as paragraph (d), and new paragraph (c) is added to read as follows:

§ 1753.26 Plans and specifications (P&S).

(b) REA Contract Form 257 shall be completed as follows:

(c) The plans and specifications shall show the identification and date of the model code used for seismic safety design considerations, and the seismic factor used. See 7 CFR part 1792, subpart C.

§ 1753.29 [Amended]

10. In § 1753.29, paragraph (a) is removed, and paragraphs (b), (c), (d), and (e) are redesignated as paragraphs (a), (b), (c), and (d).

11. In § 1753.30, paragraphs (b)(2)(i) and (c)(2) are revised to read as follows:

§ 1753.30 Closeout procedures.

(b) ***
 (2) ***
 (i) Arrange with its architect or engineer, contractor, and the GFR for final inspection of the project.

(c) ***
 (2) Complete, with the assistance of its architect or engineer, the documents listed in Appendix A of this part that are required for the closeout of force account construction.

12. In § 1753.39, paragraph (g) is revised to read as follows:

§ 1753.39 Closeout documents.

(g) Final payment shall be made according to the payment terms of the contract.

13. In § 1753.46, paragraph (c) is added to read as follows:

§ 1753.46 General.

(c) The two contract forms which may be used for major outside plant construction are Form 515 and Form 773. Limitations on the applicability of these forms shall be as follows:

(1) Form 515 shall be used for major outside plant construction projects which will be competitively bid. The contract contains plans and specifications and has no dollar limitation. See §§ 1753.47, 1753.48 and 1753.49.

(2) A Form 515 contract which is for less than \$200,000, may, at the borrower's option, be negotiated. See § 1753.48(b).

(3) Form 773 shall be used for major outside plant projects which may not be competitively bid, and which cannot be designed and staked at the time of contract execution. Projects of this nature include routine line extensions and placement of subscriber drops. The Form 773 contract is limited to a maximum of \$200,000. In any twelve month period, REA will not finance more than \$400,000, or ten per cent (10%) of the borrower's previous year's outside plant total construction, whichever is greater, in Form 773 contracts for a borrower. This limitation includes all major and minor outside plant construction performed under Form 773 contracts, and is determined by the date the Form 773 contract is executed. See 7 CFR § 1753.50.

14. In § 1753.49, paragraph (c)(3) is revised to read as follows:

§ 1753.49 Closeout documents.

(c) ***
 (3) Final payment shall be made according to the payment provisions of Article III of Form 515.

15. § 1753.50 is added to read as follows:

§ 1753.50 Construction by Form 773 contract.

(a) The borrower shall prepare the contract form and provide such details of construction as may be available. Compensation may be based upon unit prices, hourly rates, or another mutually agreeable basis.

(b) Neither the selection of the contractor nor the contract requires REA approval.

(c) Borrowers are urged to obtain quotations from several contractors before entering into a contract to be assured of obtaining the lowest cost.

(d) The borrower must ensure that the contractor selected meets all Federal and State requirements, and that the contractor maintains the insurance

coverage required by the contract for the duration of the work. See 7 CFR part 1788.

(e) The borrower shall finance major construction under the Form 773 contract with general funds and obtain reimbursement with loan funds when construction is completed and an executed Form 771 has been submitted to REA.

(f) If the contract exceeds \$100,000, a contractor's bond shall be required. See 7 CFR part 1788.

(g) When the construction is completed to the borrower's satisfaction, the borrower shall obtain from the contractor a final invoice and an executed copy of REA Form 743, Certificate of Contractor and Indemnity Agreement.

(h) The closeout document for the Form 773 contract is REA Form 771. See § 1753.81 for the requirements for completing Form 771.

(i) An original and two copies of Form 771 shall be sent to the GFR. The GFR may inspect the construction, and will initial and return the original and one copy to the borrower.

(j) The original Form 771 shall be submitted with an FRS to REA only in conjunction with a request for an advance of loan funds for the work.

16. In § 1753.68, paragraph (d)(3)(iii) is revised to read as follows:

§ 1753.68 Purchasing special equipment.

* * * * *

(d) * * *

(3) * * *

(iii) Final payment shall be made according to the payment terms of the contract.

17. In § 1753.78, paragraph (a) is revised to read as follows:

§ 1753.78 Construction by contract.

(a) REA Form 773 shall be used for minor construction by contract. Compensation may be based upon unit prices, hourly rates, or another basis agreed to in advance by the borrower and the contractor. A single work project may require more than one contractor.

* * * * *

18. In § 1753.80, paragraphs (b), (c), (d), (e), (f), and (g) are redesignated as paragraphs (c), (d), (e), (f), (g), and (h), paragraph (b) is added, and paragraph (a) is revised, to read as follows:

§ 1753.80 Minor construction procedure.

(a) If the borrower performs minor construction financed with loan funds, the borrower's regular work order procedure shall be used to administer

construction activities that may be performed entirely by a contractor under Form 773 contract, by work order, or jointly by work order and one or more contractors under Form 773 contracts.

(b) REA financing under Form 773 contracts is limited in any twelve month period to the following amounts for the following discrete categories of minor construction. A borrower could, for example, receive financing of Form 773 contracts in a twelve month period in amounts up to \$400,000 of central office equipment and \$200,000 of special equipment and \$200,000 of buildings. The date of the Form 773 contract is the date the Form 773 contract is executed.

(1) For outside plant construction, the limit is \$400,000 or ten per cent (10%) of the borrower's previous calendar year's outside plant total construction, whichever is greater.

(2) For central office equipment, the limit is \$400,000.

(3) For special equipment, the limit is \$200,000.

(4) For buildings, the limit is \$200,000.

* * * * *

19. Appendices A through F of part 1753 are revised to read as follows:

APPENDIX A.—DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION OF BUILDINGS

Form furnished by REA	Description	Use with		Prepared by			Number of copies	Distribution				
		Contract	Force account	Contractor	Architect/engineer	Borrower		REA	Architect	Contractor		
238	Construction or Equipment Contract Amendment (Submit to REA for approval, as required).	x			x		3			3		
181	Certificate of Completion (Contract Construction) (1)	x			x		3			1		
181a	Certificate of Completion (Force Account Construction).		x		x		2			1		
231	Certificate of Contractor	x					2			1		
224	Waiver and Release of Lien (2 copies from each supplier).	x			x		2			1		
213	Certificate (Buy American)	x					1			1		
284	Statement of Architect's Fee	x					3			1		
	Inventory-List Materials and Services Furnished by Borrower Upon Which Architectural Services Were Furnished. Show Cost (See Form 284).	x	x				3			1		
	Inventory-List Materials and Services Furnished by Borrower Upon Which Architectural Services Were Not Performed Show Cost.	x					3			1		
(2)	"As Built" Plans and Specifications	x	x				1			1		
	Guarantees, Warranties, Bonds, Operating or Maintenance Instructions, et cetera.	x					1			1		
	Architect/Engineer Seismic Safety Certification	x					3			1		

(1) Cost of Materials and Services Furnished by Borrower not to be included in Total Cost on Form 181.

(2) When only Minor Changes Were Made During Construction, Two Copies of a Statement to that Effect from the Architect Will be Accepted in Lieu of the "As-Built" Plans and Specifications.

APPENDIX B.—DOCUMENTS REQUIRED TO CLOSE OUT CENTRAL OFFICE EQUIPMENT CONTRACT

Form furnished by REA	Description	Use with		Prepared by		Total No. of copies	Distribution		
		REA form 525	REA form 545	Contractor	Engineer		Borrower	Contractor	REA
238	Construction or Equipment Contract Amendment (Submit to REA for approval, if required, before following documents).	X	X		X	3			3
754	Certificate of Completion and Certificate of Contractor and Indemnity Agreement (If submitted, Form 744 is not required).	X		X	X	4	2	1	1
517	Results of Acceptance Tests (Prepare and distribute copies immediately upon completion of the acceptance tests of each central office).	X			X	2	1	1	
752a	Certificate of Completion-Not Including Installation.		X		X	3	1	1	1
224	Waiver and Release of Lien (Two copies from each supplier).	X		X		2	1		1
231	Certificate of Contractor	X		X		2	1		1
213	Certificate (Buy American)	X	X	X		2	1		1
	Switching Diagram, as installed	X	X	X		2	2		
	Set of Drawings (Each set to include all the drawings required under the Specification REA Form 522).	X	X	X		2	2		

APPENDIX C.—DOCUMENTS REQUIRED TO CLOSEOUT TELEPHONE CONSTRUCTION CONTRACT REA FORM 515

REA Form No.	Description	Number of copies	Form available from REA	Prepared by		Distribution		
				Engineer	Contractor	Borrower	Contractor	REA
724	Final Inventory	3	x	x		1	1	1
724a	Final Inventory	3	x	x		1	1	1
	Contractor's Board Extension (When required).	3			x	1	1	1
281	Tabulation of Materials Furnished by Borrower.	3			x	1	1	1
213	Certificate ("Buy American")	1	x		x	1		
	Listing of Construction Change Orders	1						1
224	Waiver and Release of Lien (Two copies from each supplier).	2	x		x	1		1
231	Certificate of Contractor	2	x		x	1		1
527	Final Statement of Construction	3	x	x		1	1	1
	Reports on Results of Acceptance Tests	2		x		1	1	
	Set of Final Staking Sheets	1		x		1		
	Tabulation of Staking Sheets	1		x		1		
	Correction Summary (legible copy)	1		x		1		
	Treated Forest Products Inspection Reports or Certificates of Compliance (Prepared by inspection company or supplier).	1				1		
	Final Key Map (when applicable)	1		x		1		1
	Final Central Office Area and Town Detail Maps.	1		x		1		1

APPENDIX D.—STEP-BY-STEP PROCEDURE FOR CLOSING OUT TELEPHONE CONSTRUCTION CONTRACT-LABOR AND MATERIALS, REA FORM 515

Sequence		By	Procedure
Step No.	When		
1	Prior to completion of construction.	Borrower's Engineer	Receives instructions from the GFR concerning the closeout procedure.

APPENDIX D.—STEP-BY-STEP PROCEDURE FOR CLOSING OUT TELEPHONE CONSTRUCTION CONTRACT-LABOR AND MATERIALS, REA FORM 515—Continued

Sequence		By	Procedure
Step No.	When		
2	Upon completion of construction.	Borrower's Engineer	Prepares the following: 1 set of Key Maps, when applicable, which show work done under the construction contract marked with red pencil. 1 set of Detail Maps, which show work done under the construction contract marked with red pencil. 1 copy of Tabulation of Staking Sheets. 1 copy of tentative Final Inventory, REA Forms 724, 724a.
3	After construction has been completed and acceptance tests made.	Borrower's Engineer	Forwards letter to the borrower with copies to the GFR stating that the project is ready for final inspection.
4	Upon receipt of letter from borrower's engineer.	GFR	Promptly arranges with borrower, borrower's engineer, and contractor for final inspection of construction. It is contemplated that final inspections will be made on sections of line as construction is completed, leaving a minimum amount to be inspected at this time.
5	When requested by the GFR.	REA Field Accountant.	Audits REA Form 281, if borrower supplied part of the materials.
6	Inspection date scheduled.	Borrower's Engineer	Shall have the following documents available for the GFR: 1 set of "as constructed" Key Maps (when applicable). 1 set of "as constructed" Detail Maps. 1 copy of the List of Construction Change Orders. 1 set of Final Staking Sheets. 1 copy of Tabulation Staking Sheets. 1 copy of Treated Forest Products Inspection Reports or Certificates of Compliance. 1 copy of tentative Final Inventory REA Form 724, 724a. 1 copy of tentative Tabulation, REA Form 231, if borrower furnished part of material. 1 copy of Report on Results of Acceptance Tests.
7	During inspection	Borrower's Engineer	Issues instructions to contractor covering corrections in construction found during inspection by GFR in the company of the borrower's engineer and the contractor or his/her representative.
8	During inspection	Contractor	Corrects defects in construction on basis of instructions from the borrower's engineer. The corrections should proceed closely behind the inspection in order that the borrower's engineer can check the corrections before leaving the system.
9	During inspection	Borrower's Engineer	With GFR inspects and approves corrected construction.
10	During inspection	Borrower's Engineer	Marks inspected areas on the Key Map, if available, otherwise on the Detail Maps.
11	Upon completion of inspection.	Borrower's Engineer	Prepares or obtains all the closeout documents listed in Appendix C. Makes distribution of the copies of the documents as indicated in Appendix C. Forwards the documents for REA to the GFR.
12	After reviewing final documents.	REA GFR	Reviews documents and distributes copies as indicated in Appendix C.
13	After signing final inventory.	Borrower	Prepares and submits Financial Requirement Statement, REA Form 481, requesting amount necessary to make final payment due under contract.
14	On receipt of final advance.	Borrower	Promptly forwards check for final payment to contractor.
15	During next loan fund audit review after final payment to contractor.	REA Field accountant.	Makes an examination of borrowers construction records for (1) compliance with the construction contract and Subpart F and (2) REA Form 281, Tabulation of Materials Furnished by Borrowers, if any, for appropriate costs.

APPENDIX E.—DOCUMENTS REQUIRED TO CLOSE OUT FORCE ACCOUNT OUTSIDE PLANT CONSTRUCTION

Item No.	REA form No.	Description on title of document	No. of copies required and distribution of documents		
			Total No.	Owner	REA
a.	817, 817a, 817b.	Final inventory force account construction and certificate of engineer	2	1	1
b.	213	Certificate, "Buy American" (as applicable—one from each supplier)	1	1	0
c.		Detail maps	1	1	0
d.		Key map if applicable	1	1	0
e.		Staking sheets	1	1	0
f.		Tabulation of staking sheets	1	1	0
g.		Treated forest products inspection reports, if applicable	1	1	0

APPENDIX F.—DOCUMENTS REQUIRED TO CLOSEOUT EQUIPMENT CONTRACTS

Form furnished by REA	Description	No. of copies		Prepared by				Distribution		
		Form 397	Form 398	Form 397		Form 398		Borrower	Contractor	REA
				Contractor	Engineer	Contractor	Engineer			
238	Construction or Equipment Contract Amendment (If required, submit to REA for approval before other closeout documents).	3	3	.....	x	.....	x	.....	.....	3
396	Certificate of Completion-Special Equipment Contract (Including Installation).	3	.....	.....	x	.....	x	1	1	1
396a	Certificate of Completion-Special Equipment Contract (Not Including Installation).	.....	3	.....	x	.....	x	1	1	1
744	Certificate of Contractor and Indemnity Agreement.	2	.....	x	.....	.....	.....	1	.....	1
213	Certificate (Buy American)	2	2	x	.....	x	.....	1	.....	1
	Report in writing, including all measurements and other information required under Part II of the applicable specifications.	2	2	x	.....	.....	x	1	.....	1
	Set of maintenance recommendations for all equipment furnished under the contract.	1	1	x	.....	x	.....	1	.....	.....

Dated: August 17, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94-20783 Filed 8-24-94; 8:45 am]

BILLING CODE 3410-16-P

Farmers Home Administration

7 CFR Part 1924

RIN 0575-AB27

Planning and Performing Construction and Other Development

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to comply with the Energy Policy Act of 1992, Public Law 102-486. This Act requires that thermal standards for new construction of Single Family Housing (SFH) (other than manufactured homes) subject to mortgages insured, guaranteed, or made by the Secretary of Agriculture under Title V of the Housing Act of 1949 meet or exceed the requirements of the Council of American Building Officials (CABO) Model Energy Code, 1992 (MEC-92). Therefore, for new construction of SFH (other than manufactured homes) FmHA adopts the thermal requirements contained in the 1992 edition of the MEC. The CABO/MEC-92 requirements are comparable to the FmHA thermal requirements for

new SFH construction. FmHA is not changing its requirements for Multi-family Housing (MFH) programs. FmHA field offices were notified of the changes required by this Act prior to October 22, 1993. Temporary changes were issued to all FmHA field offices on December 7, 1993 and April 28, 1994 implementing this change.

EFFECTIVE DATE: This regulation is effective October 22, 1993.

FOR FURTHER INFORMATION CONTACT: David J. Adams, Senior Loan Specialist, Single Family Housing Processing Division, FmHA, USDA, Room 5330, South Agriculture Building, Washington, D.C. 20250, Telephone: (202) 720-1532.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this final rule in compliance with Executive Order 12866, and the Office of Management and Budget (OMB) has determined that it is a "significant regulatory action."

Intergovernmental Consultation

This activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.410 Low-Income Housing Loans (Section 502 Rural Housing Loans), 10.405 Farm Labor Housing Loans and Grants; 10.406 Farm Operating Loans; 10.415 Rural Rental Housing Loans; and 10.416 Soil and Water Loans (SW Loans). For the reasons set forth in the Final Rule and related Notice(s) to 7 CFR Part 3015, Subpart V, this activity affects the following programs that are

included in the scope of EO 12372 which requires intergovernmental consultation with State and local officials: 10.405, 10.415, and 10.416.

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not needed.

Civil Justice Reform

This document has been reviewed in accordance with EO 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court Systems in that it meets all applicable standards provided in Section 2 of the EO.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575-0042 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Please send written comments to the Office of Information Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, D.C. 20503. Please send a

copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA, Ag Box 0743, Washington, DC 20250.

Background

Presently, FmHA requires that all drawings and specifications for housing loan and grant applications involving new construction and conditional commitments be prepared to comply with the thermal requirements of Exhibit D of FmHA Instruction 1924-A.

Section 509(a) of the Housing Act of 1949, in conjunction with Section 109 of the Cranston-Gonzalez National Affordable Housing Act as amended by the Energy Policy Act of 1992 require the Secretary of Housing and Urban Development (HUD) and the Secretary of Agriculture (USDA) to jointly establish by rule energy efficiency standards for new construction of SFH subject to mortgages insured, guaranteed, or made by the Secretary of Agriculture under Title V of the Housing Act of 1949. Such standards shall meet or exceed the requirements of CABO MEC-92. However, if the Secretaries have not, within 1 year after the date of enactment of the Energy Policy Act of 1992, established energy efficiency standards, all new construction of SFH shall meet the requirements of CABO MEC-92. USDA and HUD have consulted in jointly establishing energy efficiency standards but as of this date have not jointly established such standards. This Rule establishes the CABO MEC-92 as the FmHA requirement for new construction of single family housing (other than manufactured homes) subject to mortgages insured, guaranteed, or made by the Secretary of Agriculture under title V of the Housing Act of 1949. The CABO/MEC-92 requirements are comparable to the FmHA thermal requirements for new SFH construction previously in effect.

In addition to the changes to the regulation required by the Energy Policy Act of 1992, the certification of compliance with development standards has been removed from the text of the regulation and moved to an FmHA form. The only change in the substance of the certification has been to add certification of compliance with the applicable energy standard from Exhibit D to this regulation.

Section 109 of the Cranston-Gonzalez National Affordable Housing Act does not require CABO MEC-92 for MFH or existing SFH. Therefore, the FmHA thermal requirements in FmHA Instruction 1924-A, Exhibit D will continue to be used for MFH and existing SFH construction.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking because they are either nonsubstantive editorial changes or merely following the specific directions of the Energy Policy Act of 1992 and no discretion is left with the agency in implementing these statutory changes.

FmHA's thermal requirements for new and existing MFH construction are still applicable.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—agriculture, Low and moderate income housing.

Accordingly, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. Authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1980; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

2. Section 1924.5 is amended by revising the introductory text of paragraph (f)(1)(iii) and paragraph (f)(1)(iii)(F) to read as follows:

§ 1924.5 Planning development work.

- (f) * * *
- (1) * * *
- (iii) FmHA will accept final drawings and specifications and any modifications thereof only after the documents have been certified in writing as being in conformance with the applicable development standard if required under paragraph (d)(1) of this section. Certification is required for all Single Family Housing (SFH) thermal designs (plans, specifications, and calculations).

(F) All certifications of final drawings, specifications, and calculations shall be on Form FmHA 1924-25, "Plan Certification."

3. Exhibit D of subpart A is amended by revising paragraph II and the first paragraph of paragraph IV A; by adding paragraph III F; by reserving paragraph

IV E; by adding paragraph IV F; and by adding a sentence at the end of the introductory text of paragraph IV D to read as follows:

Exhibit D of Subpart A—Thermal Performance Construction Standards

II. *Policy:* All loan or grant applications involving new construction (except for new Single Family Housing (SFH)) and all applications for conditional commitments (except for new SFH) shall have drawings and specifications prepared to comply with paragraphs IV A or C and IV D of this Exhibit. All new SFH construction shall have drawing and specifications prepared to comply with paragraph IV F of this Exhibit. All existing dwellings to be acquired with FmHA loan funds shall be considered in accordance with paragraph IV B or C of this Exhibit.

III. * * *
 F. *CABO Model Energy Code, 1992 Edition (MEC-92)*—This code sets forth the minimum energy/thermal requirements for the design of new buildings and structures or portions thereof and additions to existing buildings. The MEC is maintained by the Council of American Building Officials (CABO).

IV. * * *
 A. All multifamily dwellings to be constructed with FmHA loan and/or grant funds and all repair, remodeling, or renovation work performed on single family and multifamily dwellings with FmHA loan and/or grant funds shall be in conformance with the following, except as provided in paragraphs IV C 3 and IV D of this Exhibit:

D. * * * This section does not apply to new SFH construction.

F. *New SFH construction.* New SFH construction shall meet the requirements of CABO Model Energy Code, 1992 Edition (MEC-92).

Dated: August 8, 1994.
 Bob Nash,
 Under Secretary for Small Community and Rural Development.
 [FR Doc. 94-20991 Filed 8-24-94; 8:45 am]
 BILLING CODE 3410-07-U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 242 and 287
 [INS No. 1442-92; AG Order No. 1907-94]
 RIN 1115-AC63

Enhancing the Enforcement Authority of Immigration Officers

AGENCY: Immigration and Naturalization Service, Justice.
ACTION: Final rule correction.

SUMMARY: The final rule published in the Federal Register on August 17, 1994

at 59 FR 42406 was to have contained a chart summarizing the categories of immigration officers who are authorized to exercise the principal enforcement authorities outlined in the regulation. This chart was omitted in error. This document contains the omitted chart which was referenced in the Supplementary Information section on page 42408, the third column, first

paragraph. The chart served as an illustrative tool and its omission in no way impacts the effective date of the regulation.

EFFECTIVE DATES: This correction is effective August 17, 1995. The effective date of the final rule published on August 17, 1994 remains August 17, 1995.

FOR FURTHER INFORMATION CONTACT:

Kathryn E. Sheehan, Special Assistant, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, telephone (202) 514-3032.

Dated: August 19, 1994.

Doris Meissner,
Commissioner, Immigration and Naturalization Service.

BILLING CODE 4410-10-M

Categories of Immigration Officers

Enforcement Authority	Border Patrol Agent (Includes Aircraft Pilots)	Special Agent	Deportation Officer	Detention Enforcement Officer	Immigration Inspector	Immigration Examiner
General Arrest (Section 287 (a) (5) (B) of the Act)	YES	YES	YES	NO	YES Permanent Full-Time Inspectors Only	NO
General Arrest (Section 287 (a) (5) (A) of the Act)	YES	YES	YES	NO	YES Permanent Full-Time Inspectors Only	NO
Felony Arrest Regarding Immigration Laws (Section 287 (a) (4) of the Act)	YES	YES	YES	NO	YES	YES
Anti-Smuggling Arrest (Section 274 (a) of the Act)	YES	YES	YES	NO	YES	NO
Arrest for Immigration Violations (Section 287 (a) (2) of the Act)	YES	YES	YES	NO	YES	YES
Carry Firearms (Includes deadly force) (Section 287 (a) of the Act)	YES	YES	YES	YES	YES	NO
Non-Deadly Force (Section 287 (a) of the Act)	YES	YES	YES	YES	YES	NO
Patrolling the Border (Section 287 (a) (3) of the Act)	YES	YES	NO	NO	YES Seaports Only	NO
Search Warrant (Section 287 (a) of the Act)	YES	YES	NO	NO	NO	NO
Arrest Warrant for Immigration Violations (Section 287 (a) of the Act)	YES	YES	YES	YES Administrative Only	YES	NO
Arrest Warrant for Non-Immigration Violations (Section 287 (a) of the Act)	YES	YES	YES	NO	NO	NO
Search of Applicants for Admission to the U.S. (Section 287 (c) of the Act)	YES	YES	YES	NO	YES	YES
High Speed Vehicular Pursuit (Section 287.8 (e) of 8 CFR)	YES	NO	NO	NO	NO	NO

YES = Authorized

NO = Not Authorized

The Following Immigration Officers may also be granted one or more of the enforcement authorities:

1. supervisory and managerial personnel, who completed basic immigration law enforcement training, who are responsible for supervising the activities of those officers listed above; and
2. immigration officers, under certain circumstances, who are designated individually or as a class by the Commissioner (authorities pertaining to criminal violations require approval of the Deputy Attorney General).

FEDERAL ELECTION COMMISSION

11 CFR Parts 107, 114, and 9008

[Notice 1994-12]

Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Final Rule: Announcement of effective date.

SUMMARY: On June 29, 1994 (59 FR 33606), the Commission published the text of revised regulations governing publicly-financed Presidential nominating conventions. These regulations implement the Federal Election Campaign Act of 1971, as amended (FECA), and the Presidential Election Campaign Fund Act (Fund Act). The Commission announces that these rules are effective as of August 25, 1994.

EFFECTIVE DATE: August 25, 1994.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219-3690 or toll free (800) 424-9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of Title 2, United States Code, and 26 U.S.C. 9009(c) require that any rule or regulation prescribed by the Commission to implement Title 2 and Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR Part 107, section 114.1 and Part 9008 were transmitted to Congress on June 23, 1994. Thirty legislative days expired in the Senate and in the House of Representatives on August 17, 1994.

Announcement of Effective Date: 11 CFR Part 107, section 114.1 and Part 9008, as published at 59 FR 33606 is effective as of August 25, 1994.

Dated: August 22, 1994.

Trevor Potter,
Chairman.

[FR Doc. 94-20916 Filed 8-24-94; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-SW-11-AD; Amendment 39-9013; AD 94-17-18]

Airworthiness Directives; Robinson Helicopter Company Model R44 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Robinson Helicopter Company (RHC) Model R44 series helicopters. This action requires removal and replacement of specific components of the cyclic control system. This amendment is prompted by an accident involving an R44 in which the probable cause was determined to be fatigue failure of the cyclic stick assembly. The actions specified in this AD are intended to prevent failure of the cyclic stick assembly and loss of control of the helicopter.

DATES: Effective September 9, 1994.

Comments for inclusion in the Rules Docket must be received on or before October 24, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-SW-11-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ms. Lirio Liu, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-123L, 3229 E. Spring Street, Long Beach, California 90806-2425, telephone (310) 988-5229, fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: This amendment adopts a new airworthiness directive (AD) that is applicable to RHC Model R44 series helicopters. On July 31, 1993, a RHC Model R44 crashed shortly after takeoff. The helicopter had accumulated 174 hours time-in-service at the time of the accident. The National Transportation Safety Board (NTSB) determined the probable cause for the accident as fatigue failure of the cyclic stick assembly. After reviewing the NTSB report, the FAA finds it necessary to take action to remove the cyclic control system involved in this accident from eligibility for further flight. Of the six Model R44 series helicopters in the

field, five have been modified to incorporate a revised FAA-approved cyclic control system design. The sixth helicopter, serial number (S/N) 0011, has not been modified. The cyclic control system controls the attitude of the helicopter. If it fails, the operator loses the ability to control inputs to the rotor. This condition, if not corrected, could result in failure of the cyclic stick assembly and loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other RHC Model R44 series helicopters of the same type design, this AD is being issued to prevent failure of the cyclic stick assembly and loss of control of the helicopter.

The FAA has found that the original cyclic control system design fully meets existing FAA design standards, but has limited damage tolerance characteristics and does not display slow crack growth properties. When initial damage or a flaw is introduced, the cyclic stick assembly can fail due to fatigue prior to its retirement time of 4,000 hours time-in-service. This AD requires immediate removal and replacement of specific components of the cyclic control system in accordance with the applicable maintenance manual.

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94-SW-11-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 94-17-18 Robinson Helicopter Company: Amendment 39-9013. Docket No. 94-SW-11-AD.

Applicability: Model R44 series helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the cyclic stick assembly and loss of control of the helicopter, accomplish the following:

(a) Before further flight after the effective date of this AD, remove the following cyclic control system parts and replace with the corresponding replacement parts in accordance with the applicable maintenance manual:

Remove part Nos.	Replace with part Nos.
A205-3	A205-5 Revision J or higher.
C175-1	C175-2 Revision H or higher.
C176-1	C176-2 Revision B or higher.
C177-1	C177-2 Revision F or higher.
C319-1	C319-3 Revision I or higher.
C320-1	C320-1 Revision L or higher.
C958-4	C958-5 Revision E or higher.
A101-4	D173-1 Revision A or higher.
C338-1	C338-4 Revision C or higher.
A211-2	C211-3 Revision I or higher.
A137-1	A137-2 Revision C or higher.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits will not be issued.

(d) This amendment becomes effective on September 9, 1994.

Issued in Fort Worth, Texas, on August 18, 1994.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94-20753 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 94-CE-05-AD; Amendment 39-9017; AD 94-18-04]

Airworthiness Directives; Univair Aircraft Corporation Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Univair Aircraft Corporation (Univair) Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 airplanes. This action requires installing inspection openings in the outer wing panels, inspecting (one-time) the wing outer panel structure for corrosion, and repairing any corrosion found. Several reports of corrosion in the outer wing panels of the affected airplanes prompted the proposed action. The actions specified by this AD are intended to prevent wing structural damage, that, if not detected and corrected, could progress to the point of failure.

DATES: Effective October 7, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; telephone (303) 375-8882; facsimile (303) 375-8888. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger P. Chudy, Aerospace Engineer, FAA, Denver Aircraft Certification Field Office, 5440 Roslyn Street, suite 133, Denver, Colorado 80216; telephone (303) 286-5684; facsimile (303) 286-5689.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Univair Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-

2A, and Mooney M10 airplanes was published in the *Federal Register* on April 12, 1994 (59 FR 17288). The action proposed to require installing inspection openings in the outer wing panels, inspecting (one-time) the wing outer panel structure for corrosion, and repairing any corrosion found. The proposed actions would be accomplished in accordance with Univair Service Bulletin (SB) No. 29, dated January 27, 1994.

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

The commenter states that installing inspection openings forward of the main spar constitutes a major change to the aircraft wing airfoil that would affect stall/spin characteristics, and requests the FAA delete these particular inspection openings from the AD. The FAA does not concur. The analysis accomplished by the Univair Aircraft Company in developing the service bulletin shows that the 15 percent chord placement of the inspection openings on the bottom wing surface is in a positive pressure zone well aft of the travel range of the forward stagnation point throughout the flight envelope. In addition, the FAA has not received any service difficulty reports or adverse comments from any of the affected airplane operators that have installed these inspection openings. The AD is unchanged as a result of this comment.

This same commenter believes that 16 inspection openings is excessive and that a accurate appraisal of corrosion can be made with just the inspection openings aft of the main spar. The commenter recommends deleting the requirement for installing inspection openings forward of the main spar. The FAA does not concur. Corrosion in a wing is not necessarily a widespread condition. Corrosion may occur as a localized effect (example: corrosion induced by rodent urine) forward of the main spar and may not be visible through the aft openings until a critical deterioration has occurred. The FAA has examined the analysis of the Univair Aircraft Corporation and has determined that the number and placement of the inspection openings on an outer wing panel was developed carefully, accurately, and provides the proper assurance that corrosion can be adequately detected before structural deterioration. The AD is unchanged as a result of this comment.

This commenter also suggests a different approach to the solution of the problem, one consisting of developing a

service bulletin that recommends the installation of inspection openings over a certain period of time, say five years, after opening and recovering a wing. The commenter notes that there are many older aircraft with larger surfaces with fewer inspection openings than that which would be required by this AD. The FAA does not concur. The Univair Aircraft Corporation considered an extended time allowance after recovering the wing for installing inspection openings, but decided against it because there are two many variables in establishing a fleetwide implementation program. One must account for other factors to determine the appropriate time period to start an inspection program, including age and condition of the structure at the time of recover, operational and environmental conditions that the aircraft is subjected to, and the possible damage to the wing panels caused by the intrusion of insects or rodents. All of these factors led the FAA to implement the inspection opening installation requirements in conjunction with a one-time inspection as proposed by the service bulletin in order to assure that the wing panels are airworthy from a corrosion standpoint upon completion of this AD. The installation openings provide a means for continuing routine inspections in the future. While older airplanes with larger wing surfaces may have fewer inspection openings than that which is specified in this AD, the FAA looked at the unique structural configuration of the wing panels for the affected airplane models in approving the type certificate holder's findings on the number and placement of the openings. The AD is unchanged as a result of the above comment.

The Univair Aircraft Corporation has revised SB No. 29 to the Revision A level. This revision specifies a different screw used to secure the cover plate on airplanes with metal skinned wings. The FAA has determined that Univair SB No. 29, Revision A, dated June 7, 1994, should be incorporated into the final rule. Airplane owners/operators that have complied with the original version of this service bulletin will not have to re-accomplish these actions.

After careful review of all available information including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the incorporation of the referenced service bulletin revision and minor editorial corrections. The FAA has determined that the service bulletin change and the minor corrections will not change the meaning of the AD nor add any

additional burden upon the public than was already proposed.

The compliance time for this AD is in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described by this AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service or in storage. Therefore, to ensure that corrosion is detected and corrected on all affected airplanes within a reasonable period of time without inadvertently grounding any airplane, a compliance schedule based upon calendar time instead of hours TIS is utilized.

The FAA estimates that 2,672 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required action, and that the average labor rate is approximately \$55 an hour. Parts cost approximately \$67 (maximum) per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,354,704. This figure is based on the assumption that no affected airplane owner/operator has accomplished the required action. The \$67 parts cost figure is the maximum an operator will spend. Many airplane owners/operators will spend much less than this, and some airplane owners/operators have already accomplished the required action. With this in mind, the FAA believes the future cost impact estimate to be much less than that presented above.

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

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

Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

94-18-04 Univair Aircraft Corporation: Amendment 39-9017; Docket No. 94-CE-05-AD.

Applicability: Models Ercope 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished (See Note 1).

To prevent wing structural damage that, if not detected and corrected, could progress to the point of failure, accomplish the following:

(a) Install inspection openings in the outer wing panels and inspect the wing outer panel internal structural components for corrosion in accordance with the PROCEDURE section of Univair Service Bulletin No. 29, Revision A, dated June 7, 1994. Prior to further flight, repair any corrosion in accordance with instructions contained in the above-referenced service information.

Note 1: Complying with the original version of Univair SB No. 29, dated January 27, 1994, is considered equivalent to the requirements of paragraph (a) of this AD, and is considered "unless already accomplished" for this portion of the AD.

(b) Send the results of the inspection required by paragraph (a) of this AD to the Manager, Denver Aircraft Certification Field Office, 5440 Roslyn Street, suite 133, Denver, Colorado 80216. State whether corrosion was found, the location and extent of any corrosion found, and the total hours TIS of the component at the time the corrosion was found. (Reporting approved by the Office of Management and Budget under OMB no. 2120-0056.)

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Denver Aircraft Certification Field Office, 5440 Roslyn Street, suite 133, Denver, Colorado 80216. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver Aircraft Certification Field Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Denver Aircraft Certification Field Office.

(e) The inspection and installation required by this AD shall be done in accordance with Univair Service Bulletin No. 29, Revision A, dated June 7, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-9017) becomes effective on October 7, 1994.

Issued in Kansas City, Missouri, on August 19, 1994.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-20906 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 92F-0327]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of an aromatic petroleum hydrocarbon resin, hydrogenated, as a component of polypropylene intended for food-contact use. This action is in response to a petition filed by Arakawa Chemical Industries, Ltd.

DATES: Effective August 25, 1994; written objections and requests for a hearing by September 26, 1994. The

Director of the Office of the Federal Register approves the incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 177.1520(b), effective August 25, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 22, 1992 (57 FR 43740), FDA announced that a food additive petition (FAP 2B4338) had been filed by Arakawa Chemical Industries, Ltd., c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed that the food additive regulations be amended to provide for the safe use of an aromatic petroleum hydrocarbon resin, hydrogenated, as a component of polypropylene intended for food-contact use.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the food additive in polypropylene articles in contact with food is safe. The agency has also concluded that the additive will have the intended technical effect, and that, therefore, § 177.1520 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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.

Any person who will be adversely affected by this regulation may at any

time on or before September 26, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event

that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1520 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings "Substance" and "Limitations" to read as follows:

§ 177.1520 Olefin polymers.

* * * * *
(b) * * *

Substance	Limitations
<p>Aromatic petroleum hydrocarbon resin, hydrogenated (CAS Reg. No. 88526-47-0), produced by the catalytic polymerization of aromatic-substituted olefins from distillates of cracked petroleum stocks with a boiling point no greater than 220 °C (428 °F), and the subsequent catalytic hydrogenation of the resulting aromatic petroleum hydrocarbon resin, having a minimum softening point of 110 °C (230 °F), as determined by ASTM Method E 28-67 (Reapproved 1982), "Standard Test Method for Softening Point by Ring-and-Ball Apparatus," and a minimum aniline point of 107 °C (225 °F), as determined by ASTM Method D 611-82, "Standard Test Methods for Aniline Point and Mixed Aniline Point of Petroleum Products and Hydrocarbon Solvents," both of which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or from the Division of Petition Control, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.</p>	<p>For use only as an adjuvant at levels not to exceed 25 percent by weight in blends with polypropylene complying with paragraph (c), item 1.1 of this section. The finished polymer may be used in contact with food Types I, II, IV-B, VI-A through VI-C, VII-B, and VIII identified in Table 1 of § 176.170(c) of this chapter and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter; and with food Types III, IV-A, V, VII-A, and IX identified in Table 1 of § 176.170(c) of this chapter and under conditions of use D through G described in Table 2 of § 176.170(c) of this chapter.</p>

* * * * *
Dated: August 18, 1994.
Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.
[FR Doc. 94-20984 Filed 8-24-94; 8:45 am]
BILLING CODE 4160-01-F

21 CFR Part 177

[Docket No. 94N-0014]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *p*-cumylphenol as a chain terminator in the manufacture of polycarbonate resins intended for use in

food-contact applications. This action is in response to a petition filed by General Electric Co.

DATES: Effective August 25, 1994; written objections and requests for a hearing by September 26, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 29, 1994 (59 FR 14626), FDA announced that a food additive petition (FAP 4B4413) had been filed by General Electric Co., 1 Lexan Lane, Mt. Vernon, IN 47620-9364. The petition proposed to amend the food additive regulations

in § 177.1580 *Polycarbonate resins* (21 CFR 177.1580) to provide for the safe use of *p*-cumylphenol as a chain terminator in the manufacture of polycarbonate resins intended for use in food-contact applications.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that § 177.1580(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before

making the documents available for inspection.

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.

Any person who will be adversely affected by this regulation may at any time on or before September 26, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1580 is amended in paragraph (b) by alphabetically adding a new entry under the headings "List of Substances" and "Limitations" to read as follows:

§ 177.1580 Polycarbonate resins.

* * * * *

(b) * * *

List of Substances	Limitations
p-Cumylphenol (CAS Reg. No. 599-64-4).	For use only as a chain terminator at a level not to exceed 5 percent by weight of the resin.

* * * * *

Dated: August 16, 1994.
Fred R. Shank,
 Director, Center for Food Safety and Applied Nutrition.
 [FR Doc. 94-20982 Filed 8-24-94; 8:45 am]
 BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AB82

Commercial Vehicles in Yellowstone National Park

AGENCY: National Park Service, Interior.
ACTION: Final rule.

SUMMARY: This rule defines the management and regulation of commercial traffic on roads in Yellowstone National Park, including that portion of U.S. Highway 191 that traverses the northwest corner of the park. The regulations are intended to authorize the operation of commercial vehicles on U.S. Highway 191, to prohibit the transport of hazardous materials on U.S. Highway 191 except under certain circumstances, and to update and consolidate permit procedures related to commercial vehicle operation on all park roads.

EFFECTIVE DATE: September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Dan R. Sholly, Chief Ranger, P.O. Box 168, Yellowstone National Park, Wyoming 82190. Telephone: 307-344-2101.

SUPPLEMENTARY INFORMATION:

Background

U.S. Highway 191 passes through the northwest corner of Yellowstone National Park for approximately twenty-

two miles. It is a federally funded highway and is maintained within Yellowstone by the State of Montana under the provisions of a Special Use Permit issued by the National Park Service (Yellowstone National Park).

The wagon road which eventually became U.S. Highway 191 was constructed through Yellowstone in 1910 with the approval of the Secretary of the Interior at the sole expense of Gallatin County, Montana. The road was constructed "to facilitate travel and commerce" between residents in the southern portion of Gallatin County and the county seat located in Bozeman, Montana. From its inception, the purpose, historical use, and management of U.S. Highway 191 indicate that the highway was constructed, regulated, and maintained as a connecting route between Bozeman and West Yellowstone, Montana, for the principal purposes of commerce and convenience and only incidentally for access to Yellowstone National Park.

The early differentiation of this route from other park roads was articulated in the Superintendent's Annual Report for 1913 and 1914, which stated in part:

This is the only road in the park on which motor propelled vehicles are allowed and it is not a part of the regular tourist route.

The ongoing intent to exempt U.S. Highway 191 from the general regulations related to commercial vehicles which govern other park roads is indicated in 36 CFR 5.4 (1993), which reads as follows:

Sec. 5.4 Commercial passenger-carrying motor vehicles.

(a) The commercial transportation of passengers by motor vehicles except as authorized under a contract or permit from the Secretary or his authorized representative is prohibited in * * * Yellowstone (prohibition does not apply to non-scheduled tours as defined in Section 7.13 of this chapter, nor to that portion of U.S. Highway 191 traversing the northwest corner of the park) * * *

Although use of U.S. Highway 191 has since expanded to include interstate travel, local commercial and non-commercial traffic remains the predominant use of the highway.

In response to public interest in the management and regulation of commercial traffic on U.S. Highway 191 within Yellowstone National Park, the park conducted a series of three public meetings in 1987 and completed two environmental assessments (1990 and 1992) to evaluate the potential impacts of commercial traffic on natural and cultural resources and on visitor safety and experience.

Among the concerns identified during this process was the potential for a hazardous material spill from a commercial vehicle accident to cause irreparable damage to riverine areas adjacent to the road; and the potential social and economic impacts of redirecting some or all of the commercial vehicle traffic to alternative routes.

The alternative proposed in both environmental assessments was to authorize the continued use of U.S. Highway 191 by commercial vehicles, but to prohibit the transport of hazardous materials on U.S. Highway 191 through the park. Local deliveries and removal of hazardous materials would be allowed under permits and conditions established by the superintendent. This alternative would significantly reduce the potential of a hazardous material spill in the park, yet would not cause significant economic impacts to local communities or the trucking industry that would result from a complete ban on commercial vehicles.

Other concerns identified and evaluated in the environmental assessments included potential impacts to wildlife, visitor safety, and visitor experience created by the continued presence of, and noise levels created by, commercial traffic on U.S. Highway 191 through the park. These impacts were determined to be minor and temporary in effect. The NPS found that continued use of the highway by commercial traffic, excluding the transport of hazardous materials, caused no significant impact to resources or to the experience of park visitors.

A Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on September 15, 1993 (58 FR 48336). Based on this discussion, the NPS is today publishing final regulations as discussed below.

Purpose for Regulation

The historical and current use of U.S. Highway 191 by commercial vehicles through Yellowstone National Park is in conflict with 36 CFR 5.6. With the existing levels of interstate and local commercial vehicle traffic on U.S. Highway 191, there is significant public concern about the potential for hazardous materials spills in the park resulting from motor vehicle accidents.

The general purpose of the regulations is to authorize the use of U.S. Highway 191 through the park by commercial vehicles; to prohibit the transport of hazardous materials on U.S. Highway 191 except when permitted under certain conditions; to delete out-of-date sections of the special regulations for Yellowstone related to speed limits and

trucking permits; to establish general procedures for issuing permits to commercial vehicles operating on all park roads; to prohibit operating without a permit or in violation of a term or condition of a permit; and to provide for the suspension or revocation of a permit for failure to comply with a term or condition.

Analysis of Comments

NPS received 125 timely comments on the proposed regulations during the comment period from September 15, 1993 to November 15, 1993. The majority (116) of the comments came from individuals, many of whom stated they live or own property in or near the Big Sky, Montana, area. Nine comments came from organizations or government entities. Of the total comments, 117 expressed general support of the proposed regulations and 8 expressed opposition. Of the 117 comments in favor of the proposed regulations, 72 expressed support without qualification. Twenty-eight expressed qualified support with a preference that a complete ban on commercial trucking on U.S. Highway 191 be imposed.

This issue has been very controversial since public meetings were first held in 1987. Many local citizens have wanted a total ban on trucking through the park in order to reduce trucking outside the park near Big Sky, while the trucking industry has wanted no change whatsoever in the historical use. Considering the diverse, polarized points of view on this issue, the preference stated in this group of 28 comments is not unexpected. A number of these comments also mentioned concerns about the speed limit and encouraged NPS to actively enforce the speed limit.

Eight comments expressed qualified support for the proposal with a primary preference for a speed limit less than 55 mph for trucks. NPS believes that a reduced speed limit was adequately reviewed in the 1992 environmental assessment that determined that an aggressively enforced 55 mph speed limit would address safety, operational, and environmental concerns and would be consistent with the purposes for which the roadway was established. NPS intends to actively enforce the speed limit to the extent that staffing allows.

Five comments expressed qualified support for the proposal with a preference for more restrictive regulation of the size/type of large trucks that are not carrying hazardous materials. It was specifically suggested

that tandem and triple trailer rigs be prohibited. NPS notes that triple trailer rigs do not currently travel U.S. Highway 191 since they are already restricted under Mont. Code Ann. § 61-10-124. A variety of alternative restrictions were considered and rejected in the environmental assessments, but restricting tandem trailer rigs was not one of them. The primary environmental and safety concerns identified in the two environmental assessments relate to the transport of hazardous materials. NPS has no traffic accident data to suggest that tandem trailer rigs are involved in or contribute to any more safety or environmental problems in the park than other types of commercial trucks.

One of these comments also expressed concern that highly toxic materials such as biological or nuclear weapons may be transported without placarding for national security reasons. It was suggested that the language of the rule make clear that such materials may not be transported through the park. NPS is not aware of any unmarked biological warfare or nuclear materials being transported through the park. For the sake of consistency with standards currently followed by the transportation industry, the NPS rule purposefully relies upon the U.S. Department of Transportation for definitions and regulations related to the identification and placarding or marking of hazardous materials.

One of these comments also suggested that wording be added so that operators transporting hazardous materials are held responsible for restoration, repair, or restitution for any and all environmental, property, or personal damage resulting from a hazardous material spill. NPS believes that this responsibility is already established under 42 U.S.C. 9607, 33 CFR 153.405, and 40 CFR 263.30-31, which are applicable to park roads.

In addition, a standard condition of all special use permits issued by the National Park Service (Form 10-114) is that "the permittee shall pay the United States for any damage resulting from use of the permit which [sic] would not reasonably be inherent in the use which [sic] is being permitted". NPS believes that hazardous materials spills are not "reasonably inherent" in the transport, when permitted, of hazardous materials through the park.

Two trucking organizations and the Montana Department of Transportation expressed support for the proposed rule with recommendations for a clarification of permitting procedures and/or concern about the potential for permits to be required for non-

hazardous materials commercial vehicles on U.S. Highway 191. These concerns are discussed further in the Section-by-Section Analysis.

One comment expressed support with a recommendation that a restriction be imposed to require trucks to maintain a 500 foot distance from other trucks. For the most part, national park areas assimilate traffic codes from the state where the park is located. In the case of U.S. Highway 191, portions of the road are within Montana and portions are within Wyoming. Both state motor vehicle codes have existing sections related to "following too closely" (Mont. Code Ann. § 61-8-329 and Wyo. Stat. § 31-5-210). Neither State stipulates that trucks maintain a minimum separation of 500 feet. The NPS believes that the applicable State regulations are adequate and that imposing a 500 foot distance standard in the park is not justified by available traffic accident information and would be confusing to the public.

Of the 8 responses opposed to the proposed regulations, 6 expressed that authorizing commercial vehicle use of U.S. Highway 191 was inappropriate, undesirable, or inconsistent with the intent of existing regulations. The original purpose and historical commercial use of the road predates the general regulations prohibiting commercial vehicles in national parks.

Moreover, as discussed earlier, the NPS found that continued use of the highway by commercial traffic, excluding the transport of hazardous materials, would not adversely affect park resources or visitor experience. For these reasons, the NPS proposed the rule primarily to resolve the conflict between current regulation and existing use, with the intent being to authorize general commercial use of U.S. Highway 191 subject to certain restrictions.

Two commenters expressed that any restriction on commercial vehicles, such as the prohibition on hazardous materials transports, was unfair or unnecessary. NPS acknowledges that the rule is a compromise between two opposing viewpoints and that not all interested parties are supportive of the compromise.

Section by Section Analysis

Although portions of the proposed rule apply to all park roads, virtually all comments focused primarily on the issues related specifically to U.S. Highway 191. Based on this response, the order of sections in the final rule has been changed slightly from that in the NPRM to improve the flow from Highway 191-specific sections to more general sections applicable to all park

roads. Comments are addressed according to the section numbering used in the final rule.

Section 7.13(a)(1). This section authorizes commercial vehicles to use U.S. Highway 191. One commenter expressed support for the authorization of commercial vehicles to use U.S. Highway 191 in Yellowstone, but was concerned that the restriction of hazardous materials transport on U.S. Highway 191 in Yellowstone may establish a precedent that would be expanded to include restrictions on commercial vehicles traveling on that portion of U.S. Highway 191 which passes through Grand Teton National Park. The Yellowstone special regulation is being promulgated primarily to address a particular and unique situation regarding the specific twenty-mile portion of U.S. Highway 191 that travels through the northwest corner of Yellowstone National Park. The highway that travels from the West Entrance through the interior of the park to the South Entrance is not considered a portion of U.S. Highway 191 and is not opened to commercial vehicle use by this rule. Any future consideration of the regulations at Grand Teton National Park is not related to the Yellowstone situation and would require a separate rulemaking process with public review.

As proposed, Section 7.13(a)(2), which was identified in the NPRM as section (a)(3), would have prohibited the transport of hazardous materials on all park roads including U.S. Highway 191 except under certain circumstances requiring a permit. This section was developed primarily to address issues related to U.S. Highway 191. All comments received on this section related only to U.S. Highway 191. In part as a result of the focus of these comments, the NPS has realized that the general application of this section to other park roads raises complex issues related to park suppliers and hazardous materials deliveries to the Cooke City, Montana, area that were not evaluated in the two environmental assessments or addressed in the NPRM. To minimize confusion regarding hazardous materials transports on other park roads, which are currently managed under other permitting processes, the wording of this section in the final rule has been revised to limit its applicability specifically to U.S. Highway 191.

Two commenters representing the commercial trucking industry suggested that the language as published in the NPRM for section 7.13(a)(2) is "overly broad" when referring to Department of Transportation definitions and regulations found in 49 CFR Subtitle B. These commenters offered conflicting

suggestions as to the most appropriate sections to cross-reference. The NPS agrees that more specific wording is appropriate and has revised the final wording of this section as follows:

The transporting on U.S. Highway 191 of any substance or combination of substances, including any hazardous substance, hazardous material, or hazardous waste as defined in 49 CFR 171.8 that requires placarding of the transport vehicle in accordance with 49 CFR 177.823, or any marine pollutant that requires marking, as defined in 49 CFR Subtitle B, is prohibited; provided, however, that * * * (additional wording is italicized)

One commenter suggested that the superintendent's authority to issue permits established in this section was essentially redundant with the permit authority established in § 7.13(a)(4). In light of the changes in wording, the NPS disagrees. Section 7.13(a)(4) applies to commercial vehicles on all park roads and replaces, in part, section 7.13(c), which is being deleted. Section 7.13(a)(2) applies specifically to the transport of hazardous materials on U.S. Highway 191.

With regard to U.S. Highway 191, the NPS believes that a clear distinction must be made between these two sections, in part because there are non-commercial vehicles, such as those from cooperating highway departments or land management agencies, that at times transport hazardous materials through the park. Since the overwhelming public concern identified in the two environmental assessments is the concern about the potential environmental impacts of a hazardous materials spill along U.S. Highway 191 in the park, the NPS believes it is appropriate to manage all hazardous materials transports, including commercial and non-commercial, under section 7.13(a)(2).

The last portion of this section, as worded in the NPRM, received no specific public comments; however, it received considerable discussion within the NPS. As written in the NPRM, it stated as follows:

* * * provided, however, that the Superintendent may issue permits for the transportation of such substance or combination of substances, including hazardous waste, in emergencies, and shall issue permits when such transportation is necessary for access to lands within or adjacent to the park area to which access is otherwise not available.

It was noted that the wording was dissimilar to that of section (a)(4) with regard to establishing terms and conditions of a permit. It was also noted that the phrase "shall issue permits when such transportation is necessary

to access to lands within or adjacent to the park area to which access is not otherwise available" may be subject to differing interpretations by constituencies on opposing sides of the issue.

The development of this regulation as it applies to U.S. Highway 191 has been very controversial locally and it has been the NPS's intent to resolve, rather than perpetuate, the ongoing controversy. It has also been and continues to be the intent of the NPS to allow that small proportion of operators who are delivering hazardous materials to the West Yellowstone area to continue to travel on U.S. Highway 191 through the park as they have done in the past, subject to terms and conditions addressing resource protection, safety and other concerns as appropriate. Therefore, it is the NPS's intent that these regulations not specifically prohibit the superintendent from issuing permits to operators of motor vehicles making local deliveries of hazardous materials to that portion of Gallatin County, Montana, that is south or west of the park boundary at Milepost 11 on U.S. Highway 191.

Upon further legal review, it was felt that the original language in NPRM would have denied the NPS the discretion to continue this practice. The last portion of this section has been revised in the final rule as follows:

* * * provided however, that the superintendent may issue permits and establish terms and conditions for the transportation of hazardous materials on park roads in emergencies or when such transportation is necessary for access to lands within or adjacent to the park area.

These changes in wording from that which was published in the NPRM are meant to clarify, but not alter, the intent and substance of the regulation.

Finally, one commenter suggested that NPS clearly set forth the requirements for a permit so that it is not left to the subjective discretion of the superintendent. This concern is discussed below in *Summary of Final Regulations and Required Permit Criteria*.

Section 7.13(a)(3), which was identified as section (a)(4) in the NPRM, states that operators who are permitted to transport hazardous materials through the park are not relieved from complying with applicable state and federal hazardous materials regulations. This section received only one comment suggesting that the reference to 49 CFR Subtitle B was overly broad and that the reference should be to one specific section within the title. NPS disagrees with this commenter and believes that a broad reference is appropriate since it

is the intent of this rule that all applicable U.S. Department of Transportation regulations related to the transport of hazardous materials by motor vehicles on public roadways are applicable in the park.

Section 7.13(a)(4), which was identified as section (a)(2) in the NPRM, provides for the superintendent's authority to require permits and to establish terms and conditions for the operation of a commercial vehicle on any park road. This section, in part, replaces deleted Section 7.13(c), which established trucking permit procedures for emergency situations and for trucks traveling between the north and northeast entrances to the Cooke City, Montana, area. In addition, the deleted section also established a fixed permit fee schedule which is out-of-date and does not reflect current administrative costs.

Several commenters representing the trucking industry or State departments of transportation expressed concern that the general wording of this section is overly broad in that the superintendent would potentially have the authority to administratively restrict or eliminate general commercial vehicle use of U.S. Highway 191 through the permitting process. The commenters were concerned that this would be in conflict with the proposal articulated in the Final Environmental Assessment and that the superintendent may become the focal point for political pressure should he or she have the discretion to restrict commercial traffic through permits. The NPS acknowledges these concerns, but for several reasons, disagrees with the perceived implications.

First, the alternative adopted in the Final Environmental Assessment proposed "to allow commercial traffic continued use of U.S. Highway 191 but to restrict the transportation of quantities and types of hazardous materials." Provisions included that the superintendent shall have the authority to issue permits specifically for the transportation of quantities and types of hazardous materials through the park under certain circumstances. This alternative did not propose to relinquish the superintendent's existing authority to establish public use limits as defined in section 1.5, or the authority to issue permits as defined in section 1.6.

NPS believes that the general wording of Section 7.13(a)(4) is needed to address the management of commercial vehicle traffic on all park roads and is not limited to U.S. Highway 191. NPS also believes that requiring a permit for all commercial vehicles traveling on park roads other than U.S. Highway 191 is appropriate and consistent with the

current regulations and existing practice.

With regard to park roads other than U.S. Highway 191, the primary current commercial vehicle permittees are companies supplying goods, including petroleum products such as gasoline, propane and heating oil, to the Cooke City, Montana, area. It is the intent of the NPS that the superintendent would continue to issue permits to commercial vehicles which are providing the Cooke City area communities and tourism industry with essential goods and services. Under the terms and conditions of permit, the superintendent will exclude commercial uses of these roads which are not related to community or visitor services.

As stated in the NPRM, the NPS has no intention of requiring a permit under existing conditions for "general" commercial traffic that is not transporting hazardous materials on U.S. Highway 191 through the park as authorized by section 7.13(a)(1). The NPS believes that it currently is neither justifiable nor administratively feasible to require permits for such traffic. However, consistent with the authority granted in 36 CFR 1.5 to establish public use limits and in 36 CFR 1.6 to manage those limits through the permit process, the NPS reserves the authority to manage that use through a permit process should unforeseeable circumstances occur in the future.

The NPS believes that section 1.5 contains adequate safeguards to prevent a superintendent from being politically coerced into establishing arbitrary or unjustified public use limits relative to commercial vehicle use of U.S. Highway 191. Section 1.5(b) states:

Except in emergency situations, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in the public use pattern of the park area, adversely affect the park's natural, aesthetic, scenic or cultural values, require a long-term or significant modification in the resource management objectives of the unit, or is a highly controversial nature, shall be published as rulemaking in the Federal Register."

Clearly, significant restrictions or changes in use limits relative to U.S. Highway 191 would require the promulgation of regulations allowing for public input. Since the new 36 CFR 7.13(a)(1) explicitly authorizes commercial traffic not carrying hazardous materials to use U.S. Highway 191, the NPS believes that the superintendent is not empowered to prohibit such use through a permit requirement. The superintendent's authority would be to issue permits to

impose use limits, which would have to meet the criteria defined in Section 1.5.

One of these commenters went further to suggest that the authority of the superintendent under 36 CFR 1.6(a) to issue permits applies only when necessary to allow an otherwise prohibited or restricted activity. The commenter stated that once the use of U.S. Highway 191 by commercial vehicles transporting commodities other than hazardous materials is authorized by Section 7.13(a)(1), then the Superintendent would not have the authority to issue permits related to that use. 36 CFR 1.6(a) states:

When authorized by regulations set forth in this chapter, the Superintendent may issue a permit to authorize an otherwise prohibited or restricted activity or (italics added for emphasis) impose a public use limit.

There is clear legal precedence that the superintendent may issue permits to impose a public use limit on an activity that is not otherwise prohibited or restricted. Therefore, the NPS believes there is no ambiguity raised by the wording of this section.

One commenter expressed that should the NPS choose to require a permit in the future for general commercial vehicle use of U.S. Highway 191, then all commercial traffic, interstate and intrastate, would have to be permitted according to the Commerce Clause of the U.S. Constitution, Art. 1, Section 8, Clause 3. The NPS disagrees with this contention. The NPS promulgates regulations governing activities in the National Park System pursuant to the delegation of authority from Congress in 16 U.S.C. 3. That delegation by Congress was made under the Property Clause, Art. 4, Section 3, Clause 2, of the Constitution. While this regulation imposes limits on commerce, it does so incidentally to the necessary and appropriate exercise of Property Clause powers.

One commenter expressed concern that the "permit fee" may be misconstrued as a "fee for use", which in the commenter's opinion would be inappropriate. National Park Service Guideline NPS-53, Special Park Uses, provides for charging a permit fee based, in part, on the administrative costs of issuing a permit and monitoring and enforcing permit conditions, which is the intent of the proposed rule as described in the NPRM.

Section 7.13(a)(5) prohibits violating a term or condition of the permit and provides for the suspension or revocation of a permit should a violation occur. This section received one comment expressing concern about what sorts of "violation" may constitute

grounds to suspend or revoke the permit to transport a hazardous material. It was pointed out that a minor, technical violation, such as the inadvertent loss of one of the four required hazardous material placards, may constitute a technical violation of a permit condition. The commenter questioned whether such a violation was significant enough to warrant loss of the permit and asked that NPS clarify what kind of violation will actually result in the revocation of a permit to haul hazardous materials on U.S. Highway 191 within Yellowstone National Park.

NPS does not disagree with this concern. However, general wording such as this is standard in all sections of 36 CFR relating to permits including Sections 1.6 and 5.6. This issue is discussed below under *Required Permit Criteria*.

Section 7.13(f) changes the name of the existing section from "Commercial automobiles and buses" to "Commercial passenger carrying vehicles". No comments were received related to the name change of this section. The intent is to make the title of this section parallel to that of general regulation Section 5.4, the section upon which Section 7.13(f) is based.

Summary of Final Regulations and Required Permit Criteria

In general, permit procedures for commercial vehicles and/or hazardous materials transports will be in accordance with 36 CFR 1.6 and NPS guidelines (as amended or supplemented). The special use permit form (10-114) will be used for commercial vehicle and hazardous materials permits. Park suppliers are permitted through a different process. Permits may be applied for during normal business hours by visiting, telephoning, or telefaxing the Visitor Services Office (VSO) in the administration building at Mammoth Hot Springs. The VSO telephone number is 307-344-2115; FAX number is 307-344-2104.

These regulations differentiate between the transportation of hazardous materials on U.S. Highway 191 and commercial vehicle use. The special use permit form will be used to manage either or both activities. Specific terms and conditions of the permit may vary depending upon the use(s) requested. In most cases, one permitting document will be utilized to authorize and manage the specific use.

Vehicles regularly or frequently requiring a special use permit will generally be issued a permit which is valid for a period of one year. Vehicles that have a one-time, limited duration,

or emergency need for a permit will be issued short term permits with a limited period of validity. Permit fees will be established in accordance with NPS guidelines (as amended or supplemented). A permit fee schedule will be reviewed, adjusted if appropriate, and published in the superintendent's compendium annually.

General conditions of a special use permit are stated on the permit form (10-114). These conditions include that the permittee is expected to comply with applicable State and Federal regulations, which in the case of commercial vehicles includes motor vehicle codes and may include hazardous materials regulations depending upon the situation. Another standard condition of the permit is that the permittee is financially responsible for any damage resulting from the authorized use that would not reasonably be inherent in the use, such as a hazardous material spill.

In accordance with applicable NPS guidelines, special park conditions may be appended to the form. Depending upon the circumstances, these may include time-of-travel restrictions, safety requirements, damage mitigation requirements, and provisions for revoking or terminating a permit.

As with all other NPS permits, violations of terms or conditions of a special use permit will be administratively reviewed on a case by case basis to determine if suspension or revocation is appropriate. In general, permits will not be suspended or revoked unless violations occur that threaten or damage park resources, that create or sustain an imminent hazard to public health or safety, or that indicate recurring non-compliance with applicable regulations.

Effective Date

This final regulation is effective 30 days after publication in the *Federal Register*.

Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0026. The information will be used to document and authorize special uses of public lands that are otherwise restricted. Permits are necessary to determine whether a proposed activity is authorized by law and to evaluate the potential effects on park resources. Response is required to obtain a benefit in accordance with 36 CFR 7.13. Public reporting burden for this information is

estimated to average one-half hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 800 North Capitol, P.O. Box 37127, Washington, DC. 20013-7127; and the Office of Management and Budget, Paperwork Reduction Project (1024-0026) Washington, DC. 20503.

Compliance With Other Laws

The National Park Service prepared two environmental assessments for regulation of commercial traffic on U.S. Highway 191. The first was released for public review in 1990. Since that assessment did not fully analyze alternative routes, impacts to commodity distribution, and other economic factors, a revised environmental assessment was prepared. The latter assessment was made available for public review October 16, 1991 through December 1, 1991. On July 31, 1992, the National Park Service signed a Finding of No Significant Impact (FONSI) for the proposal, which would allow commercial traffic on U.S. Highway 191, but prohibit the transportation of hazardous materials requiring placarding through Yellowstone National Park. Copies of these Environmental Assessments are available from the Chief Ranger's Office at the above address.

This rule was not subject to Office of Management and Budget review under Executive Order 12866. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which became effective January 1, 1981, the Service has determined that these proposed regulations will not have a significant economic effect on a substantial number of small entities, nor will they require the preparation of a regulatory analysis. The proposed regulations would impose no significant costs on any class or group of small entities. This conclusion is based on the fact that no existing uses are being curtailed, except for the proposed prohibition on a very small percentage of vehicles which are carrying hazardous materials.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and record keeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 3.

2. Section 7.13 is amended by revising paragraph (a), removing and reserving paragraph (c), and revising the heading of paragraph (f) to read as follows:

§ 7.13 Yellowstone National Park.

(a) *Commercial Vehicles.* (1) Notwithstanding the prohibition of commercial vehicles set forth in Section 5.6 of this Chapter, commercial vehicles are allowed to operate on U.S. Highway 191 in accordance with the provisions of this Section.

(2) The transporting on U.S. Highway 191 of any substance or combination of substances, including any hazardous substance, hazardous material, or hazardous waste as defined in 49 CFR 171.8 that requires placarding of the transport vehicle in accordance with 49 CFR 177.823 or any marine pollutant that requires marking as defined in 49 CFR Subtitle B, is prohibited; provided, however, that the superintendent may issue permits and establish terms and conditions for the transportation of hazardous materials on U.S. Highway 191 in emergencies or when such transportation is necessary for access to lands within or adjacent to the park area.

(3) The operator of a motor vehicle transporting any hazardous substance, hazardous material, hazardous waste, or marine pollutant in accordance with a permit issued under this section is not relieved in any manner from complying with all applicable regulations in 49 CFR Subtitle B, or with any other State or federal laws and regulations applicable to the transportation of any hazardous substance, hazardous material, hazardous waste, or marine pollutant.

(4) The superintendent may require a permit and establish terms and conditions for the operation of a commercial vehicle on any park road in accordance with section 1.6 of this Chapter. The superintendent may charge a fee for permits in accordance with a fee schedule established annually.

(5) Operating without, or violating a term or condition of, a permit issued in accordance with this section is prohibited. In addition, violating a term or condition of a permit may result in the suspension or revocation of the permit.

* * * * *

(c) [Reserved]

* * * * *
(f) Commercial passenger-carrying vehicles. * * *

* * * * *
Dated: August 18, 1994.

George T. Frampton Jr.,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-20863 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 940415-4212]

RIN 0651-AA68

Revision of Patent Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of final rulemaking and lifting of suspension.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent cases, Part 1 of title 37, Code of Federal Regulations, to adjust certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI) and to recover costs of operation. The PTO also is providing notice that, beginning on October 1, 1994, the suspension of the fee for access to the Automated Patent System's Full Text Search capability (APS-Text) at a Patent and Trademark Depository Library (PTDL) will be lifted. However, the PTO is rescinding this hourly fee, which was established by 37 CFR 1.21(p), and in its place assessing an annual subscription fee on PTDLs providing such service. On October 1, 1994, the PTO also will begin collecting a fee for access to the Automated Patent System's Classified Search and Image Retrieval capability (APS-CSIR) from the search facilities in Arlington, Virginia.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Kopson by telephone at (703) 305-8510, fax at (703) 305-8525, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This rule change is designed to adjust the PTO fees in accordance with the applicable provisions of title 35, United States Code, and section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub.

L. 101-508), all as amended by the Patent and Trademark Office Authorization Act of 1991 (Pub. L. 102-204).

There are two objectives of this final rule package. The first objective is to adjust certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI) and to recover costs of operation.

The second objective is to provide notice that PTO is lifting the suspension on the fee for access to APS-Text at a Patent and Trademark Library (PTDL). This fee was established by rule on October 1, 1992 (published in the *Federal Register* on August 21, 1992 at 57 FR 38190). Collection of the fee was immediately suspended by the Commissioner to provide additional time for the PTO to solicit input from the private sector on alternative collection methods, and other options for accessing patent search and retrieval in the Libraries. In response to public comments, the PTO will rescind the fee established by 37 CFR 1.21(p), and assess a subscription fee under 37 CFR 1.21(k) on each PTDL that provides its patrons with access to APS-Text. The basis for the subscription amount is less than the fee amount that was established in 37 CFR 1.21(p). Each participating library will be responsible for establishing policies for providing access to their patrons.

The PTO also will begin charging a fee for on-line access to APS-CSIR at the Patent Search and Image Retrieval Facility (PSIRF) in Arlington, Virginia. Free access to APS-CSIR has been offered at the PSIRF since July 12, 1993. The PTO now will begin recovering the cost of providing this on-line access in accordance with 37 CFR 1.21(k).

The PTO will make any necessary adjustments to these automated system fees based upon actual fiscal year 1995 usage. Future adjustments will be made based upon deviations in system costs and/or public usage.

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. A fifty percent reduction in the fees paid under 35 U.S.C. 41(a) and 41(b) by independent inventors, small business concerns, and nonprofit organizations who meet prescribed definitions is required by 35 U.S.C. 41(h).

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price

Index (CPI) over the previous 12 months.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) provides that there shall be a surcharge on all fees established under 35 U.S.C. 41(a) and 41(b) to collect \$107 million fiscal year 1995.

Subsection 41(d) of title 35, United States Code, authorizes the Commissioner to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, and for each black and white copy of a patent.

Section 376 of title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty (PCT).

Subsection 41(i)(3) of title 35, United States Code, authorizes the Commissioner to establish reasonable fees for access to automated search systems of the PTO.

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Commissioner under Section 41 may take effect thirty days after notice in the *Federal Register* and the *Official Gazette of the Patent and Trademark Office*.

Recovery Level Determinations

This rule adjusts patent fees for a planned recovery of \$571,439,000 in fiscal year 1995, as proposed in the Administration's budget request to the Congress. The fee amounts established for automated access to PTO's data bases will recover reasonable costs of providing these services to the public. The total amount expected to be collected is consistent with the budgeted amount.

The patent statutory fees established by 35 U.S.C. 41(a) and 41(b) are being adjusted on October 1, 1994, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index (CPI-U). In calculating these fluctuations, the Office of Management and Budget (OMB) has determined that the PTO should use CPI-U data as determined by the Secretary of Labor. However, the Department of Labor does not make public the CPI-U until approximately 21 days after the end of the month being calculated. Therefore, the latest CPI-U information available is for the month of May 1994. In accordance with previous rulemaking methodology, the PTO uses the Administration's projected CPI-U for the 12-month period ending September

30, 1994, which is 3.0 percent. Based on this projection, patent statutory fees are being adjusted by 3.0 percent. Before the final fee schedule is published, the fees may be slightly adjusted based on actual data available from the Department of Labor.

Certain non-statutory patent processing fees established under 35 U.S.C. 41(d) and PCP processing fees established under 35 U.S.C. 376 are being adjusted up to the three percent fluctuation in the CPI in order to recover their estimated average costs in 1995. Three patent service fees that are set by statute are not adjusted. The three fees that are not being adjusted are assignment recording fees, printed patent copy fees and photocopy charge fees.

The Office calculated unit costs for all fees based on OMB Circular A-25, "User Fees", and OMB Circular A-130, "Management of Federal Information Resources". Costs were determined from the best available records (for example, financial statements of the Office) and included direct and indirect costs to the Office for carrying out the activity, as directed by OMB Circular A-25. The patent statutory fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user.

Fees of \$100 or more were rounded to the nearest \$10. Fees between \$2 and \$99 were rounded to an even number so that the comparable small entity fee would be a whole number.

The Office has detailed cost calculation worksheets for each fee amount. These worksheets are available for public inspection in Suite 507 of Crystal Park 1, 2011 Crystal Drive, Arlington, Virginia.

Workload Projections

Determination of workloads varies by fee. Principal workload projection techniques are as follows:

Patent application workloads are projected from statistical regression models using recent application filing trends. Patent issues are projected from an in-house patent production model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 80 percent, 57 percent and 25 percent, respectively. Service fee workloads follow linear trends from prior years' activities.

Any fee amount that is paid on or after October 1, 1994, would be subject to the new fees then in effect. For purposes of determining the amount of

the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing or Transmission, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A Certificate of Mailing or Transmission under Section 1.8 is not "proper" for items which are specifically excluded from the provisions of Section 1.8. Section 1.8 should be consulted for those items for which a Certificate of Mailing or Transmission is not "proper." Such items include, inter alia, the filing of national and international applications for patents. However, the provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate do apply to any paper or fee (including patent applications) to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of the rules, as amended, the amount of the fee to be paid would be the fee established by the amended rules.

Cost Calculations

APS-Text at a Patent and Trademark Depository Library (PTDL)

The costs for one hour terminal session time on APS-Text at a PTDL include license fees that must be paid to Chemical Abstracts Service (CAS) for its proprietary text and structure search software. Other costs are included for a portion, projected at 3.65 percent, of the lease of a computer mainframe for memory storage purposes; all costs associated with training PTDL staff (equipment rental, materials and time); personnel to provide client support to the PTDLs; telecommunication costs. A summary of the costs are listed below.

APS-TEXT COST OF ONE HOUR OF TERMINAL SESSION TIME AT A PATENT AND TRADEMARK DEPOSITORY LIBRARY

Cost element	Public share
Client Support Overtime	\$10,203
Additional Mainframe Costs	43,216
Software (license fee)	273,000
Training Costs	10,000
Subtotal	336,419
General & Admin. Overhead @ 12.2%	40,976
Total Cost	377,395
Estimated Annual Usage (hours) .	54,600
Unit Cost (per hour)	6.91
Telecommunication Costs (per hour)	8.00
Total Cost (per hour)	14.91
Total Cost (per hour-rounded)	15.00

The PTDLs will pay an annual maximum use subscription rate based on one of five tier levels, roughly equivalent to one to five hours of use per day, five days per week. Each PTDL will select a maximum use subscription tier based on its anticipated usage and be responsible for monitoring their own use. The PTDLs will also be responsible for establishing their own policies regarding the provision of APS-Text in their library. If during the year a PTDL is about to exceed its chosen level of maximum use, the PTDL will be allowed to move to a higher tier (and pay the additional subscription rate) or to use up to the subscribed level and cease continued access mid-year.

Tiers	Annual usage	Annual subscription rate
I	0-300 hours	\$2,250
II	301-600 hours	6,750
III	601-900 hours	11,250
IV	901-1200 hours	15,750
V	1201-1500 hours	20,250

The subscription rates were derived using the \$15.00 per hour access charge previously calculated. There will be no additional charges or refunds to each library. For each tier, a discount mechanism is included in the annual subscription calculation. For example, the annual subscription rate of \$2,250 for Tier I is calculated by taking the mean average of the annual usage range (in this case 150 hours is the mean of zero and 300 hours) and multiplying it by the \$15.00 per hour access charge. Therefore, for a PTDL in Tier I, any usage over 150 hours is free to the library. But if a PTDL in Tier I were to not use at least 150 hours, the PTO would not be required to refund the amount of the subscription fee that was not used.

APS-CSIR at the Patent Search and Image Retrieval Facility (PSIRF)

The costs for one hour terminal session time on APS-CSIR at the PSIRF include license fees that must be paid to Chemical Abstracts Service (CAS) for its proprietary text and structure search software. It is estimated that 40 percent of the terminal time will be used for text searching, which requires the search software from CAS.

Other costs are included for a portion, projected at 2.25 percent, of the lease of a computer mainframe for memory storage purposes; additional personnel for the PSIRF and the Office of Computer and Telecommunications Operations; computer acquisition, installation, and maintenance; supplies and equipment dedicated to public use;

and general and administrative overhead. A summary of the costs are listed below.

APS-CSIR COST OF ONE HOUR OF TERMINAL SESSION TIME AT THE PATENT SEARCH AND IMAGE RETRIEVAL FACILITY

Cost element	Total cost
Compensation and Benefits	\$250,813
Additional Hardware and Mainframe Costs	226,792
Software (license fee)	25,000
Supply Costs	10,512
Installation Costs (amortized)	25,366
Subtotal	538,483
Space Costs	41,759
General & Admin Overhead @ 12.2%	65,695
Total Cost	645,937
Estimated Annual Usage (hours) .	13,000
Unit Cost (per hour)	49.68
Rounded Fee Amount (per hour-prorated)	50.00

A comparison of existing and revised fee amounts is included as an Appendix to this notice of final rulemaking.

In order to ensure clarity in the implementation of the revised fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (b), (d), and (f)-(i), is revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.17 Patent Application Processing Fees

Section 1.17, paragraphs (b)-(g) and (m), is revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.17, paragraphs (j), and (n)-(p), is revised to adjust fees established therein to recover costs.

37 CFR 1.18 Patent Issue Fees

Section 1.18, paragraphs (a)-(c), is revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.20 Post-issuance Fees

Section 1.20, paragraphs (c), (i)(1), and (j), is revised to adjust fees established therein to recover costs.

Section 1.20, paragraphs (e)-(g), is revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.21 Miscellaneous Fees and Charges

Section 1.21 is amended to remove paragraph (p).

37 CFR 1.445 International Application Filing, Processing, and Search Fees

Section 1.445, paragraph (a), is revised to adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.482 International Preliminary Examination Fees

Section 1.482, paragraphs (a)(1) and (a)(2)(ii), is revised to adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a), (b) and (d), is revised to adjust fees established therein to reflect fluctuations in the CPI.

Response to Comments on the Rules

Patent Fee Increase

A notice of proposed rulemaking to adjust patent fees was published in the *Federal Register* on May 27, 1994, at 59 FR 27519, and in the *Official Gazette* on June 7, 1994, at 1163 OG 14.

A public hearing was held on June 28, 1994. Three comments were received and considered in adopting the rules set forth herein.

Comments: The respondents, although not objecting to the three percent fee increase, strongly oppose any fee increase for the purpose of making up patent fee surcharge money that is being withheld from the PTO. The respondents support the Administration's proposal to ensure that all user fees assessed by the PTO are used exclusively by the PTO.

Response: The Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) requires the PTO, in fiscal year 1995, to collect \$107 million in patent fee surcharges and to deposit these collections to the Patent and Trademark Office Fee Surcharge Fund. In the past, Congress has only appropriated part of these deposits back to the PTO. Deposits not made available to the Office reside in the Fund. To date, the reserve in the Fund is slightly in excess of \$35 million. For fiscal year 1995, the PTO requested that all patent fees be provided directly to the Office, thereby eliminating reliance on appropriations from the Fee Surcharge Fund. This language will not be enacted. The House of Representatives has recommended that an additional \$18.7 million in patent fee surcharges not be made available to the Office in fiscal year 1995. Final action on the 1995 appropriations bill is pending. The Administration does not propose to increase patent fees in fiscal year 1995 other than the increase that reflects

fluctuations in the Consumer Price Index.

Collection of the Fee for Access to APS-Text at the PTDLS

A fee for access to APS-Text at a PTDL was set in the final rule package published in the *Federal Register* on August 21, 1992 (57 FR 38189). The final rule became effective October 1, 1992. On that date, the fee took effect but collection was immediately suspended by the Commissioner to provide additional time to solicit input from the private sector on alternative collection methods, and other options for accessing patent search and retrieval in the Libraries.

The Office received six comments.

Comment: Two respondents stated that many of the PTDLS already have considerable experience in collecting fees for access to on-line patent and trademark services provided by private sector vendors. They suggested that mechanisms already in place could be adapted to the collection of fees for PTO-provided services.

These respondents also suggested that the PTO procure access for the PTDLS to private sector on-line patent and trademark services, using a Federal procurement mechanism, such as Fedlink.

Response: The PTO encourages the PTDLS to provide a variety of patent and trademark services for their patrons. However, the PTDLS are not required to provide access to private sector on-line services, and the PTO can only provide support and training to the PTDLS for products and services it develops.

In the case of APS access, participation on the part of the PTDLS will be voluntary. With respect to other services, the PTDLS will make the decision as to which ones best fit the needs of their user communities. Fedlink, which provides on-line services to Government agencies, cannot extend its charter to include the PTDLS.

Under the proposed subscription method, libraries should develop policies and procedures which best suit their particular circumstances.

Comment: One respondent suggested that the access to APS be expanded beyond the PTDLS, with a small fee for general use, and discounted fees for independent inventors and/or off-peak usage.

Response: At this time, allowing direct access by the public would impact internal PTO operations. Access at PTDLS will ensure usage in a controlled environment, where end-users will have access to knowledge and skills of trained librarians.

Comment: One respondent suggested that the PTO permit voluntary participation by the individual PTDLS.

Response: Participation on the part of the PTDLS will be voluntary. The level of participation by the PTDLS will not affect their relationship with the PTO in any manner.

Comment: One respondent suggested that the PTO provide access to APS-Text on a subscription basis. This method would set a fee for anticipated usage over a determined period of time.

Response: The PTO will provide access to APS-Text to the PTDLS on an annual subscription basis. All of the libraries will have the option of subscribing. Each library that chooses to subscribe will establish a policy for providing the public with access to APS-Text.

Comment: One respondent suggested that the PTO set up a system that allows users to input credit or debit card numbers.

Response: Currently, the PTO is studying this collection option. The current equipment in use does not allow access via a credit or debit card. This option may be feasible in the near future.

Other Considerations

This final rule change is in conformity with the requirements of Executive Order 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. There are no information collection requirements relating to these patent fee rules. This final rule has been determined to be significant for purposes of Executive Order 12866.

The PTO has determined that this final rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the final rule change would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The final rule change increases fees by changes in the CPI as authorized by 35 U.S.C. 41(f). The principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h), which provides small entities with a 50-percent reduction in the major patent fees.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Inventions and patents,

Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, the PTO is amending title 37 of the Code of Federal Regulations, Chapter 1, Part 1, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.16 is amended by revising paragraphs (a), (b), (d), and (f) through (i) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases:	
By a small entity (§ 1.9(f))	\$365.00
By other than a small entity	730.00
(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3:	
By a small entity (§ 1.9(f))	38.00
By other than a small entity	76.00
* * * * *	
(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:	
By a small entity (§ 1.9(f))	120.00
By other than a small entity	240.00
(If the additional fees required by paragraphs (b), (c), and (d) of this section are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)	
* * * * *	
(f) For filing each design application:	
By a small entity (§ 1.9(f))	150.00
By other than a small entity	300.00
(g) Basic fee for filing each plant application:	
By a small entity (§ 1.9(f))	245.00
By other than a small entity	490.00
(h) Basic fee for filing each reissue application:	
By a small entity (§ 1.9(f))	365.00
By other than a small entity	730.00
(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:	
By a small entity (§ 1.9(f))	38.00
By other than a small entity	76.00

3. Section 1.17 is amended by revising paragraphs (b) through (g), (j), and (m) through (p) read as follows:

§ 1.17 Patent application processing fees.

(b) Extension fee for response within second month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	\$185.00
By other than a small entity	370.00
(c) Extension fee for response within third month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	435.00
By other than a small entity	870.00
(d) Extension fee for response within fourth month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	680.00
By other than a small entity	1,360.00
(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:	
By a small entity (§ 1.9(f))	140.00
By other than a small entity	280.00
(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:	
By a small entity (§ 1.9(f))	140.00
By other than a small entity	280.00
(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:	
By a small entity § 1.9(f)	120.00
By other than a small entity	240.00
* * * * *	
(j) For filing a petition to institute a public use proceeding under § 1.192	1,390.00
* * * * *	
(m) For filing a petition:	

(1) For revival of an unintentionally abandoned application, or	
(2) For the unintentionally delayed payment of the fee for issuing a patent:	
By a small entity (§ 1.9(f))	605.00
By other than a small entity	1,210.00
(n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104—\$840.00 reduced by the amount of the application basic filing fee paid.	
(o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104—\$1,690.00 reduced by the amount of the application basic filing fee paid.	
(p) For submission of an information disclosure statement under § 1.97(c)	210.00

4. Section 1.18 is revised to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:	
By a small entity (§ 1.9(f))	\$605.00
By other than a small entity	1,210.00
(b) Issue fee for issuing a design patent:	
By a small entity (§ 1.9(f))	210.00
By other than a small entity	420.00
(c) Issue fee for issuing a plant patent:	
By a small entity (§ 1.9(f))	305.00
By other than a small entity	610.00

5. Section 1.20 is amended by revising paragraphs (c), (e) through (g), (i)(1), and (j) to read as follows:

§ 1.20 Post issuance fees.

(c) For filing a request for reexamination (§ 1.510(a))	\$2,320.00
(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:	
By a small entity (§ 1.9(f))	480.00
By other than a small entity	960.00
(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:	
By a small entity (§ 1.9(f))	965.00
By other than a small entity	1,930.00
(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:	
By a small entity (§ 1.9(f))	1,450.00
By other than a small entity	2,900.00
(j) (1) unavoidable	640.00
(i) For filing an application for extension of the term of a patent (§ 1.740)	1,030.00

§ 1.21 [Amended]

- 6. Section 1.21 is amended by removing paragraph (p).
- 7. Section 1.445 is amended by revising paragraph (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:	
(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14)	\$210.00
(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:	
(i) No corresponding prior United States national application with basic filing fee has been filed	640.00
(ii) A corresponding prior United States national application with basic filing fee has been filed	420.00
(3) A supplemental search fee when required, per additional invention	180.00

8. Section 1.482 is amended by revising paragraphs (a)(1) and (a)(2)(ii) to read as follows:

§ 1.482 International preliminary examination fees.

(a) * * *

- (1) A preliminary examination fee is due on filing the Demand:
- (i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of \$460.00
- (ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of 690.00
- (2) * * *
- (ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office 240.00

9. Section 1.492 is amended by revising paragraphs (a) (1) through (5), (b), and (d) to read as follows:

§ 1.492 National stage fees.

- (a) * * *
- (1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:
- By a small entity (§ 1.9(f)) 330.00
- By other than a small entity 660.00
- (2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:
- By a small entity (§ 1.9(f)) 365.00
- By other than a small entity 730.00
- (3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:
- By a small entity (§ 1.9(f)) 490.00
- By other than a small entity 980.00
- (4) Where an international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):
- By a small entity (§ 1.9(f)) 46.00
- By other than a small entity 92.00
- (5) Where a search report on the international application has been prepared by the European Patent Office of the Japanese Patent Office:
- By a small entity (§ 1.9(f)) 425.00
- By other than a small entity 850.00
- (b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:
- By a small entity (§ 1.9(f)) 38.00
- By other than a small entity 76.00
- (d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:
- By a small entity (§ 1.9(f)) 120.00
- By other than a small entity 240.00

Dated: August 18, 1994.

Bruce A. Lehman,
Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks.

Appendix to This Final Rule

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS

37 CFR Section	Description	October 1993	October 1994
1.16(a)	Basic Filing Fee	\$710	\$730
1.16(a)	Basic Filing Fee (Small Entity)	355	365
1.16(b)	Independent Claims	74	76
1.16(b)	Independent Claims (Small Entity)	37	38
1.16(c)	Claims in Excess of 20	22	(1)

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Section	Description	October 1993	October 1994
1.16(c)	Claims in Excess of 20 (Small Entity)	11	(¹)
1.16(d)	Multiple Dependent Claims	230	240
1.16(d)	Multiple Dependent Claims (Small Entity)	115	120
1.16(e)	Surcharge—Late Filing Fee	130	(¹)
1.16(e)	Surcharge—Late Filing Fee (Small Entity)	65	(¹)
1.16(f)	Design Filing Fee	290	300
1.16(f)	Design Filing Fee (Small Entity)	145	150
1.16(g)	Plant Filing Fee	480	490
1.16(g)	Plant Filing Fee (Small Entity)	240	245
1.16(h)	Reissue Filing Fee	710	730
1.16(h)	Reissue Filing Fee (Small Entity)	355	365
1.16(i)	Reissue Independent Claims	74	76
1.16(i)	Reissue Independent Claims (Small Entity)	37	38
1.16(j)	Reissue Claims in Excess of 20	22	(¹)
1.16(j)	Reissue Claims in Excess of 20 (Small Entity)	11	(¹)
1.17(a)	Extension—First Month	110	(¹)
1.17(a)	Extension—First Month (Small Entity)	55	(¹)
1.17(b)	Extension—Second Month	360	370
1.17(b)	Extension—Second Month (Small Entity)	180	185
1.17(c)	Extension—Third Month	840	870
1.17(c)	Extension—Third Month (Small Entity)	420	435
1.17(d)	Extension—Fourth Month	1,320	1,360
1.17(d)	Extension—Fourth Month (Small Entity)	660	680
1.17(e)	Notice of Appeal	270	280
1.17(e)	Notice of Appeal (Small Entity)	135	140
1.17(f)	Filing a Brief	270	280
1.17(f)	Filing a Brief (Small Entity)	135	140
1.17(g)	Request for Oral Hearing	230	240
1.17(g)	Request for Oral Hearing (Small Entity)	115	120
1.17(h)	Petition—Not All Inventors	130	(¹)
1.17(h)	Petition—Correction of Inventorship	130	(¹)
1.17(h)	Petition—Decision on Questions	130	(¹)
1.17(h)	Petition—Suspend Rules	130	(¹)
1.17(h)	Petition—Expedited License	130	(¹)
1.17(h)	Petition—Scope of License	130	(¹)
1.17(h)	Petition—Retroactive License	130	(¹)
1.17(h)	Petition—Refusing Maintenance Fee	130	(¹)
1.17(h)	Petition—Refusing Maintenance Fee—Expired Patent	130	(¹)
1.17(h)	Petition—Interference	130	(¹)
1.17(h)	Petition—Reconsider Interference	130	(¹)
1.17(h)	Petition—Late Filing of Interference	130	(¹)
1.20(b)	Petition—Correction of Inventorship	130	(¹)
1.17(h)	Petition—Refusal to Publish SIR	130	(¹)
1.17(i)(1)	Petition—For Assignment	130	(¹)
1.17(i)(1)	Petition—For Application	130	(¹)
1.17(i)(1)	Petition—Late Priority Papers	130	(¹)
1.17(i)(1)	Petition—Suspend Action	130	(¹)
1.17(i)(1)	Petition—Divisional Reissues to Issue Separately	130	(¹)
1.17(i)(1)	Petition—For Interference Agreement	130	(¹)
1.17(i)(1)	Petition—Amendment After Issue	130	(¹)
1.17(i)(1)	Petition—Withdrawal After Issue	130	(¹)
1.17(i)(1)	Petition—Defer Issue	130	(¹)
1.17(i)(1)	Petition—Issue to Assignee	130	(¹)
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.53	130	(¹)
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.60	130	(¹)
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.62	130	(¹)
1.17(i)(2)	Petition—Make Application Special	130	(¹)
1.17(j)	Petition—Public Use Proceeding	1,350	1,390
1.17(k)	Non-English Specification	130	(¹)
1.17(l)	Petition—Revive Abandoned Appl.	110	(¹)
1.17(l)	Petition—Revive Abandoned Appl. (Small Entity)	55	(¹)
1.17(m)	Petition—Revive Unintentionally Abandoned Appl.	1,170	1,210
1.17(m)	Petition—Revive Unintentionally Abandoned Appl. (Small Entity)	585	605
1.17(n)	SIR—Prior to Examiner's Action	820	840
1.17(o)	SIR—After Examiner's Action	1,640	1,690
1.17(p)	Submission of an Information Disclosure Statement (§ 1.97)	200	210
1.18(a)	Issue Fee	1,170	1,210
1.18(a)	Issue Fee (Small Entity)	585	605
1.18(b)	Design Issue Fee	410	420
1.18(b)	Design Issue Fee (Small Entity)	205	210
1.18(c)	Plant Issue Fee	590	610

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Section	Description	October 1993	October 1994
1.18(c)	Plant Issue Fee (Small Entity)	295	305
1.19(a)(1)(i)	Copy of Patent	3	(¹)
1.19(a)(1)(ii)	Patent Copy—Expedited Local Service	6	(¹)
1.19(a)(1)(iii)	Patent Copy Ordered Via EOS—Expedited Service	25	(¹)
1.19(a)(2)	Plant Patent Copy	12	(¹)
1.19(a)(3)(i)	Copy of Utility Patent or SIR in Color	24	(¹)
1.19(b)(1)(i)	Certified Copy of Patent Application as Filed	12	(¹)
1.19(b)(1)(i)	Certified Copy of Patent Application as Filed, Expedited	24	(¹)
1.19(b)(2)	Cert or Uncert Copy of Patent-Related File Wrapper/Contents	150	(¹)
1.19(b)(3)	Cert. or Uncert. Copies of Office Records, per Document	25	(¹)
1.19(b)(4)	For Assignment Records, Abstract of Title and Certification	25	(¹)
1.19(c)	Library Service	50	(¹)
1.19(d)	List of Patents in Subclass	3	(¹)
1.19(e)	Uncertified Statement—Status of Maintenance Fee Payment	10	(¹)
1.19(f)	Copy of Non-U.S. Patent Document	25	(¹)
1.19(g)	Comparing and Certifying Copies, Per Document, Per Copy	25	(¹)
1.19(h)	Duplicate or Corrected Filing Receipt	25	(¹)
1.20(a)	Certificate of Correction	100	(¹)
1.20(c)	Reexamination	2,250	2,320
1.20(d)	Statutory Disclaimer	110	(¹)
1.20(d)	Statutory Disclaimer (Small Entity)	55	(¹)
1.20(e)	Maintenance Fee—3.5 Years	930	960
1.20(e)	Maintenance Fee—3.5 Years (Small Entity)	465	480
1.20(f)	Maintenance Fee—7.5 Years	1,870	1,930
1.20(f)	Maintenance Fee—7.5 Years (Small Entity)	935	965
1.20(g)	Maintenance Fee—11.5 Years	2,820	2,900
1.20(g)	Maintenance Fee—11.5 Years (Small Entity)	1,410	1,450
1.20(h)	Surcharge—Maintenance Fee—6 Months	130	(¹)
1.20(h)	Surcharge—Maintenance Fee—6 Months (Small Entity)	65	(¹)
1.20(i)(1)	Surcharge—Maintenance After Expiration—Unavoidable	620	640
1.20(i)(2)	Surcharge—Maintenance After Expiration—Unintentional	1,500	(¹)
1.20(j)	Extension of Term of Patent	1,000	1,030
1.21(a)(1)	Admission to Examination	300	(¹)
1.21(a)(2)	Registration to Practice	100	—
1.21(a)(3)	Reinstatement to Practice	15	(¹)
1.21(a)(4)	Certificate of Good Standing	10	—
1.21(a)(4)	Certificate of Good Standing, Suitable Framing	20	(¹)
1.21(a)(5)	Review of Decision of Director, OED	130	(¹)
1.21(a)(6)	Regrading of Examination	130	(¹)
1.21(b)(1)	Establish Deposit Account	10	(¹)
1.21(b)(2)	Service Charge Below Minimum Balance	25	(¹)
1.21(b)(3)	Service Charge Below Minimum Balance	25	(¹)
1.21(c)	Filing a Disclosure Document	10	(¹)
1.21(d)	Box Rental	50	(¹)
1.21(e)	International Type Search Report	40	(¹)
1.21(g)	Self-Service Copy Charge	25	(¹)
1.21(h)	Recording Patent Property	40	(¹)
1.21(i)	Publication in the OG	25	(¹)
1.21(j)	Labor Charges for Services	30	(¹)
1.21(k)	Unspecified Other Services	(²)	(¹)
1.21(k)	Terminal Use APS-TEXT by the PTDL's	70	(²)
1.21(k)	Terminal Use APS-CSIR	—	50
1.21(l)	Retaining Abandoned Application	130	(¹)
1.21(m)	Processing Returned Checks	50	(¹)
1.21(n)	Handing Fee—Incomplete Application	130	(¹)
1.21(o)	Terminal Use APS-TEXT	40	(¹)
1.24	Coupons for Patent and Trademark Copies	3	(¹)
1.296	Handing Fee—Withdrawal SIR	130	(¹)
1.445(a)(1)	Transmittal Fee	200	210
1.445(a)(2)(i)	PCT Search Fee—No U.S. Application	620	640
1.445(a)(2)(ii)	PCT Search Fee—Prior U.S. Application	410	420
1.445(a)(3)	Supplemental Search	170	180
1.482(a)(1)(i)	Preliminary Exam Fee	450	460
1.482(a)(1)(ii)	Preliminary Exam Fee	670	690
1.482(a)(2)(i)	Additional Invention	140	(¹)
1.482(a)(2)(ii)	Additional Invention	230	240
1.492(a)(1)	Preliminary Examining Authority	640	660
1.492(a)(1)	Preliminary Examining Authority (Small Entity)	320	330
1.492(a)(2)	Searching Authority	710	730
1.492(a)(2)	Searching Authority (Small Entity)	355	365
1.492(a)(3)	PTO Not ISA nor IPEA	950	960

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Section	Description	October 1993	October 1994
1.492(a)(3)	PTO Not ISA nor IPEA (Small Entity)	475	490
1.492(a)(4)	Claims—IPEA	90	92
1.492(a)(4)	Claims—IPEA (Small Entity)	45	46
1.492(a)(5)	Filing with EPO/JPO Search Report	830	850
1.492(a)(5)	Filing with EPO/JPO Search Report (Small Entity)	415	425
1.492(b)	Claims—Extra Individual (Over 3)	74	76
1.492(b)	Claims—Extra Individual (Over 3) (Small Entity)	37	38
1.492(c)	Claims—Extra Total (Over 20)	22	(¹)
1.492(c)	Claims—Extra Total (Over 20) (Small Entity)	11	(¹)
1.492(d)	Claims—Multiple Dependents	230	240
1.492(d)	Claims—Multiple Dependents (Small Entity)	115	120
1.492(e)	Surcharge	130	(¹)
1.492(e)	Surcharge (Small Entity)	65	(¹)
1.492(f)	English Translation—After 20 Months	130	(¹)
2.6(a)(1)	Application for Registration, Per Class	245	(¹)
2.6(a)(2)	Amendment to Allege Use, Per Class	100	(¹)
2.6(a)(3)	Statement of Use, Per Class	100	(¹)
2.6(a)(4)	Extension for Filing Statement of Use, Per Class	100	(¹)
2.6(a)(5)	Application for Renewal, Per Class	300	(¹)
2.6(a)(6)	Surcharge for Late Renewal, Per Class	100	(¹)
2.6(a)(7)	Publication of Mark Under § 12(c), Per Class	100	(¹)
2.6(a)(8)	Issuing New Certificate of Registration	100	(¹)
2.6(a)(9)	Certificate of Correction of Registrant's Error	100	(¹)
2.6(a)(10)	Filing Disclaimer to Registration	100	(¹)
2.6(a)(11)	Filing Amendment to Registration	100	(¹)
2.6(a)(12)	Filing Affidavit Under Section 8, Per Class	100	(¹)
2.6(a)(13)	Filing Affidavit Under Section 15, Per Class	100	(¹)
2.6(a)(14)	Filing Affidavit Under Sections 8 & 15, Per Class	200	(¹)
2.6(a)(15)	Petitions to the Commissioner	100	(¹)
2.6(a)(16)	Petition to Cancel, Per Class	200	(¹)
2.6(a)(17)	Notice of Opposition, Per Class	200	(¹)
2.6(a)(18)	Ex Parte Appeal to the TTAB, Per Class	100	(¹)
2.6(a)(19)	Dividing an Application, Per New Application Created	100	(¹)
2.6(b)(1)(i)	Copy of Registered Mark	3	(¹)
2.6(b)(1)(ii)	Copy of Registered Mark, Expedited	6	(¹)
2.6(b)(1)(iii)	Copy of Registered Mark Ordered, Via EOS, Expedited, Svc	25	(¹)
2.6(b)(2)(i)	Certified Copy of TM Application as Filed	12	(¹)
2.6(b)(2)(ii)	Certified Copy of TM Application as Filed, Expedited	24	(¹)
2.6(b)(3)	Cert. or Uncert. Copy of TM-Related File Wrapper/Contents	50	(¹)
2.6(b)(4)(i)	Cert. Copy of Registered Mark, Title or Status	10	(¹)
2.6(b)(4)(ii)	Cert. Copy of Registered Mark, Title or Status—Expedited	20	(¹)
2.6(b)(5)	Certified or Uncertified Copy of TM Records	25	(¹)
2.6(b)(6)	Recording Trademark Property, Per Mark, Per Document	40	(¹)
2.6(b)(6)	For Second and Subsequent Marks in Same Document	25	(¹)
2.6(b)(7)	For Assignment Records, Abstracts of Title and Cert	25	(¹)
2.6(b)(8)	Terminal Use X-SEARCH	40	(¹)
2.6(b)(9)	Self-Service Copy Change	0.25	(¹)
2.6(b)(10)	Labor Charges for Services	30	(¹)
2.6(b)(11)	Unspecified Other Services	(²)	(¹)

(¹) These fees are not affected by this rulemaking.

(²) Actual cost.

(³) Subscription.

[FR Doc. 94-20900 Filed 8-24-94; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[D2-1-5552a; FRL-5012-8]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) approves the State Implementation Plan (SIP) submitted by the State of Idaho for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). The implementation plan was submitted by the State and satisfied certain Federal requirements for an acceptable moderate

nonattainment area PM-10 SIP for Pinehurst, Idaho.

DATES: This final rule will be effective on October 24, 1994 unless adverse or critical comments are received by September 26, 1994. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

Documents which are incorporated by reference are available for inspection during normal business hours at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, and the State of Idaho Division of Environmental Quality, 1410 N. Hilton, Boise, ID 83720.

FOR FURTHER INFORMATION CONTACT: Stephen Fry, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, (206) 553-2575.

SUPPLEMENTARY INFORMATION:

I. Background

The Shoshone County, Pinehurst, Idaho area was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990¹ (see 56 FR 56694 (November 6, 1991) and 40 CFR 81.313 (codified air quality designation for the Pinehurst area)). The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of title I of the Act.² EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 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 title I advanced in this proposal and the supporting rationale. In this rulemaking action on the State of Idaho's moderate PM-10 SIP for the Pinehurst nonattainment area, EPA is applying its interpretations taking into consideration the specific factual issues presented. Additional

information supporting EPA's action on this particular area is available for inspection at the address indicated above.

Those states containing initial moderate PM-10 nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area (see sections 172(c), 188, and 189 of the Act).

States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992 (see section 189(a) of the CAA). This permit program element, also known as the New Source Review (NSR) program, was submitted by the State of Idaho on May 17, 1994. EPA notified Idaho in a June 10, 1994 letter to the Administrator of the Idaho Division of Environmental Quality that the NSR program submittal was complete. EPA is currently in the process of reviewing the NSR program to determine if the program meets the requirements of the CAA. EPA intends to take action on Idaho's NSR program when EPA has completed its review.

In addition, states containing initial moderate PM-10 nonattainment areas were required to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA upon a determination by EPA that the area has

failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543-13544). Contingency measures for the Pinehurst PM-10 nonattainment area have not yet been submitted by IDEQ. A findings letter, dated January 13, 1994, was mailed to the Governor of Idaho which informed him that the State had failed to make the required PM-10 contingency measures submittal for Pinehurst. The State has until July 13, 1995 to correct this deficiency for Pinehurst, or it will face Federal highway or offset sanctions (see section 179 of the CAA and 58 FR 51270 (October 1, 1993)).

EPA intends to take action on the contingency measures for the Pinehurst PM-10 nonattainment area when this requirement is submitted or intends to impose sanctions in the event this deficiency is not corrected.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittal (see 57 FR 13565-13566). In this action, EPA is granting approval of the plan revision submitted to EPA on April 14, 1992. EPA has determined that the submittal meets the applicable requirements of the Act, with respect to moderate area PM-10 submittal.

Analysis of State Submission

1. 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.³ 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.

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

³ Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

¹ The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act" or "CAA"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

² Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM-10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

The Idaho Division of Environmental Quality (IDEQ) held a public hearing on the Pinehurst PM-10 plan on January 22, 1992 in Pinehurst and, after IDEQ reviewed the oral testimony, the plan was adopted by the IDEQ Administrator on April 7, 1992. The submitted plan was received by EPA on April 14, 1992 as a revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. A letter dated June 8, 1992 was forwarded to the Administrator of IDEQ indicating the completeness of the submittal and the next steps to be taken in the review process. In this action EPA is approving the State of Idaho's PM-10 SIP submittal for the Pinehurst PM-10 nonattainment area.

Since the Pinehurst PM-10 SIP requirements due on November 15, 1991 were not submitted by that date as required by section 189(a)(2)(A) of the CAA, EPA made a finding, pursuant to section 179 of the Act, that the State failed to submit the SIP revision and notified the Governor in a letter dated December 18, 1991 (see 57 FR 19906 (May 8, 1992)). EPA's June 8, 1992 determination that the State had made a complete submittal corrected the State's failure to submit the PM-10 SIP requirements for Pinehurst due on November 15, 1991 and, therefore, terminated the 18-month sanctions clock for that deficiency under section 179 of the CAA.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area (see section 110(a)(2)(K) of the CAA). Because the submission of such inventories is necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

The base year emission inventory (1988) developed for the Pinehurst nonattainment area identified the major sources of PM-10 concentrations during 24-hour worst case winter days as residential wood combustion (59%), fugitive dust (38%) and other sources (3%). Annual emissions for 1988 were residential wood combustion (41%), fugitive dust (38%), building

construction (18%) and other sources (3%).

EPA is approving the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act.⁴ For further details see the Technical Support Document (TSD).

3. RACM (Including RACT)

As noted, the initial moderate PM-10 nonattainment areas must submit provisions to assure that RACM (including RACT) were implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539-13545 and 13560-13561).

a. Residential Wood Combustion Program. Attainment of the 24-hour and annual standards is based on control strategies designed to reduce wood smoke. Attainment is demonstrated through the establishment of a voluntary residential wood combustion curtailment program, wood stove replacement program and home weatherization program. The specific control measures are supported and enhanced through an aggressive air pollution public awareness program. More details regarding these control measures are as follows:

(1) *Episodic Wood Burning Curtailment Program.* The IDEQ is in charge of declaring episodic voluntary wood burning curtailments in the Pinehurst nonattainment area. A voluntary burn ban is declared when 24-hour PM-10 levels in the nonattainment area, as estimated by nephelometer, are measured to exceed 100 $\mu\text{g}/\text{m}^3$. To keep the public informed regarding particulate air quality levels, a 24-hour PM-10 prediction is made for the Pinehurst/Silver Valley area after an IDEQ meteorologist calculates lower atmospheric stability and evaluates nephelometer, upper air temperature sounding, snow cover, surface temperature, delta temperature, wind speed, cloud cover, National Weather Service and occasionally commercial weather service data.

⁴ The EPA issued guidance on PM-10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM-10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the amended Act; therefore, EPA may continue to rely on this guidance (see section 193 of the CAA).

Wood burning advisories are made in conjunction with the air quality report and are issued weekdays and, as necessary on weekends and holidays, by 9 a.m., from November 1 through the end of February. The advisory is recorded on a telephone answering machine for both the public and media. When a voluntary wood burning curtailment is declared, the IDEQ directly contacts the media and conducts radio and television interviews to publicize the existence of a burn ban. Voluntary curtailment declarations are also carried routinely by the local radio station and newspaper.

IDEQ requests a 25 percent emission reduction credit for its voluntary curtailment program in the Pinehurst nonattainment area during 24-hour worst case periods. The 25 percent credit is greater than the ten percent generally suggested by EPA for voluntary curtailment programs. The recommended ten percent credit is viewed by EPA as a "starting point in assessing the effectiveness of residential wood combustion control programs." However, final judgement of the amount of credit to be granted is determined by EPA's regional offices based on the program features outlined in EPA's Guidance Document for Residential Wood Combustion Emission Control Measures, September 1989, (EPA-450/2-89-015). More than ten percent credit may be granted based on the program's effectiveness.

IDEQ cites residential wood heating surveys that were conducted in the Ada County/Boise PM-10 nonattainment area, that indicate a 43 percent effectiveness rate for the voluntary curtailment program in that part of Idaho. The State points out in the Pinehurst SIP that the Pinehurst City Council adopted a resolution (on November 11, 1991) supporting the curtailment program and requesting all Pinehurst citizens, except those who must rely on wood burning as their sole source of heat, to not burn wood during a curtailment episode. Therefore, the features of the Pinehurst curtailment program, the effectiveness data obtained from Ada County/Boise coupled with the demonstrated local support for the curtailment program by the leaders of Pinehurst is the basis for IDEQ's 25 percent emission reduction claim. According to IDEQ calculations this 25 percent reduction is equivalent to a PM-10 emission reduction of 51.3 lbs/day and a 24-hour PM-10 ambient reduction of 20 $\mu\text{g}/\text{m}^3$.

Based upon the surveys conducted in Ada County/Boise, the support by Pinehurst City officials and the recent

success during the 1992-1993 and 1993-1994 wood burning seasons in preventing PM-10 concentrations from exceeding the 24-hour NAAQS, EPA is satisfied that at least a 25 percent emission reduction is occurring when voluntary episodic wood burning curtailments are declared in Pinehurst. Therefore, EPA is accepting the 25 percent credit claimed for this control measure. Further description of this program and justification for EPA's action is set out in the TSD, contained in the public record corresponding with this action.

(2) Public Awareness Program. The wood smoke public awareness program for the Pinehurst/Silver Valley area plays a critical role in ensuring that the residential wood combustion program is successful. Public awareness of the problems associated with wood smoke has a significant effect on how well the different components of the wood smoke control program are accepted. IDEQ has utilized the following methods to promote public awareness about the wood smoke problem in Pinehurst: education brochures for each household, utility bill inserts, newspaper articles—public service announcements (PSA's), educational materials for elementary schools, surveys to determine the level of awareness and response to programs, radio interviews, radio PSA's, outreach to wood stove dealers and wood/pellet fuel outlets, and Speakers Bureau through service clubs and community meetings. IDEQ's well-established public awareness program was enhanced in 1991, when \$14,550 was awarded by the Pacific Northwest and Alaska Bioenergy Program to provide wood energy education in Idaho's Silver Valley (which includes Pinehurst). For the 1993-1994 and 1994-1995 residential heating seasons, a wood stove advocate has been hired by IDEQ to serve as an information outlet regarding wood stove issues and also track the progress of reducing wood stove emissions.

IDEQ is claiming a five percent credit for the Pinehurst wood smoke public awareness program. This credit is based upon the increased effectiveness of the public awareness program since 1991, the fact that Pinehurst is a small town (population 1,722 in 1990)—which makes it relatively easy to keep in contact with the citizens, and the fact that IDEQ has hired a Pinehurst wood stove advocate to work on increasing the public's awareness of the availability of cleaner-burning residential heating devices.

Considering IDEQ's aforementioned reasons for claiming a five percent

emission reduction credit (which equals a PM-10 emission reduction of 10.8 lbs/day, and a 24-hour PM-10 ambient reduction of $4 \mu\text{g}/\text{m}^3$), EPA is accepting the five percent credit requested by the IDEQ.

(3) Uncertified Wood Stove Change-out Program. IDEQ is in the process of replacing 90 uncertified wood stoves in the Pinehurst nonattainment area with cleaner heating devices. The uncertified wood stoves are replaced as part of a combined Federal assistance grant, and State and local loan program. Ninety grants ranging from \$500-\$1,750 each will be offered to the residents of Pinehurst as financial incentive to replace their uncertified stoves with natural gas furnaces, pellet stoves or phase II wood stoves. In addition, 50 of these participants will be offered low interest loans, up to a maximum amount of \$1,500 per homeowner, using Idaho Department of Water Resources (IDWR) funds. These loans will cover the additional costs of upgrading the qualifying resident's heating system, including the cost of installation. IDWR will allow the loans to be paid back over a five-year period. The combined grant and loan program will be administered by the Northern Idaho Community Action Agency (NICAA).

It is estimated by IDEQ that the combined grant/loan program will replace 90 uncertified wood stoves with 40 natural gas furnaces, 25 pellet stoves and 25 phase II wood stoves. This change is projected to result in a PM-10 emission reduction of 43.4 lbs/day (which equals a $17 \mu\text{g}/\text{m}^3$ 24-hour PM-10 reduction) in the Pinehurst nonattainment area (based upon a 100%, 95% and 55% emission reduction credits for replacing uncertified wood stoves with natural gas furnaces, pellet stoves and phase II wood stoves, respectively; a 0.56 lbs/day PM-10 emission rate for a uncertified wood stove in Pinehurst; and the determination that a PM-10 emission rate of 393 lbs/day equals a 24-hour ambient PM-10 concentration of $150 \mu\text{g}/\text{m}^3$ at Pinehurst).

Thus, IDEQ is estimating that the wood stove change-out program will reduce PM-10 emissions from residential wood combustion devices in Pinehurst by 16.5 percent (or 43.4 lbs of PM-10 reduced/day divided by 263.8 lbs of PM-10 emitted on the worst case day in 1994). EPA believes that the program will reduce PM-10 emissions in the Pinehurst nonattainment area because the program is receiving broad based support and has secure funding sources. Therefore, EPA is accepting the 16.5 percent PM-10 emission reduction credit that IDEQ claims will result from

implementation of the wood stove change-out program.

(4) Home Weatherization Program. Wood stove emissions can be reduced slightly through comprehensive weatherization programs that result in a reduction of the amount of fuel utilized. The Idaho Economic Opportunity Office offers free weatherization assistance to low income families. This assistance takes the form of an energy audit, which may result in insulation, weather stripping and heating system improvements.

Home weatherization improvements will be applied to all 90 households in which wood stove change-outs occur, using loans and grant money from Idaho Department of Water Resources, Farmers Home Administration, Washington Water Power and North Idaho Community Action Agency's Weatherization Division. At least 30 other homes will be targeted for weatherization improvements.

EPA's Guidance Document for Residential Wood Combustion Emission Control Measures, September 1989, generally recommends less than a five percent credit for home weatherization programs. However, IDEQ is claiming an eight percent credit for the Pinehurst home weatherization program for the following three reasons: a. Pinehurst has a higher than normal percentage of older, uninsulated homes; b. Shoshone County, which contains Pinehurst, has a high percentage of low income households, who in the past were unable to afford weatherization; and c. Pinehurst's cold winter climate results in a high number of heating degree days, which enables a home weatherization program to have more impact than it would in an area that possesses a warmer winter climate.

The eight percent reduction claimed from the program is only equivalent to a PM-10 decrease of 3.5 lbs/day (which equals a daily ambient PM-10 reduction of $1 \mu\text{g}/\text{m}^3$). Therefore, this program will have only a slight impact on PM-10 levels during worst case days. Nonetheless, in light of IDEQ's reasoning that homes in Pinehurst are in need of weatherization, and that weatherizing 120 homes will result in lower fuel consumption and correspondingly less PM-10 emissions in the Pinehurst nonattainment area, EPA is accepting the eight percent credit claimed by IDEQ.

b. Other Sources. RACM (including RACT) does not require the imposition of controls on emissions from sources that are insignificant (i.e. de minimis) and does not require the implementation of all available control measures where an area demonstrates

timely attainment and the implementation of additional controls would not expedite attainment (see 57 FR 13540-44).

IDEQ has determined, through its emission inventory analysis of the nonattainment area, that road dust contributed 38 percent of the PM-10 concentration on the worst case days in base year 1988. IDEQ demonstrated timely attainment of the 24-hour PM-10 NAAQS by controlling wood smoke. Therefore, RACM does not require road dust control measures. Furthermore, RACM does not require the implementation of controls for prescribed silvicultural and agricultural burning for the Pinehurst nonattainment area, because the area is not significantly impacted by those activities on worst case days, according to the emission inventory analysis.

Similarly, RACT does not require the implementation of control technology for sources of PM-10 in the nonattainment area, because the area is primarily characterized by residential and commercial uses which are not subject to RACT requirements. There are no major stationary sources operating in the Pinehurst PM-10 nonattainment area.

A more detailed discussion of the control measures contained in the SIP and an explanation as to why certain available control measures were not implemented, can be found in IDEQ's submittal and in the TSD. EPA has reviewed IDEQ's submittal and associated documentation and concluded that they adequately justify the control measures to be implemented. The implementation of the Pinehurst, Idaho PM-10 nonattainment plan control strategy will result in the attainment of the PM-10 NAAQS as expeditiously as practicable—by December 31, 1994. By this notice, EPA is approving IDEQ's control strategy as satisfying the RACM (including RACT) requirement.

4. Demonstration

Moderate PM-10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (57 FR 13539). Alternatively, the State must show attainment by December 31, 1994, is impracticable. The 24-hour PM-10 NAAQS is 150 micrograms/cubic meter ($\mu\text{g}/\text{m}^3$), and the standard is attained when the expected number of days per

calendar year with a 24-hour average concentration above $150 \mu\text{g}/\text{m}^3$ is equal to or less than one (see 40 CFR 50.6). The annual PM-10 NAAQS is $50 \mu\text{g}/\text{m}^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to $50 \mu\text{g}/\text{m}^3$ (id.).

IDEQ utilized an attainment demonstration for Pinehurst based upon proportional rollback modeling supported by a complete emission inventory, receptor modeling and WYNDvalley, a non-guideline dispersion model.

The receptor modeling consisted of using the Chemical Mass Balance (CMB) version 7.0 air quality model to analyze for days during 1988-1990 when 24-hour PM-10 concentrations were either elevated or exceeded the NAAQS. CMB results from ten PM-10 filters showed that on the average residential wood smoke and fugitive dust were responsible for 77 and 18 percent, respectively, of the PM-10 on high concentration days. The CMB percentages for residential wood smoke and fugitive dust are greater and lower, respectively, than those that were determined from the emission inventory, but the CMB analysis still confirms that residential wood combustion is the major source of PM-10 on worst case days in the Pinehurst nonattainment area. Therefore, these results support IDEQ's reliance on wood smoke control strategies to attain the PM-10 standard.

The IDEQ used version 3.06 of the WYNDvalley dispersion model to simulate PM-10 concentrations in Pinehurst during a wintertime stagnation episode. WYNDvalley was chosen because of the model's ability to handle both the light wind conditions and complex terrain that significantly help trap PM-10 air pollution in the Pinehurst PM-10 nonattainment area. Also, the WYNDvalley dispersion model was used because Pinehurst is dominated by area sources (wood smoke and fugitive road dust) and lacks any major point source impacts. The modeled stagnation event began on January 20, 1988 and continued through January 30, 1988. Pinehurst's design value exceedance of $183 \mu\text{g}/\text{m}^3$ was measured on January 28, during this stagnant period. The WYNDvalley model showed that the maximum PM-10 values occurred at or near the Pinehurst school, agreeing with results found in the January-March 1989 CMB/saturation study. Therefore, the model helped verify that the Pinehurst PM-10 monitor is situated in the area of maximum PM-10 impact.

The attainment demonstration indicates that Pinehurst will attain the 24-hour PM-10 NAAQS by December 31, 1994, with the maximum 24-hour concentration predicted to be $143 \mu\text{g}/\text{m}^3$ (which is the result of the proposed control measures reducing the projected 1994 maximum PM-10 emissions from 484.8 to 375.9 lbs/day).

According to EPA's review, which identified incomplete quarterly data in 1986 and corrected for the use of non-reference PM-10 data in 1986 and 1987 (i.e. Hi-Vol SA321A gravimetric PM-10 sampler), Pinehurst has never violated the annual arithmetic mean PM-10 standard. The highest valid three-year annual average at Pinehurst is $46 \mu\text{g}/\text{m}^3$, during 1987-1989, while the lowest three-year average is $36 \mu\text{g}/\text{m}^3$, during 1990-1992. Therefore, IDEQ and EPA believe that because the annual PM-10 standard has never been violated at Pinehurst, and the 24-hour PM-10 controls have helped reduce annual concentrations (as evidenced in the downward trend in the annual average concentrations), it is reasonable to predict that the area will continue to meet the annual standard and the standard will not be violated in 1994.

EPA is finding that the modeling analysis is adequate to demonstrate timely attainment of the PM-10 NAAQS in Pinehurst. The control strategies used to achieve attainment are summarized in the section titled "RACM (including RACT)." A more detailed description of the attainment demonstration is contained in the TSD accompanying this notice.

It should be noted that the 1997 maintenance demonstration, supplied by IDEQ, shows that Pinehurst will remain in attainment for both the 24-hour and annual PM-10 NAAQS through 1997. According to IDEQ's calculations, which were partially based on a 1994 Washington Water Power residential heating survey for the Pinehurst area, the maximum 24-hour PM-10 concentration in 1997 will be $127 \mu\text{g}/\text{m}^3$. This 1997 24-hour value is equivalent to a PM-10 emission rate of 332 lbs/day. Furthermore, the annual arithmetic standard will be maintained from 1994-2000, with the maximum annual average value of $47.2 \mu\text{g}/\text{m}^3$ (occurring in the year 2000). This aforementioned concentration is equivalent to a PM-10 emission rate of 47.0 tons/year. This 1997 maintenance demonstration satisfies part of the quantitative milestones/reasonable further progress requirement (see CAA section 189(c)).

5. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM-10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the CAA).

While section 189(c) plainly provides that quantitative milestones are to be achieved until an area is redesignated attainment, it is silent in indicating the starting point for counting the first three-year period or how many milestones must be initially addressed. In the General Preamble, EPA addressed the statutory gap in the starting point for counting the three-year milestones, indicating that it would begin from the due date for the applicable implementation plan revision containing the control measures for the area (i.e., November 15, 1991 for initial moderate PM-10 nonattainment areas) (see 57 FR 13539).

As to the number of milestones, EPA believes that at least two milestones must be initially addressed. Thus, submittal to address the SIP revisions due on November 15, 1991 for the initial moderate PM-10 nonattainment areas must demonstrate that two milestones will be achieved (First milestone: November 15, 1991 through November 15, 1994; Second milestone: November 15, 1994 through November 15, 1997).

For the initial PM-10 nonattainment areas that demonstrate attainment, the emissions reduction progress made between the SIP submittal (due date of November 15, 1991) and the attainment date of December 31, 1994 (46 days beyond the November 15, 1994 milestone date) will satisfy the first quantitative milestone. The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations (see 57 FR 13539). For such areas that demonstrate timely attainment of the PM-10 NAAQS, the second milestone should, at a minimum, provide for continued maintenance of the standards.⁵

⁵ Section 189(c) of the Act provides that quantitative milestones are to be achieved "until the area is redesignated attainment." However, this endpoint for quantitative milestones is speculative because redesignation of an area as attainment is contingent upon several factors and future events. Therefore, EPA believes it is reasonable for States to initially address at least the first two milestones. Addressing two milestones will ensure that the State continues to maintain the NAAQS beyond the attainment date for at least some period during which an area could be redesignated attainment. However, in all instances, additional milestones

This SIP demonstrates attainment by December 31, 1994 and maintenance through December 31, 1997, satisfying two milestones. Therefore, the submittal satisfies the quantitative milestones currently due. Accordingly, EPA is approving the SIP for Pinehurst relative to the quantitative milestone requirement.

Finally, once a milestone has passed, the State will have to demonstrate that the milestone was, in fact, achieved for the Pinehurst area as provided in section 189(c)(2) of the Act.

6. PM-10 Precursors

The control requirements which are applicable to major stationary sources of PM-10, also apply to major stationary sources of PM-10 precursors unless EPA determines such sources do not contribute significantly to PM-10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539-13540 and 13541-13542).

The filter analyses (chemical mass balance) indicated that, on average, less than 4 percent of the PM-10 mass was comprised of secondary particulate on high concentration days. EPA believes that this is an insignificant portion and, therefore, is proposing to grant the exclusion from control requirements authorized under section 189(e) for major stationary sources of PM-10 precursors.

Note that while EPA is making a general finding for this area about precursor contribution to PM-10 NAAQS exceedances, this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by IDEQ and EPA (see sections 172(c)(6), 110(a)(2)(A) of the CAA and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions are set forth in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in

must be addressed if an area is not redesignated attainment.

the SIP (see section 110(a)(2)(C) of the CAA).

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply to residential wood combustion activities. The SIP provides that the control measures for the affected activities apply throughout the entire nonattainment area.

The SIP provided that all affected activities would be in full compliance with the implementation of applicable control measures by December 10, 1993. However, funding problems has delayed implementation of the wood stove change-out and home weatherization programs until the summer of 1994.

IDEQ is responsible for running the voluntary episodic wood burning curtailment and public awareness programs. The curtailment program for Pinehurst is part of a statewide program that evaluates air quality and meteorological parameters in the PM-10 nonattainment areas on a daily basis, during November 1 through the end of February, and declares burning bans as necessary. The public awareness program is a broad-based strategy designed for the entire Silver Valley (which includes the Pinehurst NAA). IDEQ, through the Pinehurst Particulate (PM-10) Air Quality Improvement Plan and supporting documentation, commits to carrying out the curtailment and public awareness programs in Pinehurst. If either of these two measures are discontinued without EPA and public approval, then the State of Idaho would be subject to a findings letter for non-implementation of an approved part of the plan (see section 179(a)(4) of the CAA). This in turn could result in Federal sanctions imposed against the State and the loss of State base grant funds.

IDEQ's submittal and the TSD contain further information on enforceable requirements. The TSD also contains a discussion of the personnel and funding intended to support effective implementation of the control measures.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13543-13544). These measures were required to be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon

a determination by EPA that the area has failed to make RFP or attain the PM-10 NAAQS by the applicable statutory deadline.

Contingency measures for the Pinehurst PM-10 nonattainment area have not yet been submitted by IDEQ. A findings letter, dated January 13, 1994, was mailed to the Governor of Idaho which informed him that the State had failed to make the required PM-10 contingency measures submittal for Pinehurst. The State has until July 13, 1995 to correct this deficiency for Pinehurst, or it will face federal highway or offset sanctions (see section 179 of the CAA).

EPA intends to take action on the contingency measures for the Pinehurst PM-10 nonattainment area when the requirement is submitted, or intends to impose sanctions in the event this deficiency is not corrected.

III. Implications of This Action

EPA is approving the plan revision submitted to EPA on April 14, 1992 for the Pinehurst nonattainment area. Among other things, IDEQ has demonstrated that the Pinehurst moderate PM-10 nonattainment area will attain the PM-10 NAAQS by December 31, 1994.

IV. Administrative 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 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 CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, 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 CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment 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. This action will be effective October 24, 1994 unless, by September 26, 1994 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 document that will withdraw the final action. All public comments received will 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 October 24, 1994.

The EPA has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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 the 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 OMB has exempted this regulatory action from E.O. 12866 review.

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 24, 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 filed 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), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: July 5, 1994.

Gerald A. Emison,
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 N—Idaho

2. Section 52.670 is amended by adding paragraph (c)(28) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(28) On April 14, 1992, the State of Idaho submitted a revision to the SIP for Pinehurst, ID, for the purpose of bringing about the attainment of the national ambient air quality standards for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

(i) Incorporation by reference.

(A) April 7, 1992 letter from Idaho Department of Health and Welfare to EPA Region 10 submitting the Pinehurst Particulate Air Quality Improvement Plan as a revision to the Implementation Plan for the Control of Air Pollution in the State of Idaho. The plan has been adopted in accordance with the authorities and requirements of the Federal Clean Air Act and the Idaho Environmental Protection and Health Act (Idaho Code section 39-10/*et seq.*).

(B) SIP revision for Pinehurst Particulate Air Quality Improvement Plan, February 5, 1992 (adopted on April 7, 1992).

[FR Doc. 94-20810 Filed 8-24-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[CA 83-2-6581a FRL-5030-2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). The revised rules control VOC emissions from Polyester Resin Operations, Manufacture of Polymeric Cellular (Foam) Products, Fugitive Emissions of Volatile Organic Compounds, and Sumps and Wastewater Separators. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these rules serves as a final determination that the deficiencies in these rules have been corrected and that on the effective date of this action, any sanctions or Federal Implementation Plan (FIP) obligations are permanently stopped. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on October 24, 1994, unless adverse or critical comments are received by September 26, 1994. If the effective date is delayed, a timely notice will be published in the *Federal Register*.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Jerry Kurtzweg, ANR 443, 401 "M" Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123-1095

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

FOR FURTHER INFORMATION CONTACT:

Daniel A. Meer, Chief, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1185.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: SCAQMD Rule 1162, Polyester Resin Operations; Rule 1173, Fugitive Emissions of Volatile Organic Compounds; Rule 1175, Control of Emissions from the Manufacture of Polymeric Cellular (Foam) Products; and Rule 1176, Sumps and Wastewater Separators. These rules were submitted by the California Air Resources Board (CARB) to EPA on May 24, 1994.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Los Angeles-South Coast Air Basin Area (LA-Basin). 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rule for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.¹ EPA's SIP-Call used that guidance to indicate the necessary

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

corrections for specific nonattainment areas. The LA Basin is classified as extreme;² therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 24, 1994, including the rules being act on in this notice. This notice addresses EPA's direct-final action for SCAQMD Rule 1162, Polyester Resin Operations; Rule 1173, Fugitive Emissions of Volatile Organic Compounds; Rule 1175, Control of Emissions from the Manufacture of Polymeric Cellular (Foam) Products; and Rule 1176, Sumps and Wastewater Separators. South Coast Air Quality Management District adopted these rules on May 13, 1994. These submitted rules were found to be complete on July 14, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V³ and are being finalized for approval into the SIP.

Rule 1162 controls VOC emissions from all polyester resin operations that fabricate, rework, repair, or touch-up products for commercial, military, or industrial use; Rule 1173 controls VOC leaks from valves, fittings, pumps, compressors and other device at refineries, chemical plants, oil and gas production fields, natural gas processing plants, and pipeline transfer stations; Rule 1175 controls emissions of VOCs from polymeric cellular products manufacturing operations including but not limited to expandable polystyrene, polystyrene foam extrusion, polyurethane, isocyanurate and phenolic foam operations; Rule 1176 limits VOC emissions from sumps, wastewater separators, separator forebays, process drains, sewer lines and junction boxes located at oil production fields, refineries, chemical plants, and industrial facilities handling petroleum liquids. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

² The LA Basin retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

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

EPA Evaluation and Action

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

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 1173 is entitled "Control of Volatile Organic Equipment Leaks from Natural Gas/Gasoline Processing Plants", EPA-450/3-83-007; the CTG applicable to Rule 1176 is entitled "Control of Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds", EPA-450/2-77-025. Rules 1162 and 1175 control emissions from source categories for which EPA has not developed a CTG. These rules were evaluated against the general RACT requirements of the CAA (section 110 and part D, 40 CFR part 51), "Issues relating to VOC Regulation Cutpoints, Deficiencies and Deviations—Clarifications to Appendix D of November 24, 1987 Federal Register" May 25, 1988 (EPA's Blue Book), and other EPA policies including the EPA Region IX/CARB document entitled: "Guidance Document for Correcting VOC Rule Deficiencies," April 1991. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQM's submitted rules include the following significant changes from the current SIP:

Rule 1162, Polyester Resin Operations

- Specifies individual test methods for determining monomer content and weight loss of polymer resin materials,
- References specific test method to determine capture efficiency,
- Adds applicability section.

Rule 1173, Fugitive Emissions of Volatile Organic Compounds

- Removed Executive Officer discretion in approving alternate test methods from section (h)(2),
- Clarified section (k)(1) that unsafe components are not exempt from repair requirements,
- Changed the definition of "inaccessible component" to be consistent with the CTG definition.

Rule 1175, Control of Emissions From the Manufacture of Polymeric Cellular (Foam) Products

- Revised definition of Approved Emission Control System,
- Deleted definition of Emission Collection System,
- Updated Emission Control Requirements section,
- Expanded test method section,

Rule 1176, Sumps and Wastewater Separators

- Removed Executive Officer discretion in determining equivalent control measures from section (c)(2)(C),
- Removed Executive Officer discretion in approving alternate test methods from sections (g)(1) and (g)(2),
- Removed ability to designate safety exemptions without District approval (h)(1).

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1162, Polyester Resin Operations; Rule 1173, Fugitive Emissions of Volatile Organic Compounds; Rule 1175, Control of Emissions from the Manufacture of Polymeric Cellular (Foam) Products; and Rule 1176, Sumps and Wastewater Separators, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

The final action on these rules serves as a final determination that the deficiencies in these rules have been corrected. Therefore, if this direct final action is not withdrawn, on October 24, 1994, any sanction or Federal Implementation Plan Clock is stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered

separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment 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. This action will be effective October 24, 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 October 24, 1994.

Regulatory Process

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 impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

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

This action has been classified as a Table 3 action by the Regional

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 29, 1994.

Jeffrey Zelikson,
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 F—California

2. Section 52.220 is amended by adding paragraph (c)(197) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(197) New and amended regulations for the following APCDs were submitted on May 24, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) Rules 1162, 1173, 1175 and 1176, adopted on May 13, 1994.

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[FR Doc. 94-20914 Filed 8-24-94; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 74

RIN 0991-AA56

Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments, and Indian Tribal Governments

AGENCY: Department of Health and Human Services, HHS.

ACTION: Interim final rule; Request for comments.

SUMMARY: This interim final rule amends 45 CFR Part 74 to incorporate the changes established by revised OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Institutions," published by the Office of Management and Budget (OMB) on November 29, 1993 (58 FR 62992). Consistent with the Circular, this rule applies to HHS awards to institutions of higher education, hospitals, other non-profit organizations and commercial organizations, and to all subawards to such entities including those that are made by States, local governments, and Indian Tribal governments under HHS awards.

DATES: This interim final rule is effective August 25, 1994. Written comments must be submitted on or before October 24, 1994.

ADDRESSES: Comments must be in writing and should be mailed or faxed to Charles Gale, Director, Division of Grants Policy and Oversight, HHS, Room 517-D, 200 Independence Avenue, SW., Washington, DC 20201; FAX (202) 690-8772. Written comments may be inspected at the identified address during agency business hours from 9:30 a.m. to 5:30 p.m. (EST).

FOR FURTHER INFORMATION CONTACT: Charles Gale, Director, Division of Grants Policy and Oversight, HHS, at the address above; telephone (202) 690-6377. For the hearing impaired only: TDD, (202) 690-6415.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Interim Rule

Since it was first issued in 1976, HHS has applied the provisions of OMB Circular A-110 in making awards to institutions of higher education,

hospitals and other non-profit organizations through its regulations at 45 CFR part 74. Except for a minor change made in 1987, the provisions of Circular A-110 remained intact until OMB published a comprehensive revision on November 29, 1993 (58 FR 62992). OMB and other executive agencies, including HHS, have expended considerable effort over the years to produce an updated Circular.

In 1987, OMB organized an interagency task force to review the Circular with a view toward its revision based on recommendations solicited from affected organizations such as universities and other non-profit groups. The work of that task force resulted in the publication of a notice of a proposed common rule that would have combined Circular A-110 with OMB Circular A-102, "Uniform Requirements for Grants and Agreements with State and Local Governments." (53 FR 44716 (Nov. 4, 1988)). The public response led to a decision to abandon further efforts to bring that proposal to final rulemaking.

In November 1990, OMB established another interagency task force with the same assignment—to revise Circular A-110. The task force developed a proposed revision of the Circular, which OMB published with a request for comments on August 27, 1992 (57 FR 39018). After considering the over 200 comments from a wide variety of federal and non-federal respondents, OMB published the final revised Circular in the *Federal Register* on November 29, 1993 (58 FR 62992).

OMB Circular A-110 sets forth government-wide standards governing Federal agency administration of grants and other agreements with institutions of higher education, hospitals and other non-profit organizations. Federal agencies must apply the provisions of the Circular in making awards to the covered entities; all primary recipients (including governments) of Federal awards must also apply the Circular's provisions to any subawards they make to such entities. Those provisions that affect Federal agencies were effective on December 29, 1993 (58 FR 62992-93). With respect to the Circular's application to recipients of Federal agency awards, OMB's notice directed each affected agency to promulgate its own rules adopting the provisions of the Circular (58 FR 62992-93).

Agency-specific rules must follow the provisions of the Circular unless OMB has granted the agency an exception for classes of recipients of awards from a particular requirement of the Circular (58 FR 62992, 62995). The terms of the Circular, however, permit Federal awarding agencies to make exceptions

on an award-by-award basis without prior OMB approval and to apply less restrictive requirements in the case of small awards. Where a conflict exists between a provision of the Circular and a statute, the statute governs (58 FR 62992-93, 62995).

Accordingly, HHS is publishing this interim final rule whose primary purpose is to incorporate the provisions of OMB Circular A-110 into HHS's grants administration regulation at 45 CFR part 74. Consistent with the Circular, this rule applies to HHS awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under HHS awards. In keeping with the longstanding applicability of part 74, this rule also applies to awards to commercial organizations.

The rule continues part 74's application to certain grants and agreements that HHS has with State governments under programs commonly referred to as "entitlement programs." The specific programs covered are identified at 45 CFR 92.4 (a)(3), (a)(7), and (a)(8).

To make part 74 consistent with the Circular, the amendments eliminate those current part 74 provisions which have been superseded by the standards established in the Circular. However, other provisions, which have been part of HHS's longstanding grants policy, are retained because of their continuing import to proper stewardship of the award making administration and closeout process. These provisions do not have their foundation in the Circular. Neither are they inconsistent with it. In addition, the amended rule contains provisions reflecting certain deviations from the Circular which OMB has approved. All of these matters are discussed in further detail below.

Although HHS is publishing this rule as an interim final rule with an immediate effective date, it is also inviting comments from the public. First, the rule is being published as an interim final because we believe that OMB afforded the public ample opportunity to comment on its proposed revision to Circular A-110 which resulted in the final version of the Circular, on which this rule is chiefly based. However, comments are being invited because of the relationship of this interim final rule to our current part 74 and the discretion we exercised in implementing the Circular.

Regarding our current part 74, we have retained in this interim final rule

certain of its longstanding provisions which have not been subject to public comment for some time. We are deleting other of its provisions which we believe have been overtaken by the Circular or by other statutes (e.g., the Cash Management Improvement Act) or events (e.g., changes in technology). Because of the varied interests and perspectives of recipients of HHS awards, who operate under a broad array of HHS-administered programs authorized under a variety of different statutes, and comprise an extraordinarily diverse universe in terms of size of operations, level of funding received and purpose of award activity, we are inviting public comment on this aspect of the rule.

With respect to our implementation of the Circular, in general, we have faithfully followed its provisions. However, in several instances we have either elaborated on a provision or modified it to make it pertain more clearly to the HHS environment or for other reasons. Also, we have exercised the discretion which the terms of the Circular afforded federal agencies in deciding how to handle certain matters; for example, whether unrecovered indirect costs may be included as part of a recipient's matching contributions (Circular section .23 (b), (58 FR 62992, 62997)) or whether recipients should be subject to certain prior approval requirements (Circular section .25 (c) (2) and (5), (f) (58 FR 62992, 62998-99)). We are, therefore, inviting public comment to determine whether any further substantive or other changes to part 74 may be necessary.

II. Discussion of the Interim Final Rule

General

The amendments to part 74 revise the current subparts A through F; remove current subparts G through AA; add a new appendix A; and delete appendixes G and H, which contained procurement standards from previous versions of OMB Circulars A-102 and A-110. No changes are made in existing appendix E, concerning cost principles for hospitals, and appendixes I and J, concerning audits; therefore, those provisions continue as codified and are not republished here. Similarly, the status of appendixes B through D and F remains "reserved." The Authority citation has been corrected.

Following OMB Circular A-110, we have organized the structure of part 74 into a more "user friendly" format that follows the sequential steps of the normal awards management cycle: Pre-award, post-award, and after-the-award or closeout. In addition, HHS has

electd to continue to have special additional rules, which currently appear at subpart AA, that apply only to awards to commercial organizations. The amended part 74, therefore, has six subparts as follows: subpart A—General; subpart B—Pre-Award Requirements; subpart C—Post-Award Requirements; subpart D—After-The-Award Requirements; subpart E—Special Provisions For Awards to Commercial Organizations; and subpart F—Disputes. As noted above, a new appendix A has been added to part 74—Contract Provisions. What follows is a general presentation of the change from the current part 74 that have been made to align the rule with the organization and standards of Circular A-110.

Like its predecessor, the revised subpart A, General, includes provisions covering Purpose and Applicability, Definitions, and Deviations; however, these provisions have been revised pursuant to the Circular. All references to "OPAL" here and elsewhere in the current rule have been deleted since that Office no longer exists in HHS. The current provision regarding Appeals, § 74.5, is deleted as being unnecessary in view of the provisions on Termination and Enforcement at revised subpart C and the Dispute provisions at revised subpart F. The current provision on special grant or subgrant conditions, § 74.7, is removed as modified by the Circular to the revised subpart B, Pre-Award Requirements, § 74.14.

The revised § 74.1(a)(3), Purpose and Applicability, expressly recognizes part 74's longstanding applicability to the entitlement programs identified at 45 CFR 92.4 (a)(3), (a)(7) and (a)(8), subject of course to any statutory provision that may preempt a particular part 74 regulation. (See e.g., 53 FR 8078, 8079 (Mar. 11, 1988).) Also, in keeping with the current exemption of these programs at § 74.100 (a) and (b) from application of the existing subpart L, Programmatic Changes and Budget Revisions, the revised § 74.1(a)(3) makes clear that § 74.25, Revision of program and budget plans, of the revised subpart C does not apply. In addition, because the government recipients of entitlement program awards do not use the conventional application forms when seeking HHS funds, we have also made § 74.12 of the revised subpart B inapplicable to these programs. HHS, OMB, and the Department of Agriculture intend in the future to propose either a separate new regulation for the entitlement programs or a complete revision of OMB Circular A-102 common rule (45 CFR part 92 for HHS). When that effort is completed, either a new separate regulation or an

amended part 92, but not this part, will apply to the entitlement programs; until that time, part 74 remains applicable.

The provisions of the current § 74.4(a)(2), which make certain provisions of part 74 applicable to grants made under programs other than the entitlement programs, are eliminated because we have determined that it is no longer necessary to make these provisions applicable to governmental recipients of HHS funds. They are largely out of date or their significance has diminished considerably from when they were first promulgated.

A new provision is included at § 74.5, Subawards, which establishes the general rule that this part applies to all subawards made under awards that are subject to this part unless a particular provision specifically excludes subrecipients from coverage. This rule departs from the current part 74 approach to identifying when provisions apply to subrecipients. Whereas the current § 74.4(b) provides that the language of the various provisions that followed would indicate whether a provision applied to subrecipients, the new § 74.5 serves as a single umbrella provision bringing all applicable subawards under Part 74 coverage. The current § 74.7(c), 74.24(b), 74.97, 74.100(c), 74.102(b), 74.116, 74.143, 74.163, and 74.176, which contain specific rules regarding subgrants, are, therefore, eliminated.

Another new provision is added, Effect on other issuances, at § 74.3 to make clear that part 74, as amended herein, is the authoritative statement of HHS award administration policy subject only to any statutory overrides or deviations approved by OMB or deviations applied on an award-by-award basis.

The revised subpart B sets forth the rules that apply in the pre-award process covering pre-award policies, application forms, debarment and suspension, special award conditions, and certifications and representations. In keeping with the Circular, two new provisions have been added covering application of the Metric Conversion Act, as amended, and the Resource Conservation and Recovery Act, §§ 74.15 and 74.16, respectively. Section 74.10, Physical segregation and eligibility, of the current subpart B is removed as modified by the Circular to the Financial and Program management provisions of the Revised subpart C, Post-Award Requirements, § 74.22(I). Major changes have taken place in the method that the Federal government uses to transfer Federal funds to recipients of Federal awards. Section

74.11, Checks-paid basis letter of credit, of the current subpart is eliminated because it has been overtaken by these changes and thus, no longer applies. Provisions that reflect the new payment methods and systems appear at the revised subpart C, § 74.22, Payment. Section 74.12, Minority-owned banks of the current subpart B is removed as modified by the Circular to add coverage of women-owned banks to the revised subpart C, § 74.22(j).

The revised subpart C, Post-Award Requirements, sets forth the rules for financial and program management, property and procurement standards, reports and records, and the termination of awards and enforcement of their terms. Sections 74.15, 74.17 and 74.18 of the current subpart C, Bonding and Insurance, are removed as modified by the Circular to the revised subpart C, §§ 74.21 (c) through (e), Standards for financial management systems. The provisions which appear at the current § 74.16, Construction and facility improvement, are removed as modified by the Circular to the revised § 74.48, Contract provisions.

The revised subpart D, After-The-Award Requirements, sets out the procedures for closing out awards, including taking any disallowances or making any adjustments. Sections 74.20 through 74.25 of the current subpart D, Retention and Access Requirements for Records, are removed as modified by the Circular to the revised subpart C, § 74.53, Retention and access requirements for records.

The revised subpart E, Special Provisions For Awards To Commercial Organizations, contains the special additional provisions governing awards to commercial organizations that are contained currently in subpart AA. The provisions of the current subpart E, Waiver of Single State Agency Requirements, are eliminated based on a determination that the general statement of award administration rules is an inappropriate locus for this type of a rule. Such a rule is better located in the regulations promulgated to implement the particular federal program(s) in question.

The revised subpart F, Disputes, contains the rules that apply in resolving any formal disputes that may arise between HHS and the recipient of an award, including a provision evidencing HHS's interest in employing alternative dispute mechanisms to attempt to resolve disagreements before the parties resort to formal adjudication processes. The provisions of the current subpart T, Miscellaneous, are removed to the revised subpart F, except that current § 74.304(e) is eliminated

because it states a vague legal standard that unnecessarily places recipients of awards in jeopardy of filing untimely appeals. HHS awarding agencies are expected to observe the fundamentals of due process by ensuring that their notices of adverse final decisions clearly and adequately inform the recipient of the matter being decided and the reasons for the decision, in keeping with the provisions of the revised § 74.90(c), Final decisions in disputes.

The provisions of §§ 74.41 and 74.42(a) of the current subpart F, Grant Related Income, are incorporated as modified by the Circular in the revised subpart A, Definitions, § 74.2. (See definitions for "accrued income" and "program income" in the revised § 74.2.) The remaining §§ 74.42(b) through 74.47 are removed as modified by the Circular to the revised subpart C, § 74.24, Program Income. (See also § 74.82 of the revised subpart E regarding commercial organizations, and §§ 74.30 through 74.37 of the revised subpart C concerning disposition of proceeds from the sale of property acquired with HHS funds.)

Section 74.50 and §§ 74.52 through 74.57 of the current rules governing cost sharing, which appear at the current subpart G, Cost Sharing or Matching, are removed as modified by the Circular to the revised subpart C, § 74.23, Cost sharing or matching. The provisions of § 74.51, Definitions, of the current subpart G are incorporated as modified by the Circular in the revised subpart A, Definitions, § 74.2.

The provisions of §§ 74.60 and 74.61 (b), (c), (g) and (h) of the current subpart H, Standards for Grantee and Subgrantee Financial Management Systems and Audits, are removed as modified by the Circular to the Financial and Program Management provisions of the revised subpart C, §§ 74.21 through 74.28. The current § 74.61(e) is removed as modified by the Circular to the revised § 74.22, Payment. The current § 74.61(a) is removed as modified by the Circular to the revised § 74.52, Financial reporting. The current § 74.61(f) is removed as modified by the Circular to the revised § 74.27, Allowable costs. The current § 74.62 is removed as modified by the Circular to the revised § 74.26, Non-federal audits.

Except for § 74.71, Definitions, the provisions of the current subpart I, Financial Reporting Requirements, are removed as modified by the Circular to the revised subpart C, § 74.52, Financial reporting. Section 74.71 is incorporated as modified by the Circular in the revised subpart A, § 74.2, Definitions.

The provisions of the current subpart J, Monitoring and Reporting of Program

Performance, are removed as modified by the Circular to the revised subpart C, § 74.51, Monitoring and reporting program performance. We have eliminated the distinction which appears at the current §§ 74.82 and 74.83, between program performance reports under construction awards and under non-construction awards. Identical rules now apply to both types of awards under the revised subpart C.

Sections 74.90 and 74.91 of the current subpart K, Grant and Subgrant Payment Requirements, are eliminated as being obsolete, having been overtaken by the changes in the systems used to transfer Federal funds to recipients of Federal awards. The remaining §§ 74.92 through 74.97 are removed as modified by the Circular to § 74.22 (a) through (h), and (j) through (m) of the revised subpart C's Financial and Program Management provisions.

The provisions of the current subpart L, Programmatic Changes and Budget Revisions, are removed as modified by the Circular to § 74.25, Revision of budget and program plans, of the revised subpart C with two exceptions. First, the intent of the current provisions at § 74.100 (b) and (c) exempting "mandatory grants" is covered at § 74.1 of the revised subpart A which, as discussed above, sets forth the extent to which this part, as amended, applies to the "entitlement programs" identified at 45 CFR 92 (a)(3), (a)(7), and (a)(8). Second, § 74.104 is eliminated because it is no longer necessary in light of other provisions of the Circular as implemented herein.

Section 74.110, Definitions, of the current subpart M, Grant and Subgrant Closeout, Suspension, and Termination, is incorporated as modified by the Circular in the revised subpart A, § 74.2, Definitions. Current subpart M §§ 74.111, Closeout, and 74.112, Amounts Payable to the Federal Government, are removed as modified by the Circular to the revised subpart D. Current §§ 74.113, Violation of Terms; 74.114, Suspension; and 74.115, Termination, are removed as modified by the Circular to the revised subpart C, §§ 74.60 through 74.62, Termination and Enforcement.

The provisions at the current subpart N, Forms for Applying for Grants, have been replaced in their entirety by § 74.12, Forms for applying for HHS financial assistance, as the revised subpart B.

Section 74.132, Definitions, of the current subpart O, Property, is incorporated as modified by the Circular in § 74.2, Definitions, of the revised subpart A. The remaining §§ 74.133 through 74.145 of the current subpart

are removed as modified by the Circular to §§ 74.30 through 74.37 of the revised subpart C's Property Standards provisions.

Sections 74.160, 74.161 and 74.163 of the current subpart P, Procurements by Grantees and Subgrantees, are removed as modified by the Circular to the Procurement Standards of the revised subpart C at §§ 74.40 through 74.48. Section 74.162 of the current subpart is eliminated as being obsolete. Section 74.164 of the current subpart is incorporated as modified by the Circular in § 74.53, Retention and access requirements for records, of the revised subpart C.

The current subpart Q, Cost Principles, are removed as modified by the Circular to § 74.27, Allowable costs, of the revised subpart B, except that current §§ 74.171(b) and 74.172(b) are eliminated as being obsolete; and § 74.177 is eliminated as being redundant with the cost principles of the applicable OMB Circulars.

Differences Between Part 74, as Amended and Circular A-110

1. Circular A-110 Options

Circular A-110 contains language that, expressly or by implication, authorizes agencies to exercise discretion in how they choose to implement a particular Circular provision so long as the exercise of such discretion does not violate some applicable statute. Many of these options will be administered on a program-by-program or an award-by-award basis by HHS awarding agencies. However, to maintain maximum consistency and uniformity in HHS award and administration policy and practice, HHS has elected to regulate the following on a uniform basis:

- The Circular (section _____, 23(b)) provides for Federal agency prior approval when a recipient wishes to satisfy a cost-sharing or matching requirement by not seeking Federal payment of some or all of the indirect costs under the award. We are waiving this prior approval requirement to minimize administrative burdens on HHS recipients of funds. See § 74.23(b).

- The Circular (section _____, 24(f)) authorizes Federal agencies, by regulation or by the terms and conditions of an award, to allow recipients to deduct the costs of generating income under federally-supported projects, in certain circumstances, when they compute net program income. To facilitate uniformity of treatment in HHS awards administration, we are persuaded that all recipients of HHS funds subject to

this part should operate under the same rule; therefore, we have elected to exercise this authority by regulation. See § 74.24(f).

- The Circular (section _____, 25(c)(2)) requires recipients of non-construction awards to request prior Federal agency approval for changes in key personnel working under the award. We have elaborated on this fundamental requirement by specifying that the project director or principal investigator is always such a key person under HHS awards. This has been HHS policy for many years because we believe that project direction and leadership are important bases upon which HHS makes award decisions and decisions during the course of award administration. See § 74.25(c)(2).

- The Circular (section _____, 25(c)(5)) authorizes Federal agencies to impose a prior approval requirement on recipient budget transfers between direct and indirect costs. HHS has not previously required such prior approval, and we see no need to do so now. Consequently, this provision of the Circular does not appear in these amendments.

- The Circular (section _____, 25(f)) authorizes Federal agencies to impose a prior approval requirement on certain fund transfers that exceed ten percent of an award's total budget. HHS has not imposed this requirement in the past. Our long term experience without such a requirement gives us no reason to establish one now. Because award administration has worked well without a prior approval requirement, we have elected to continue to refrain from imposing one. Consequently, this provision of the Circular does not appear in these amendments.

- The Circular (section _____, 26(d)) authorizes Federal agencies to establish the audit requirements that will apply to awards to commercial organizations. In the interests of simplicity and uniformity, we have made commercial organizations subject to the audit requirements of OMB Circular A-133, which applies to most other HHS recipients of funds. See § 74.26(a).

- The Circular (section _____, 33(f)) authorizes Federal agencies to establish conditions under which title to exempt property will be vested in recipients. (Exempt property is property for which a Federal agency has statutory authority to vest title without further obligation, e.g., research grants under 31 U.S.C. 6306.) HHS is continuing its longstanding policy of only reserving the right to require transfer of title to such exempt equipment. This policy gives maximum flexibility to recipients of HHS funds, while protecting HHS's

ability to ensure continuity of resource application when responsibility for a project is moved to a new or replacement recipient. See § 74.33(b).

- The Circular (section _____.37) authorizes Federal agencies to require that recipients record liens to indicate that personal and real property was acquired or improved with Federal funds and that the property disposition rules apply to it. We have done so only with regard to real property in which a Federal interest has been established. We believe that such a rule properly balances the desire to minimize administrative burdens on grantees with the need to protect critical HHS financial interests. See § 74.37.

- We have adopted the Circular provisions at sections _____.22 and _____.52(a)(2) to reflect the OMB-approved procedures of the HHS Payment Management System (PMS). For example, PMS has adapted the forms SF-270 and 272 and renumbered them as PMS-270 and 272, respectively. See §§ 74.22 and 74.52(a)(2).

2. "Deviations" Approved by OMB

Circular A-110 provides for a process whereby a Federal agency may seek exceptions to provisions of the Circular. HHS sought and obtained approval for the following deviations from the Circular's provisions.

- *Prior approval of research patient costs*—Because of the significant amount of, and sensitivity to, research patient care in HHS, revised § 74.25(c)(8) continues the requirement currently at § 74.103(d)(3) that recipients obtain prior approval for research patient care costs in awards made for the performance of research work.

- *Bid and proposal costs, and independent research and development costs of non-profit organizations*—Revised § 74.27(b) carries over virtually intact the current provisions at § 74.174(b) (1) and (2) which address allowable bid and proposal costs, and independent research and development costs. Because OMB Circular A-122 does not cover them, HHS has chosen to continue to address these subjects in part 74 to fill an important policy gap, especially in view of HHS's expansive funded research and development activity.

- *Application of part 74 to the "entitlement programs"*—Part 74, as amended, continues to apply to grants to the States for the programs listed in 45 CFR 92.4(a) (3), (7), and (8), which are commonly referred to as the "entitlement programs." As discussed under General, above, this is a temporary provision until new policies

are developed, as indicated at 45 CFR 92.4(b), for subpart E of 45 CFR part 92, to cover those programs.

3. Retention of Longstanding HHS Policies

In addition to adopting the language of OMB Circular A-110, this amendment of 45 CFR part 74 retains certain longstanding HHS policies which neither are contained in nor conflict with the Circular, and which we believe are necessary to continuing, sound administration of the awards process.

- Revised § 74.22(h)(2) references the HHS claims collection regulations in 45 CFR part 30 rather than OMB Circular A-129 because those regulations are more relevant to the delinquent debts of recipients of HHS funds.

- Revised § 74.25(k) specifies which HHS officials have the authority to grant requests for prior approvals of revisions in budget or program plans under this Part. This provision is not changed in any substantive way from the current provisions at § 74.101(a).

- Revised § 74.26 defines the term "affiliated" in relation to the applicability of OMB Circular A-133 to hospitals affiliated with institutions of higher education. The revised section also provides recipients of HHS awards with instructions on where to submit copies of audit reports. This provision is changed from current § 74.62(c) only to update the location to which audit reports must be sent.

- Revised subpart E contains special additional requirements for awards to commercial organizations. We have deleted the previous requirement that property acquired by commercial organizations under an HHS award becomes Government property. Experience has shown that no need exists for this requirement; therefore, we believe the costs of administering such a requirement cannot be justified. Henceforth, property acquired by commercial organizations under an HHS award will be treated in the same way as property acquired by other grantees as provided at revised §§ 74.30 through 74.37.

4. Other Changes

We have made a number of editorial and key technical clarifications of the Circular's provisions throughout the rule as amended. They are designed to make the rule more understandable to the many and varied HHS awarding agencies and recipients. In some instances, we have recognized some of the text in the longer sections of the Circular for easier reading and reference. However, we have not

deviated from the substantive requirements of the Circular. In addition, we have made changes related to the following provisions which do not vary in substance from the intent or provisions of the Circular.

- *Definitions, revised § 74.2*—Following OMB's approval to continue part 74's applicability to the "entitlement programs," we have added definitions of "State," "local government," "Indian Tribal government," and "Government." These definitions are consistent with the definitions set forth at 45 CFR part 92. We have also expanded the definition of "Recipient" to embrace these entities. We have added a definition of "discretionary award" to distinguish these types of transactions from the "entitlement program" type of award.

To improve the utility of the rule, we have added definitions for the following organizational entities: the Office of Management and Budget (OMB); the Office of Grants and Acquisition Management (OGAM) of the Office of the Assistant Secretary for Management and Budget, which replaces the OPAL of the current rule; and the Departmental Appeals Board, which is responsible for adjudicating certain disputes that arise between HHS and recipients of HHS funds (see revised subpart F).

The Circular defines the phrase "Federal awarding agency" at _____.2 as the Federal agency that provides an award to a recipient. In making certain features of the Circular apply more particularly to HHS, we have added a definition of "HHS awarding agency" to refer to those organizational components of HHS with authority and responsibility for making and administering HHS awards. Having established this definition, we have replaced the term "Federal awarding agency," which appears throughout the Circular's provisions, with the term "HHS awarding agency," whenever we mean the HHS organizational component making the award. In those places where we have inserted the term "HHS" in place of "Federal awarding agency," we mean to encompass not only the awarding agency, but also, other HHS components; e.g., the Office of Inspector General.

- *Appendix A*—The Circular inadvertently misstates the applicability of the statute commonly known as the Bryd Anti-Lobbying Amendment, 31 U.S.C. 1352. The statute applies to organizations which apply or bid for an award exceeding \$100,000, not \$100,000 or more. We have made the correction in Appendix A; we have also included a cross reference to 45 CFR part 93 which contains the applicable HHS

regulations implementing the statute which were issued pursuant to an OMB common rule promulgated in 1990.

• *Patent and Trademark Laws*—We have corrected the citation "35 U.S.C. Ch. 18" which was inadvertently included in section _____24(h) of the Circular. The correct citation is 35 U.S.C. 200-212. We have also added a prescription on HHS awarding agencies from employing terms and conditions of awards made for educational purposes to assert Federal rights in inventions made thereunder, in keeping with the provisions of 35 U.S.C. 212.

• *Insurance of Federally-owned Property*—At the revised § 74.31, Insurance Coverage, we have not included the last sentence of section _____31 of Circular, "Federally-owned property need not be insured unless required by the terms and conditions of the award." We have determined that, since the Government is a self-insurer, recipients should not dilute the effect of the assistance awarded by expending appropriated funds on insuring Federally-owned property. Because by its terms, the Circular's provision is discretionary with the agency, our omission of it represents a policy choice effectively to regulate against allowing HHS awarding agencies to exercise such discretion. Therefore, the omission is consistent with the substance and intent of the Circular.

III. Justification for Waiver of Proposed Rulemaking

As a matter of longstanding policy set forth at 36 FR 2532 (Feb. 5, 1971), the Department of Health and Human Services normally follows the notice of proposed rulemaking and public comment (NPRM) procedures set forth in the Administrative Procedure Act (APA), 5 U.S.C. 553, even when it is not required by the APA to do so. The APA, however, provides for an exception to the NPRM procedures when an agency finds that there is good cause for dispensing with such procedures on the grounds that they are impracticable, unnecessary or contrary to the public interest.

Pursuant to 5 U.S.C. 553, this rule is being published as an interim final rule with an immediate effective date because HHS has found good cause to dispense with both the prior notice and comment on this rule, and the 30-day delay in its effective date. At the same time, HHS encourages interested parties to comment on this rule so that we may have the benefit of the public's reaction before publishing the rule in final form.

As previously stated, the primary purpose of this rule is to incorporate the provisions of the revised OMB Circular A-110 into HHS's award administration regulations. The Circular was developed over a period of several years by a Federal interagency task force and was subject to public review and extensive public comment before OMB published its final revised Circular on November 29, 1993. OMB in fact received over 200 comments in response to its proposed Circular from a wide array of Federal and non-Federal respondents, many of whom included past and current recipients of HHS awards.

To expedite government-wide use of these uniform procedures, OMB directed that Federal agencies responsible for awarding and administering grants and other agreements covered by the Circular publish agency-specific rules adopting the Circular's specific language. OMB has allowed agencies little latitude to publish rules that deviate from the Circular which, as stated, had been subject to public comment. Unless a different provision is required by Federal statute or an agency has obtained OMB's approval for a deviation, the provisions of the Circular govern.

This interim final rule essentially adopts the provisions of the Circular to the maximum extent possible. Some key technical clarifications, which are detailed elsewhere in this Preamble, have been made to enhance the rule's clarity and thus that ability of HHS awarding agencies and recipients of HHS funds to comprehend and apply its provisions. As also explained elsewhere in this Preamble, other provisions of this rule that may differ from the precise language of the Circular simply carry over longstanding HHS policies from the current part 74. Some of these provisions neither derive from nor conflict with the Circular. Concerning others, such as the rule requiring prior approval of patient care costs in research awards, HHS obtained OMB's approval to publish them under OMB's deviation procedures. But even these "deviation" provisions have been reflected for some time in HHS's regulations at part 74. For those provisions where HHS has exercised the discretionary decisionmaking inherent in the Circular's provisions, we have made choices that we believe inure chiefly to the recipients's benefit by avoiding imposition of additional or unnecessary administrative and other burdens.

Therefore, because this rule is (1) on a Federal policy which has been subject to extensive public comment, (2) based

in the main on current regulations where it differs from that Federal policy, (3) intended to benefit both affected Federal agencies and recipients of Federal awards by removing unnecessary administrative and other burdens, and thus facilitate sound award administration, HHS has determined that publication of this rule as an NPRM is unnecessary, impractical and contrary to the public interest. For these same reasons, HHS finds that good cause exists to eliminate the 30-day delay of the effective date of this rule.

IV. Regulatory Impact Analyses

Executive Order 12866

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

(Note: HHS had previously listed this rule as a significant rule in its "Semiannual Regulatory Agenda," published in the Federal Register on April 25, 1994, 59 FR 20325. When OMB issued the revised final Circular A-110 in November 1993, HHS originally considered the possibility that its rule adopting the Circular's provisions might constitute a "significant regulatory action" as defined in Executive Order 12866, especially in view of HHS's general policy of following the APA's notice and comment procedures even when that statute does not require us to do so. Upon further review of the Circular, this implementing rule and its long regulatory history, and before the April 25, 1994 Federal Register notice, HHS had determined that this rule is not "significant" because it essentially updates HHS grant administration rules which have been in place for many years. Regrettably, HHS was unable to delete this item from the regulatory agenda before publication of the notice. Notwithstanding its inclusion in that agenda, this rule is not a "significant" rule within the meaning of the Executive Order.)

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim final rule before publication and, by approving it, certifies that it does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In keeping with the requirements of 44 U.S.C. 3504(h), the information collection requirements contained in this rule have been approved by OMB as Standard Forms or HHS adaptations of Standard Forms with the following assigned clearance numbers: SF-269: 0348-0039; SF-424: 0348-0043; and PMS-270 and 272: 0937-0200.

List of Subjects in 45 CFR Part 74

Accounting, Administrative practice and procedures, Grant programs—

health, Grant programs—social programs, Grants administration, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number Does not Apply.)

Dated: August 17, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 74 of Title 45 of the Code of Federal Regulations is amended as follows:

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS; AND CERTAIN GRANTS AND AGREEMENTS WITH STATES, LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS

1. The authority citation for part 74 is revised to read as follows:

Authority: 5 U.S.C. section 301; Appendix J is also issued under 31 U.S.C. section 7505.

2. The heading for part 74 is revised to read as set forth above.

3. Subparts A–F are revised to read as follows:

Subpart A—General

Sec.

- 74.1 Purpose and applicability.
- 74.2 Definitions.
- 74.3 Effect on other issuances.
- 74.4 Deviations.
- 74.5 Subawards.

Subpart B—Pre-Award Requirements

- 74.10 Purpose.
- 74.11 Pre-award policies.
- 74.12 Forms for applying for HHS financial assistance.
- 74.13 Debarment and suspension.
- 74.14 Special award conditions.
- 74.15 Metric system of measurement.
- 74.16 Resource Conservation and Recovery Act (RCRA, Section 6002 of Pub. L. No. 94–580 (Codified at 42 U.S.C. 6962)).
- 74.17 Certifications and representations.

Subpart C—Post-Award Requirements

Financial and Program Management

- 74.20 Purpose of financial and program management.
- 74.21 Standards for financial management systems.
- 74.22 Payment.
- 74.23 Cost sharing or matching.
- 74.24 Program income.
- 74.25 Revision of budget and program plans.
- 74.26 Non-Federal audits.
- 74.27 Allowable costs.
- 74.28 Period of availability of funds.

Property Standards

- 74.30 Purpose of property standards.
- 74.31 Insurance coverage.

- 74.32 Real property.
- 74.33 Federally-owned and exempt property.
- 74.34 Equipment.
- 74.35 Supplies.
- 74.36 Intangible property.
- 74.37 Property trust relationship.

Procurement Standards

- 74.40 Purpose of procurement standards.
- 74.41 Recipient responsibilities.
- 74.42 Codes of conduct.
- 74.43 Competition.
- 74.44 Procurement procedures.
- 74.45 Cost and price analysis.
- 74.46 Procurement records.
- 74.47 Contract administration.
- 74.48 Contract provisions.

Reports and Records

- 74.50 Purpose of reports and records.
- 74.51 Monitoring and reporting program performance.
- 74.52 Financial reporting.
- 74.53 Retention and access requirements for records.

Termination and Enforcement

- 74.60 Purpose of termination and enforcement.
- 74.61 Termination.
- 74.62 Enforcement.

Subpart D—After-the-Award Requirements

- 74.70 Purpose.
- 74.71 Closeout procedures.
- 74.72 Subsequent adjustments and continuing responsibilities.
- 74.73 Collection of amounts due.

Subpart E—Special Provisions for Awards to Commercial Organizations

- 74.80 Scope of subpart.
- 74.81 Prohibition against profit.
- 74.82 Program income.

Subpart F—Disputes

- 74.90 Final decisions in disputes.
- 74.91 Alternative dispute resolution.

Subpart A—General

§ 74.1 Purpose and applicability.

(a) Unless inconsistent with statutory requirements, this part establishes uniform administrative requirements governing:

- (1) Department of Health and Human Services' (HHS) grants and agreements awarded to institutions of higher education, hospitals, other nonprofit organizations and commercial organizations;
- (2) Subgrants or other subawards awarded by recipients of HHS grants and agreements to institutions of higher education, hospitals, other nonprofit organizations and commercial organizations, including subgrants or other subawards awarded under HHS grants and agreements administered by State, local and Indian Tribal governments; and
- (3) HHS grants and agreements, and any subawards under such grants and

agreements, awarded to carry out the entitlement programs identified at 45 CFR part 92, § 92.4(a)(3), (a)(7), and (a)(8), except that §§ 74.12 and 74.25 of this Part shall not apply.

(b) Nonprofit organizations that implement HHS programs for the States are also subject to state requirements.

§ 74.2 Definitions.

Accrued expenditures mean the charges incurred by the recipient during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subrecipients, and other payees; and, (3) other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of: (1) Earnings during a given period from (i) services performed by the recipient, and (ii) goods and other tangible property delivered to purchasers; and (2) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under Federal procurement laws and regulations.

Cash contributions mean the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which the HHS awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and HHS.

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Current accounting period means, with respect to § 74.27(b), the period of time the recipient chooses for purposes of financial statements and audits.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which HHS awarding agency sponsorship ends.

Departmental Appeals Board means the independent office established in the Office of the Secretary with delegated authority from the Secretary to review and decide certain disputes between recipients of HHS funds and HHS awarding agencies under 45 CFR part 16 and to perform other review, adjudication and mediation services as assigned.

Disallowed costs mean those charges to an award that the HHS awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Discretionary award means an award made by an HHS awarding agency in keeping with specific statutory authority which enables the agency to exercise judgment ("discretion") in selecting the applicant/recipient organization through a competitive award process.

Equipment means tangible nonexpendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of \$5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of any HHS awarding agency that, as determined by the head of the awarding agency or his/her delegate, is no longer required for the agency's needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the HHS awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the

Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6306, for property acquired under an award to conduct basic or applied research by a nonprofit institution of higher education or nonprofit organization whose principal purpose is conducting scientific research.

Federal funds authorized mean the total amount of Federal funds obligated by the HHS awarding agency for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by the HHS awarding agency's implementing instructions or authorized by the terms and conditions of the award.

Federal share of real property, equipment, or supplies means that percentage of the property's or supplies' acquisition costs and any improvement expenditures paid with Federal funds. This will be the same percentage as the Federal share of the total costs under the award for the funding period in which the property was acquired (excluding the value of third party in-kind contributions). For property acquired on an amortized basis over more than one funding period, the Federal share will be the percentage of the amount of paid-in equity at the time of disposition.

Federally recognized Indian Tribal government means the governing body of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Government means a State or local government or a federally recognized Indian tribal government.

HHS means the U.S. Department of Health and Human Services.

HHS awarding agency means any organization component of HHS that is authorized to make and administer awards.

Intangible property and debt instruments mean, but are not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Local government means a local unit of government, including specifically a county, municipality, city, town, township, local public authority, school district, special district, intra-state

district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate entity, or any agency or instrumentality of local government.

Obligations mean the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

OCAM means the Office of Grants and Acquisition Management, which is an organizational component within the Office of the Secretary, HHS, and reports to the Assistant Secretary for Management and Budget.

OMB means the U.S. Office of Management and Budget.

Outlays or expenditures mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized HHS official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 74.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest

earned on advances of Federal funds is not program income. Except as otherwise provided in the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles (see § 74.27), incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which HHS awarding agency sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving financial assistance directly from an HHS awarding agency to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, commercial organizations, and other quasi-public and private nonprofit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the HHS awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers. For entitlement programs listed at 45 CFR 92.4(a)(3), (a)(7), and (a)(8) "recipient" means the government to which an HHS awarding agency awards funds and which is accountable for the use of the funds provided. The recipient in this case is the entire legal entity even if only a particular component of the entity is designated in the award document.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, hospitals, other nonprofit institutions, and commercial

organizations. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$25,000).

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in this section.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the HHS awarding agency.

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

Suspension means an action by the HHS awarding agency that temporarily withdraws the agency's financial assistance sponsorship under an award, pending corrective action by the

recipient or pending a decision to terminate the award.

Suspension of an award is a separate action from suspension under HHS regulations (45 CFR part 76) implementing E.O.s 12549 and 12689, "Debarment and Suspension."

Termination means the cancellation of HHS awarding agency sponsorship, in whole or in part, under an agreement at any time prior to the date of completion. For the entitlement programs listed at 45 CFR 92.4 (a)(3), (a)(7), and (a)(8), "termination" shall have that meaning assigned at 45 CFR 92.3.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, mean the amount of obligations incurred by the recipient that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the HHS awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 74.3 Effect on other issuances.

This part supersedes all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 74.4.

§ 74.4 Deviations.

After consultation with OMB, the HHS OGAM may grant exceptions to HHS awarding agencies for classes of awards or recipients subject to the

requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. HHS awarding agencies may apply more restrictive requirements to a class of awards or recipients when approved by the OGAM, after consultation with the OMB. HHS awarding agencies may apply less restrictive requirements without approval by the OGAM when making small awards except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by HHS awarding agencies without seeking prior approval from the OGAM. OGAM will maintain a record of all requests for exceptions from the provisions of this part that have been approved for classes of awards or recipients.

§ 74.5 Subawards.

(a) Unless inconsistent with statutory requirements, this part shall apply to—

(1) All subawards received by institutions of higher education, hospitals, other non-profit organizations, and commercial organizations from any recipient of an HHS award, including any subawards received from States, and local Indian Tribal governments; and

(2) All subawards received from States by any entity, including a government entity, under the entitlement programs identified at 45 CFR part 92, § 92.4 (a), (a)(7), and (a)(8), except that §§ 74.12 and 74.25 of this part shall not apply.

(b) Except as provided in paragraph (a)(2) of this section, when State, local, and Indian Tribal government recipients of HHS awards make subawards to a government entity, they shall apply the regulations at 45 CFR part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or State rules, whichever apply, to such awards.

Subpart B—Pre-Award Requirements

§ 74.10 Purpose.

Sections 74.11 through 74.17 prescribe forms and instructions and other pre-award matters to be used in applying for HHS awards.

§ 74.11 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. The Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301-08, governs the use of grants, cooperative agreements and contracts. A grant or cooperative

agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the HHS awarding agency.

(b) HHS awarding agencies shall notify the public of funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 74.12 Forms for applying for HHS financial assistance.

(a) HHS awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used in place of or as a supplement to the Standard Form 424 (SF-424) series. However, HHS awarding agencies should use the SF-424 series and its program narrative whenever possible.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the HHS awarding agency. Applicants shall submit the original and two copies of any applications unless additional copies are required pursuant to 5 CFR part 1320.

(c) For Federal programs covered by E.O. 12372, as amended by E.O. 12416, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the HHS awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review. (See also 45 CFR part 100.)

(d) HHS awarding agencies that do not use the SF-424 form will indicate on the application form they prescribe whether the application is subject to review by the State under E.O. 12372.

§ 74.13 Debarment and suspension.

Recipients are subject to the nonprocurement debarment and suspension common rule implementing

E.O.s 12549 and 12689, "Debarment and Suspension," 45 CFR part 76. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 74.14 Special award conditions.

(a) The HHS awarding agency may impose additional requirements as needed, without regard to § 74.4, above, if an applicant or recipient:

- (1) Has a history of poor performance;
- (2) Is not financially stable;
- (3) Has a management system that does not meet the standards prescribed in this part;
- (4) Has not conformed to the terms and conditions of a previous award; or
- (5) Is not otherwise responsible.

(b) When it imposes any additional requirements, the HHS awarding agency must notify the recipient in writing as to the following:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the corrective actions needed;
- (4) The time allowed for completing the corrective actions; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

(c) The HHS awarding agency will promptly remove any additional requirements once the conditions that prompted them have been corrected.

§ 74.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205, declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. HHS awarding agencies will follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§ 74.16 Resource Conservation and Recovery Act (RCRA), Section 6002 of Public Law 94-580 (codified at 42 U.S.C. 6962).

Under the Act, any State agency or agency of a political subdivision of a

State which is using appropriated Federal funds must comply with section 6002 of the RCRA. This section requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254). Accordingly, State and local institutions of higher education, hospitals, and other nonprofit organizations that receive direct HHS awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 74.17 Certifications and representations.

Unless prohibited by statute or codified regulation, each HHS awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the HHS awarding agency. Annual certifications and representations shall be signed by the responsible HHS official(s) with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 74.20 Purpose of financial and program management.

Sections 74.21 through 74.28 prescribe standards for financial management systems, methods for making payments, and rules for satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 74.21 Standards for financial management systems.

(a) Recipients shall relate financial data to performance data and develop unit cost information whenever practical. For awards that support research, unit cost information is usually not appropriate.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each HHS-sponsored project or program in accordance with the reporting requirements set forth in § 74.52. If the HHS awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an

accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for HHS-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data. (Unit cost data are usually not appropriate for awards that support research.)

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) and its implementing regulations, "Rules and Procedures for Funds Transfers," (31 CFR part 205) apply, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements, or the CMIA default procedures codified at 31 CFR 205.9(f).

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records, including cost accounting records, that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the HHS awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The HHS awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described in § 74.21 (c) and

(d), the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 74.22 Payment.

(a) Unless inconsistent with statutory program purposes, payment methods shall minimize the time elapsing between the transfer of funds from the U.S. Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements, or the CMIA default procedures codified at 31 CFR 205.9, to the extent that either applies.

(b) (1) Recipients will be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(ii) Financial management systems that meet the standards for fund control and accountability as established in § 74.21.

(2) Unless inconsistent with statutory program purposes, cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances will be consolidated to cover anticipated cash needs for all awards made by all HHS awarding agencies to the recipient.

(1) Advance payment mechanisms include electronic funds transfer, with Treasury checks available on an exception basis.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients may submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on PMS-270, "Request for Advance or Reimbursement," or other forms as may be authorized by HHS. This form is not to be used when Treasury check

advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special HHS-wide instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. The HHS awarding agency may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the HHS assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, HHS will make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients may submit a request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the HHS awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, HHS may provide cash on a working capital advance basis. Under this procedure, HHS advances cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the recipient's disbursing cycle. Thereafter, HHS reimburses the recipient for its actual cash disbursements. The working capital advance method of payment will not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) Unless inconsistent with statutory program purposes, to the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, the HHS awarding agency will not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h) (1) or (2) of this section applies:

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or HHS awarding agency reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United

States. Under such conditions, the HHS awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated. (See 45 CFR part 30).

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, HHS will not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients are encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless one of the following conditions apply:

(1) The recipient receives less than \$120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply (see 31 CFR part 205), interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to the Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Recipients with Electronic Funds Transfer capability should use an electronic medium such as the FEDWIRE Deposit System. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the HHS

awarding agency, it waives its right to recover the interest under CMIA. (See § 74.25(d)).

(m) PMS-270, Request for Advance or Reimbursement. Recipients shall use the PMS-270 to request advances or reimbursement for all programs when electronic funds transfer or predetermined advance methods are not used.

§ 74.23 Cost sharing or matching.

(a) To be accepted, all cost sharing or matching contributions, including cash and third party in-kind, shall meet all of the following criteria:

(1) Are verifiable from the recipient's records;

(2) Are not included as contributions for any other federally-assisted project or program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives;

(4) Are allowable under the applicable cost principles;

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching;

(6) Are provided for in the approved budget; and

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If the HHS awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of:

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

(2) The current fair market value. However, when there is sufficient justification, the HHS awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those

instances in which the required skills are not found in the recipient's organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable property, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g)(1) or (2) of this section applies:

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the HHS awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(i) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(1) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees, including time records.

(2) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 74.24 Program income.

(a) The standards set forth in this section shall be used to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided below in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with the terms and conditions of the award, shall be used in one or more of the following ways:

(1) Added to funds committed to the project or program, and used to further eligible project or program objectives;

(2) Used to finance the non-Federal share of the project or program; or

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the HHS awarding agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the HHS awarding agency does not specify in the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support performance of research work, paragraph (b)(1) of this section shall apply automatically unless:

(1) The HHS awarding agency indicates in the terms and conditions of the award another alternative; or

(2) The recipient is subject to special award conditions under § 74.14; or

(3) The recipient is a commercial organization (see § 74.82).

(e) Unless the terms and conditions of the award provide otherwise, recipients

shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards. (See §§ 74.30 through 74.37, below).

(h) The Patent and Trademark Laws Amendments, 35 U.S.C. section 200-212, apply to inventions made under an award for performance of experimental, developmental, or research work. Unless the terms and conditions for the award provide otherwise, recipients shall have no obligation to HHS with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under an award. However, no scholarship, fellowship, training grant, or other funding agreement made primarily to a recipient for educational purposes will contain any provision giving the Federal agency rights to inventions made by the recipient.

§ 74.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the sum of the Federal and non-Federal shares, or only the Federal share, depending upon HHS awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section. Except as provided at §§ 74.4, 74.14, and this section, HHS awarding agencies may not impose other prior approval requirements for specific items.

(c) For nonconstruction awards, recipients shall obtain prior approvals from the HHS awarding agency for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in the project director or principal investigator or other key persons specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The inclusion, unless waived by the HHS awarding agency, or costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Educational Institutions;" OMB Circular A-122, "Cost Principles for Nonprofit Organizations;" or appendix E of this part, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(6) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(7) Unless described in the application and funded in the approved award, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(8) The inclusion of research patient care costs in research awards made for the performance of research work.

(d) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, the HHS awarding agency is authorized, at its option, to waive cost-related and administrative prior written approvals required by this part and its appendixes. Additional waivers may be granted authorizing recipients to do any one or more of the following:

(1) Incur pre-award costs up to 90 calendar days prior to award, or more than 90 calendar days with the prior approval of the HHS awarding agency. However, all pre-award costs are incurred at the recipient's risk: the HHS awarding agency is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated and inadequate to cover such costs.

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the conditions identified at paragraphs (d)(2)(i), (ii), and (iii) of this section apply. For one-time extensions, the recipient must notify the HHS awarding agency in writing, with the supporting reasons and revised expiration date, at least 10 days before the date specified in the award. This one-time extension may not be exercised either by recipients or HHS awarding agencies merely for the purpose of using

unobligated balances. Such extensions are not permitted where:

(i) The terms and conditions of award prohibit the extension; or

(ii) The extension requires additional Federal funds; or

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support performance of research work, unless the HHS awarding agency provides otherwise in the award, or the award is subject to § 74.14 or subpart E of this Part, the prior approval requirements described in paragraphs (d) (1)-(3) of this section are automatically waived (i.e., recipients need not obtain such prior approvals). However, extension of award expiration dates must be approved by the HHS awarding agency if one of the conditions in paragraph (d)(2) of this section applies.

(e) The HHS awarding agencies may not permit any budget changes in a recipient's award that would cause any Federal appropriation to be used for purposes other than those consistent with the original purpose of the authorization and appropriation under which the award was funded.

(f) For construction awards, recipients shall obtain prior written approval promptly from the HHS awarding agency for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the project or program;

(2) The need arises for additional Federal funds to complete the project; or

(3) A revision is desired which involves specific costs for which prior written approval requirements apply in keeping with the applicable cost principles listed in § 74.27.

(g) When an HHS awarding agency makes an award that provides support for both construction and nonconstruction work, it may require the recipient to obtain prior approval before making any fund or budget transfers between the two types of work supported.

(h) For both construction and nonconstruction awards, recipients shall notify the HHS awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(i) Within 30 calendar days from the date of receipt of the request for budget

revisions, HHS awarding agencies shall notify the recipient whether its requested budget revisions have been approved. If the requested revision is still under consideration at the end of 30 calendar days, the HHS awarding agency must inform the recipient in writing of the date when the recipient may expect a decision.

(j) When requesting approval for budget changes, recipients shall make their requests in writing.

(k) All approvals granted in keeping with the provisions of this section shall not be valid unless they are in writing, and signed by at least one of the following HHS officials:

(1) The Head of the HHS Operating or Staff Division that made the award or subordinate official with proper delegated authority from the Head, including the Head of the Regional Office of the HHS Operating or Staff Division that made the award; or

(2) The responsible Grants Officer of the HHS Operating or Staff Division that made the award or an individual duly authorized by the Grants Officer.

§ 74.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education, hospitals affiliated with institutions of higher education, other nonprofit organizations, and commercial organizations shall be subject to the audit requirements contained in OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions." (See appendix I to this part.)

(b)(1) OMB Circular A-133 exempts hospitals not affiliated with an institution of higher education. In determining whether this exemption applies, the term *affiliated* includes all situations where:

(i) A hospital or an institution of higher education has an ownership interest in the other entity or some other party (other than a State or local unit of government) has an ownership interest in each of them; or

(ii) An affiliation agreement exists; or

(iii) Federal research or training awards to a hospital or institution of higher education are performed in whole or in part in the facilities of, or involve the staff of, the other entity.

(2) Hospitals not covered by the audit provisions of OMB Circular A-133 are subject to the audit requirements of the HHS awarding agency.

(c) State and local governments shall be subject to the audit requirements contained in the Single Audit Act, 31 U.S.C. 7501-07, and OMB Circular A-128, "Audits of State and Local

Governments." (See appendix J to this part.)

(d) All copies of audit reports that a recipient is required, under OMB Circulars A-128 or A-133, to submit to the HHS awarding agency shall be addressed to the National External Audit Resources Unit, 323 West 8th St., Lucas Place—Rm. 514, Kansas City, MO 64105. The HHS Office of Inspector General will distribute copies as appropriate within HHS. Recipients, therefore, are not required to send their audit reports to any other HHS official.

§ 74.27 Allowable costs.

(a) For each kind of recipient, there is a particular set of Federal principles that applies in determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The allowability of costs incurred by nonprofit organizations (except for those listed in Attachment C of Circular A-122) is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Nonprofit Organizations" and paragraph (b) of this section. The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of this part, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those nonprofit organizations listed in Attachment C to Circular A-122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31, except that independent research and development costs are unallowable.

(b) OMB Circular A-122 does not cover the treatment of bid and proposal costs or independent research and development costs. The following rules apply to these costs for nonprofit organizations subject to that Circular.

(1) *Bid and proposal costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for Federal and non-Federal awards, contracts, and other agreements, including the development

of scientific, cost, and other data needed to support the bids, proposals, and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs. Bid and proposal costs of past accounting periods are unallowable in the current period. However, if the recipient's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs covered by paragraph (b)(2) of this section, or pre-award costs covered by OMB Circular A-122, Attachment B, paragraph 33 and § 74.25(d)(1).

(2) *Independent Research and Development costs.* Independent research and development is research and development which is conducted by an organization, and which is not sponsored by Federal or non-Federal awards, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development. The cost of independent research and development, including their proportionate share of indirect costs, are unallowable.

§ 74.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the HHS awarding agency pursuant to § 74.25(d)(1).

Property Standards

§ 74.30 Purpose of property standards.

Sections 74.31 through 74.37 set forth uniform standards governing management and disposition of property furnished by HHS or whose cost was charged directly to a project supported by an HHS award. The HHS awarding agency may not impose additional requirements, unless specifically required to do so by Federal statute. The recipient may use its own property management standards and procedures provided they meet the provisions of §§ 74.31 through 74.37.

§ 74.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with HHS funds as provided to other property owned by the recipient.

§ 74.32 Real property.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the HHS awarding agency.

(b) The recipient shall obtain written approval from the HHS awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the HHS awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the HHS awarding agency or its successor. The HHS awarding agency must provide one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal share in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the HHS awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal share in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 74.33 Federally-owned and exempt property.

(a)(1) Title of federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the HHS awarding agency. Upon completion of the award or when

the property is no longer needed, the recipient shall report the property to the HHS awarding agency for further agency utilization.

(2) If the HHS awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the HHS awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act, 15 U.S.C. 3710(l), to donate research equipment to educational and nonprofit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals"). Appropriate instructions shall be issued to the recipient by the HHS awarding agency.

(b) Exempt property shall not be subject to the requirements of § 74.34, except that it shall be subject to paragraphs (h)(1), (2), and (4) of that section concerning the HHS awarding agency's right to require transfer.

§ 74.34 Equipment.

(a) Title to equipment acquired by a recipient with HHS funds shall vest in the recipient, subject to the conditions of this section.

(b)(1) The recipient shall not use equipment acquired with HHS funds to provide services to non-Federal organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for so long as the Federal Government retains an interest in the equipment.

(2) If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the HHS awarding agency.

(3) User charges shall be treated as program income, in keeping with the provisions of § 74.24.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the HHS awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, if any, in the following order of priority:

- (1) Programs, projects, or activities sponsored by the HHS awarding agency;
- (2) Programs, projects, or activities sponsored by other HHS awarding agencies; then

(3) Programs, project, or activities sponsored by other Federal agencies.

(d) During the time that equipment is used on the program, project, or activity for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the program, project, or activity for which the equipment was originally acquired. First preference for such other use shall be given to other programs, projects, or activities sponsored by the HHS awarding agency. Second preference shall be given to programs, projects, or activities sponsored by other HHS awarding agencies. Third preference shall be given to programs, projects, or activities sponsored by other Federal agencies.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the HHS awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information:

- (i) A description of the equipment;
- (ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number;
- (iii) Source of the equipment, including the award number;
- (iv) Whether title vests in the recipient or the Federal Government;
- (v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost;
- (vi) Information from which one can calculate the percentage of HHS's share in the cost of the equipment (not applicable to equipment furnished by the Federal Government);
- (vii) Location and condition of the equipment and the date the information was reported;
- (viii) Unit acquisition cost; and
- (ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the HHS awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) The recipient shall take a physical inventory of equipment and the results reconciled with the equipment records at least once every two years. Any

differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) recipient shall maintain a control system to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the HHS awarding agency.

(5) The recipient shall implement adequate maintenance procedures to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, it may use the equipment for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original HHS awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of HHS's share in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the HHS awarding agency; such instructions must be issued to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the HHS awarding agency an amount computed by applying to the sales proceeds the percentage of HHS share in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the HHS share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the HHS awarding agency by an amount

which is computed by applying the percentage of the recipient's share in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient will be reimbursed by the HHS awarding agency for such costs incurred in its disposition.

(h) The HHS awarding agency reserves the right to order the transfer of title to the Federal Government or to a third party named by the awarding agency when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards:

(1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(2) The HHS awarding agency may require submission of a final inventory that lists all equipment acquired with HHS funds and federally-owned equipment.

(3) If the HHS awarding agency fails to issue disposition instructions within 120 calendar days after receipt of the inventory, the recipient shall apply the standards of paragraph (g)(1) of this section as appropriate.

(4) When the HHS awarding agency exercises its right to order the transfer of title to the Federal Government, the equipment shall be subject to the rules for federally-owned equipment. (See § 74.34(g)).

§ 74.35 Supplies.

(a) Title to supplies shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-federally sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment. (See § 74.34(g)).

(b)(1) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

(2) If the supplies owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the HHS awarding agency.

(3) User charges shall be treated as program income, in keeping with the provisions of § 74.24.

§ 74.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The HHS awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments purchased or otherwise acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the HHS awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 74.34 (g) and (h).

§ 74.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipients as trustee for the beneficiaries of the project or program under which the property was acquired or improved, and shall not be encumbered without the approval of the HHS awarding agency. Recipients shall record liens or other appropriate notices of record to indicate that real property has been acquired or constructed or, where applicable, improved with Federal

funds, and that use and disposition conditions apply to the property.

Procurement Standards

§ 74.40 Purpose of procurement standards.

Sections 74.41 through 74.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are established to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. The standards apply where the cost of the procurement is treated as a direct cost of an award.

§ 74.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipients of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the HHS awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 74.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for

violations of such standards by officers, employers, or agents of the recipients.

§ 74.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 74.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that:

(1) Recipients avoid purchasing unnecessary items;

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government; and

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of HHS awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies'

implementation of E.O.s 12549 and 12689, "Debarment and Suspension." (See 45 CFR part 76.)

(e) Recipients shall, on request, make available for the HHS awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this Part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 74.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 74.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a) Basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.

§ 74.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 74.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts:

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the HHS awarding agency may accept the bonding policy and requirements of the recipient, provided the HHS awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract

to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the HHS awarding agency, the U.S. Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this part, as applicable.

Reports and Records**§ 74.50 Purpose of reports and records.**

Sections 74.51 through 74.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 74.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure that subrecipients have met the audit requirements as set forth in § 74.26.

(b) The HHS awarding agency will prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports will not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the award year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The HHS awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report will not be required after completion of the project.

(d) Performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall submit the original and two copies of performance reports.

(f) Recipients shall immediately notify the HHS awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) HHS may make site visits, as needed.

(h) The HHS awarding agency complies with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," when requesting performance data from recipients.

§ 74.52 Financial reporting.

(a) The following forms are used for obtaining financial information from recipients:

(1) SF-269 or SF-269A, Financial Status Report.

(i) The HHS awarding agency will require recipients to use either the SF-269 (long form) or SF-269A to report the status of funds for all nonconstruction projects or programs. The SF-269 shall always be used if income has been earned. The awarding agency may, however, waive the SF-269 or SF-269A requirement when the PMS-270, Request for Advance or Reimbursement, or PMS-272, Report of Federal Cash Transactions, will provide adequate information to meet its needs, except that a final SF-269 or SF-269A shall be required at the completion of the project when the PMS-270 is used only for advances.

(ii) If the HHS awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The HHS awarding agency will determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report will not be required more frequently than quarterly or less frequently than annually except under § 74.14. A final report shall be required at the completion of the agreement.

(iv) Recipients shall submit the SF-269 and SF-269A (an original and two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the HHS awarding agency upon request of the recipient.

(2) PMS-272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients, the HHS awarding agency requires each recipient to submit the PMS-272 and, when necessary, its continuation sheet, PMS-272A through G. The HHS awarding agency uses this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) The HHS awarding agency may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) Recipients shall submit the original and two copies of the PMS-272 15 calendar days following the end of each quarter. The HHS awarding agency may require a monthly report from those recipients receiving advances totaling \$1 million or more per year.

(iv) The HHS awarding agency may waive the requirement for submission of the PMS-272 for any one of the following reasons: (A) When monthly advances do not exceed \$25,000 per recipient, provided that such advances are monitored through other forms contained in this section; (B) If, in HHS' opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or, (C) When the electronic payment mechanisms provide adequate data.

(b) When the HHS awarding agency needs additional information or more

frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, the HHS awarding agency will issue instructions to require recipients to submit that information under the "Remarks" section of the reports.

(2) When HHS determines that a recipient's accounting system does not meet the standards in § 74.21, additional pertinent information to further monitor awards may be obtained, without regard to § 74.4, upon written notice to the recipient until such time as the system is brought up to standard. In obtaining this information, the HHS awarding agencies comply with report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public."

(3) The HHS awarding agency may accept the identical information from a recipient in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(4) The HHS awarding agency may provide computer or electronic outputs to recipients when such action expedites or contributes to the accuracy of reporting.

§ 74.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following:

(1) If any litigation, claim, financial management review, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the HHS awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc., as specified in § 74.53(g).

(c) Copies of original records may be substituted for the original records if

authorized by the HHS awarding agency.

(d) The HHS awarding agency will request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, the HHS awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) HHS awarding agencies, the HHS Inspector General, the U.S. Comptroller General, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, the HHS awarding agency will not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the HHS awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act, 5 U.S.C. 552, if the records had belonged to the HHS awarding agency.

(g) Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If the recipient submits to the Federal Government or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If the recipient is not required to submit to the Federal Government or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other

accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 74.60 Purpose of termination and enforcement.

Sections 74.61 and 74.62 set forth uniform suspension, termination and enforcement procedures.

§ 74.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a) (1), (2), or (3) of this section applies.

(1) By the HHS awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the HHS awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the HHS awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the HHS awarding agency determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, it may terminate the award in its entirety.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 74.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 74.62 Enforcement.

(a) If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute or regulation, an assurance, an application, or a notice of award, the HHS awarding agency may, in addition to imposing any of the special conditions outlined in § 74.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the HHS awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take any other remedies that may be legally available.

(b) In taking an enforcement action, the HHS awarding agency will provide the recipient or subrecipient an opportunity for such hearing, appeal, or other administrative proceeding to which the recipient or subrecipient is entitled under any statute or regulation applicable to the action. (See also 45 CFR parts 16, 75, and 95.)

(c) Costs to a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the HHS awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable; and

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the HHS implementing regulations at § 74.13 of this part and 45 CFR part 76.

Subpart D—After-the-Award Requirements

§ 74.70 Purpose.

Sections 74.71 through 74.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 74.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The HHS awarding agency may approve extensions when requested by the recipient.

(b) Unless the HHS awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) HHS will make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that HHS has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. 45 CFR part 30 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, HHS will make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with HHS funds or received from the Federal Government in accordance with §§ 74.31 through 74.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, HHS retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 74.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the HHS awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 74.26.

(4) Property management requirements in §§ 74.31 through 74.37.

(5) Records retention requirements in § 74.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the HHS awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 74.72(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 74.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the HHS awarding agency may reduce the debt by paragraph (a) (1), (2), or (3) of this section:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, HHS awarding agencies will charge interest on an overdue debt in accordance with 4 CFR ch. II, "Federal Claims Collection Standards." (See 45 CFR part 30.)

Subpart E—Special Provisions for Awards to Commercial Organizations

§ 74.80 Scope of subpart.

This subpart contains provisions that apply to awards to commercial organizations. These provisions are in addition to other applicable provisions of this part, or they make exceptions from other provisions of this part for awards to commercial organizations.

§ 74.81 Prohibition against profit.

Except for awards under the Small Business Innovation Research (SBIR) and Small Business Technology Research (STTR) programs (15 U.S.C. 638), no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

§ 74.82 Program income.

The additional costs alternative described in § 74.24(b)(1) may not be applied to program income earned by a commercial organization except in the SBIR and STTR programs.

Subpart F—Disputes

§ 74.90 Final decisions in disputes.

(a) HHS attempts to promptly issue final decisions in disputes and in other matters affecting the interests of recipients. However, final decisions adverse to the recipient are not issued until it is clear that the matter cannot be resolved through further exchange of information and views.

(b) Under various HHS statutes or regulations, recipients have the right to appeal from, or to have a hearing on, certain final decisions by HHS awarding agencies. (See, for example, subpart D of 42 CFR part 50, and 45 CFR parts 16 and 75) Paragraphs (c) and (d) of this section set forth the standards HHS expects its member agencies to meet in issuing a final decision covered by any of the statutes or regulations.

(c) The decision may be brief but must contain:

(1) A complete statement of the background and basis of the awarding

agency's decision, including reference to the pertinent statutes, regulations, or other governing documents; and

(2) Enough information to enable the recipient to understand the issues and the position of the HHS awarding agency.

(d) The following or similar language (consistent with the terminology of the applicable statutes or regulations) should appear at the end of the decision: "This is the final decision of the (title of grants officer or other official responsible for the decision). It shall be the final decision of the Department unless, within 30 days after receiving this decision, you deliver or mail (you should use registered or certified mail to establish the date) a written notice of appeal to (name and address of appropriate contact, e.g., the Departmental Appeals Board, Department of Health and Human Services, Washington, DC 20201). You shall attach to the notice a copy of this decision, note that you intend an appeal, state the amount in dispute, and briefly state why you think that this decision is wrong. You will be notified of further procedures."

§ 74.91 Alternative dispute resolution.

HHS encourages its awarding agencies and recipients to try to resolve disputes by using alternative dispute resolution (ADR) techniques. ADR often is effective in reducing the cost, delay and contentiousness involved in appeals and other traditional ways of handling disputes. ADR techniques include mediation, neutral evaluation and other consensual methods. Information about ADR is available from the HHS Dispute Resolution Specialist at the Departmental Appeals Board, U.S. Department of Health and Human Services, Washington, DC 20201.

Subparts G-AA—[Removed]

4. Subparts G-AA of part 74 are removed.

5. Appendix A is added to part 74 to read as follows:

Appendix A to Part 74—Contract Provisions

All contracts awarded by a recipient, including small purchases, shall contain the following provisions as applicable where the cost of the contract is treated as a direct cost of an award:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act* (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874, as supplemented by Department of Labor regulations, 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States." The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended* (40 U.S.C. 276a to a-7)—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act, 40 U.S.C. 276a to a-7, and as supplemented by Department of Labor regulations, 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the HHS awarding agency.

4. *Contract Work Hours and Safety Standards Act* (40 U.S.C. 327-333)—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-333, as supplemented by Department of Labor regulations, 29 CFR part 5. Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any further implementing regulations issued by HHS.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.)*—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the HHS and the appropriate Regional Office of the Environmental Protection Agency.

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient. (See also 45 CFR part 93).

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—Certain contracts shall not be made to parties listed on the nonprocurement portion of the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." (See 45 CFR part 76.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

* * * * *

Appendixes G and H to Part 74 [Removed and Reserved]

6. Appendixes G and H to part 74 are removed and reserved.

[FR Doc. 94-20560 Filed 8-24-94; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-265; FCC 94-203]

Cable TV Act of 1992—Development of Competition and Diversity in Video Programming; Distribution and Carriage

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: By this Memorandum Opinion and Order ("MO&O") the Commission amends one of its rules implementing the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). The MO&O amends the Commission's rule on adjudicatory carriage agreement complaints to specifically afford standing to any multichannel video programming distributor ("MVPD") aggrieved by a violation of Section 616 of the 1992 Cable Act. The intent of this action is to prevent anticompetitive behavior by cable operators and multichannel video programming distributors.

EFFECTIVE DATE: September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Markowitz or Diane Hofbauer, Cable Services Bureau, (202) 416-0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's MO&O, adopted August 2, 1994, and released August 5, 1994. The full text of the MO&O is available for 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., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of Memorandum Opinion and Order

1. In furtherance of the Commission's implementation of the carriage agreement provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), the Commission adopted a Memorandum Opinion and Order reconsidering one of its regulations adopted in Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992—Development of Competition and Diversity in Video Programming Distribution and Carriage,

MM Docket No. 92-265 (Oct. 22, 1993), 58 FR 60390 (Nov. 16, 1993), 9 FCC Rod 2624 (1993); 47 CFR 76.1302. The action disposes of a petition for reconsideration filed by the Wireless Cable Association ("WCA") requesting that the Commission amend its rules, to afford standing specifically to any multichannel video programming distributor ("MVPD") aggrieved by an alleged violation of Section 616 of the 1992 Cable Act to file a complaint pursuant to 47 CFR 76.1302(a). WCA's petition was supported by Liberty Cable Company and GTE Service Corporation and was opposed by Tele-Communications, Inc. and Liberty Media Corporation.

2. Section 616 of the 1992 Cable Act, 47 U.S.C. 536, governs agreements between cable operators—or other MVPDs—and the programming services they distribute, and directs the Commission to establish regulations that prevent cable operators or other MVPDs from entering into carriage agreements that condition carriage of a vendor's programming on particular concessions.

3. Section 616(a) (1), (2) and (3), 47 U.S.C. 536(a) (1), (2), (3) specifically directed the Commission to establish regulations prohibiting MVPDs from: (1) Requiring a financial interest in the programming services as a condition of carriage; (2) coercing a programming vendor to provide exclusive rights as a condition of carriage, or retaliating against such vendor for failure to grant exclusivity; and (3) discriminating in carriage terms between affiliated and nonaffiliated programming vendors.

4. WCA claimed that § 76.1302 of the Commission's rules is too narrowly drafted and could be interpreted to limit standing solely to programming vendors aggrieved by violations of the carriage agreement provisions, thus precluding a complaint from an MVPD aggrieved by the same anticompetitive behavior. WCA contended that if the rule was so interpreted, the purpose of Section 616 would be frustrated because a multiple system operator with sufficient market power over a programming vendor to coerce exclusivity would be able to employ the same market power to secure the programming vendor's silence. Opponents of the petition for reconsideration contended, inter alia, that Section 616 was intended solely to benefit unaffiliated programming vendors and that Section 628 of the 1992 Cable Act (47 U.S.C. 548), and the Commission's program access rules, provide the appropriate avenue of redress for MVPDs.

4. The 1992 Cable Act and its legislative history¹ indicate that Congress found that the cable television industry is highly concentrated with a high degree of vertical integration of cable systems and programmers.² When drafting the 1992 Cable Act, Congress was concerned that increased horizontal concentration and vertical integration in the cable industry had created an imbalance of power between cable operators and program vendors. Congress concluded that vertically integrated cable operators have the incentive and ability to favor affiliated programming vendors over unaffiliated programming vendors with respect to granting carriage on their system.³ Congress also found that, in return for carriage on the cable system, some cable operators have required certain non-affiliated programming vendors to grant them certain concessions.⁴

5. Congress sought to address these concerns by including Sections 19 and 12 in the 1992 Cable Act, which added Sections 628 and 616, respectively, to the Communications Act of 1934, as amended. Section 628 (47 U.S.C. 548), which contains the program access provisions, primarily restricts the activities of vertically integrated programming vendors and cable operators with respect to other, unaffiliated MVPDs. Section 616 (47 U.S.C. 536), in contrast, contains the carriage agreement provisions that were designed to restrict the activities of cable operators and other MVPDs when dealing with unaffiliated programming vendors.

6. The underlying premise of both the program access and carriage provisions of the 1992 Cable Act was to increase competition to franchised cable operators from other MVPDs, reducing the undue market power held in noncompetitive markets by cable operators as compared to that of consumers and video programming vendors.⁵ The legislative history shows that Congress routinely treated Sections 616 and 628 in concert, thereby confirming its concern for the impact of anticompetitive conduct on

programming vendors and on emerging MVPDs' access to programming.

6. The Commission has determined that it is in the public interest to grant WCA's petition and to amend § 76.1302 of the Commission's rules to specifically afford standing to aggrieved MVPDs to file complaints under Section 616 of the 1992 Cable Act. Based on the record, the criteria set forth in the 1992 Cable Act and its legislative history, the Commission believes that it serves the public interest if all potential violations of Section 616 are brought to the Commission's attention. Moreover, the Commission believes that the statutory purpose of Section 616 is further served if the Commission is made aware of such violations through complaints by both programming vendors and MVPDs alike. The mere threat of potential complaints by allegedly aggrieved competing distributors is an added check on potential anticompetitive behavior by MVPDs with respect to carriage agreements. While the Commission believes that this approach is entirely consistent with the purpose and intent of the 1992 Cable Act, it also is well within the Commission's general authority in Sections 4 (i) and (j) of the Communications Act to amend the rules in this manner.⁶

7. The Commission emphasized, however, that all complaints filed pursuant to Section 616 must be based on documentary evidence or testimony in the form of affidavits, (signed by an authorized representative or agent of the complaining party), and may not merely reflect conjecture or allegations based only on information and belief.

8. The Commission stated that it intends to strictly enforce the prohibition in § 76.1302(q) of the Commission's rules (47 CFR 76.1302(a)) against the filing of frivolous complaints. Thus, the Commission believes that this rule affords adequate protection against any potential frivolous complaints filed as a result of its decision to expand the scope of parties with standing to file carriage agreement complaints pursuant to Section 616.

List of Subjects in 47 CFR Part 76

Cable television.

⁶Section 4(i) provides, in part, that the Commission "may 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." Section 4(j) provides, in part, that the "Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. 154(i), (j).

Federal Communications Commission.

LaVera F. Marshall,
Acting Secretary.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.1302 is amended by revising the introductory paragraph and paragraphs (a), (r) and (s) to read as follows:

§ 76.1302 Adjudicatory Proceedings

Any video programming vendor or multichannel video programming distributor aggrieved by conduct that it alleges to constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission.

(a) *Notice required.* Any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in § 76.1301. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(r) *Statute of limitations.* Any complaint filed pursuant to this paragraph must be filed within one year of the date on which one of the following events occurs:

(1) The multichannel video programming distributor enters into a contract with a video programming vendor that a party alleges to violate one or more of the rules contained in this section; or

(2) The multichannel video programming distributor offers to carry the video programming vendor's programming pursuant to terms that a party alleges to violate one or more of the rules contained in this section; or

(3) A party has notified a multichannel video programming

¹House Committee on Energy and Commerce, H.R. Rep. No. 102-628, 102d Cong., 2d Sess. (1992) ("House Report"); Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 102-92, 102d Cong., 1st Sess. (1991) ("Senate Report"); House Committee on Energy and Commerce, H.R. Rep. No. 102-862, 102d Cong., 2d Sess. (1992), reprinted in Cong. Rec. H8308 (Sept. 14, 1992) ("Conference Report").

²Senate Report at 25.

³Senate Report at 24; House Report at 41-45.

⁴Senate Report at 24; House Report at 42.

⁵See, e.g., 1992 Cable Act section 2(a)(2).

distributor that it intends to file a complaint with the Commission based on violations of one or more of the rules contained in this section.

(s) Remedies for violations.

(1) Remedies authorized. Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff or administrative law judge decision, the order for carriage of a video programming vendor's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be required to carry the video programming vendor's programming for an additional period of time equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) Additional sanctions. The remedies provided in paragraph (s)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

[FR Doc. 94-20915 Filed 8-24-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

Charter Service; Address Change

AGENCY: Federal Transit Administration, DOT.

ACTION: Technical amendment.

SUMMARY: This technical amendment revises an address related to the agency's charter bus requirements. The amendment is required because the organization has moved.

EFFECTIVE DATE: August 25, 1994.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Attorney Advisor, Office of the Chief Counsel, 202-366-1936.

SUPPLEMENTARY INFORMATION: 49 CFR part 604 of the Federal Transit Administration's (FTA) regulations govern charter service that recipients of FTA funding may provide using FTA funded equipment or facilities. The regulation prohibits an FTA recipient from providing charter service if there is a private charter operator willing and able to provide the charter service proposed by the recipient.

In determining whether there are any willing and able operators to provide this charter service, an FTA recipient must follow the procedures set forth at 49 CFR 604.11. These include public participation procedures, which require a recipient to send a notice to all private charter operators in the proposed geographic area, and to any private operator that requires notice, to determine if there is any private operator willing and able to provide the charter service proposed in the notice. Further, recipients must send a copy of this notice to both the American Bus Association and the United Bus Owners of America.

In this connection, the American Bus Association has changed its location. This notice merely updates its address.

For the reasons set forth above, Title 49, Chapter VI of the Code of Federal Regulations is amended as set forth below:

PART 604—CHARTER SERVICE

1. The authority citation for part 604 reads as follows:

Authority: 49 U.S.C. 5323(d); 23 U.S.C. 103(e)(4); 142(a); and 142(c); and 49 CFR 1.51.

2. Section 604.11 is amended by revising paragraph (b)(3) to read as follows:

§ 604.11 Procedures for determining if there are any willing and able private charter operators.

* * * * *

(b) * * *

(3) Sending a copy of the notice to the United Bus Owners of America, 1300 L Street, NW., suite 1050, Washington, DC 20005, and the American Bus Association, 1100 New York Avenue, NW, Suite 1050, Washington, DC 20005-3934.

* * * * *

Issued on: August 22, 1994.

Gordon J. Linton,
Administrator.

[FR Doc. 94-20980 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-67-U

49 CFR Part 663

Small Purchase Exception to Resident Inspector Requirement Under Pre-Award and Post-Delivery Audits of Rolling Stock Purchases

AGENCY: Federal Transit Administration, DOT.

ACTION: Regulatory guidance.

SUMMARY: This document provides guidance on the Federal Transit Administration's (FTA) regulation requiring audits of rolling stock purchased with FTA funds to assure compliance with the bid specification requirements. For procurements of 11 or more vehicles, the regulation requires that an inspector be present during construction of the vehicles at the manufacturing site to assure compliance with the bid specifications; an exception is thus provided for purchases of ten or fewer vehicles. FTA explains in this document that the exception also applies to the purchase of ten or fewer vehicles by a subrecipient under the umbrella of a Statewide procurement.

EFFECTIVE DATE: August 25, 1994.

FOR FURTHER INFORMATION CONTACT: George Izumi, Office of Grants Management, Federal Transit Administration, (202) 366-6475; or Daniel Duff, Office of Chief Counsel, Federal Transit Administration, (202) 366-4011.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 12(j) of the Federal Transit Act, as amended, FTA issued a regulation requiring a pre-award and post-delivery audit for an FTA grant involving the purchase of buses and other rolling stock. Under the regulation, a recipient of Federal financial assistance under sections 3, 9, 16, or 18 of the Act must certify that its rolling stock procurements comply with the bid specifications.

Section 12(j) provides that "manufacturer certification shall not be sufficient, and independent inspections and auditing shall be required." Accordingly, as part of the post-delivery certification process, 49 CFR 663.37(a) requires the recipient to have a "resident inspector" at the manufacturing site during the period of manufacture to assure such compliance, and provides that the inspector cannot be an agent or employee of the manufacturer.

Section 663.37(c) provides, however, that the "resident inspector" requirement under the regulation does not apply to the purchase of ten or fewer vehicles, in which case the recipient

itself must assure compliance with the specifications.

Issue

FTA's section 18 (nonurbanized area formula) and section 16 (elderly and persons with disabilities formula) programs are administered by the States. States also may receive funds under the section 3 (capital) program. The States receive grant funds from FTA, and in turn make the funds available to subrecipients that provide transportation services at the local level.

Some States make arrangements with vehicle manufacturers on behalf of a number of local subrecipients. These smaller operators prefer the efficiency and convenience of this process, through which they can purchase vehicles in a more timely manner and at a more reasonable cost than if each acted independently. However, the question has arisen whether, when a subrecipient purchases 10 or fewer vehicles under such a Statewide procurement, it must employ a resident inspector at the manufacturing site. Affected States and subrecipients have expressed concern that the application of the resident inspector requirement in this situation would impose a considerable cost burden on them. They contend that the exception in section 663.37(c) covers such small purchases under a Statewide procurement.

Clarification

As the preamble to the final rule (56 FR 48384, September 24, 1991) indicates, the purpose of the exception at 49 CFR 663.37(c) is to provide a recipient of FTA funds procuring a small number of vehicles relief from the cost burden associated with the requirement that an inspector be present at the manufacturing site; indeed, a section of the preamble addresses the rule's economic impact on small entities, and concludes that it will not have a significant impact on a substantial number of such entities because of policies adopted in the final rule, including the exception to the in-plant inspection requirement provided for small purchases. This rationale applies equally to a purchase of ten or fewer vehicles by a subrecipient of a State, even where the purchase or purchase order is made under the umbrella of a Statewide procurement. Moreover, the unique role of the States in administering the FTA's nonurbanized and elderly and persons with disabilities programs should not prevent a subrecipient under those programs from being afforded the same relief from a regulatory cost burden currently available to larger recipients

under the formula and capital programs. Accordingly, we intend this guidance to make clear that the existing exception from the resident inspector requirement for purchases of ten or fewer vehicles at 49 CFR 663.37(c) applies to separate purchases of ten or fewer vehicles by a subrecipient under a Statewide procurement using section 3, 16, or 18 funds.

We emphasize that the exception does not relieve grantees from the audit requirement altogether. Instead, recipients or subrecipients must verify, independent of the manufacturer, that the vehicles meet the bid specification requirements by road testing and visually inspecting the vehicles to make certain that they comply with the bid specifications.

Issued on: August 22, 1994.

Gordon J. Linton,

Administrator.

[FR Doc. 94-20979 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-57-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 642

[Docket No. 940553-4223; I.D. 050394A]

RIN 0648-AE98

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 7 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Amendment 7 divides the eastern zone commercial quota for the Gulf migratory group of king mackerel into equal quotas for the Florida east and west coast fisheries, further divides the quota for the west coast sub-zone into equal quotas for hook-and-line and run-around gillnet harvesters, and allows persons to fish under the gillnet quota in the west coast sub-zone only aboard vessels that have endorsements on their Federal commercial mackerel permits to fish with gillnets in that sub-zone. The intended effect of this rule is to allocate equitably the eastern zone commercial quota among users and avoid the negative social and economic

emergencies related to a recent, disproportionately large, west coast harvest in the commercial fishery for Gulf group king mackerel off Florida. This rule also informs the public of the approval by the Office of Management and Budget (OMB) of a collection-of-information requirement contained in this rule and publishes the OMB control number for that collection.

EFFECTIVE DATE: September 23, 1994, except that the amendment to § 204.1(b) is effective August 24, 1994; § 642.4(m) is effective August 24, 1994, except for § 642.4(m)(4), which is effective August 24, 1994, through October 31, 1994; and §§ 642.7(t), (u), and (v) and 642.28(b)(2) are effective November 1, 1994.

ADDRESSES: Requests for copies of the final regulatory flexibility analysis (FRFA) may be sent to: Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-570-5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP. The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented through regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The background and rationale for the measures in Amendment 7 were included in the proposed rule (59 FR 28330, June 1, 1994) and are not repeated here.

Comments and Responses

Four letters were received during the comment period in response to the proposed rule. The Gulf of Mexico Fishery Management Council (Gulf Council) submitted a comment regarding the proposed regulations. Two letters from a commercial fishermen's organization expressed opposition to the 50/50 allocation of the eastern zone commercial quota of Gulf group king mackerel between Florida's east and west coast fisheries. The fourth comment received from the Chief Counsel for Advocacy, Small Business Administration (SBA) indicated that the initial regulatory flexibility analysis (IRFA) prepared for Amendment 7 does not comply with the Regulatory Flexibility Act (RFA) because it failed to contain an examination of other alternatives as required by the RFA.

Specific comments and NMFS responses are listed below.

Comment: The Gulf Council expressed concern that the regulatory language contained in the proposed rule would not effectively prevent gillnet vessels operating in the west coast sub-zone from additionally harvesting Gulf group king mackerel under the hook-and-line quota.

Response: NMFS concurs with this concern and has ensured that the final rule language clearly prohibits gillnet vessels from fishing for Gulf group king mackerel in the west coast sub-zone with gear other than a gillnet. The final rule is intended to prevent gillnet vessels from landing king mackerel under both quotas and to be consistent with the provisions of Amendment 7.

Under the final rule, king mackerel may be possessed or landed from a vessel that uses, or has aboard, a run-around gillnet, only when it possesses a Federal commercial mackerel permit with a gillnet endorsement. King mackerel landed from such a vessel will be counted only against the gillnet quota, while those landed by vessels not having a gillnet endorsement will be counted against the hook-and-line quota. Monitoring of mackerel landings by gear type is feasible and will be utilized during the 1994-95 winter season for this fishery. Accuracy in monitoring catches by gear type of this fishery is expected to be similar to that achieved through other quota monitoring programs.

As in those programs, success in limiting catches to quotas will be highly dependent on the good faith and cooperation of the fishing industry, and the ability of NMFS to close the fishery in a timely manner.

Comment: Two letters received from commercial fishermen objected to the proposed 50/50 split of the eastern zone commercial quota for Gulf group king mackerel between Florida's east and west coast fisheries. They preferred an alternative allocation, considered and rejected by the Council, that would establish a 56/44 west/east coast division of the quota, as depicted in Table 1 of Amendment 7. This allocation occurred during the period from the 1985-86 season through the 1992-93 season under quota management initiated with FMP Amendment 1. These commenters contended that actions taken by the Gulf Council in its decision to support the 50/50 west/east split of the quota were inconsistent with the Magnuson Act. Specifically, they argued that the Councils' decision was not based on the best available scientific information and that reasonable opportunity was not

provided for interested parties to review and comment on the new data used by the Council as a basis for its final decision.

Response: NMFS has reviewed the Councils' proposed equal allocation between Florida's east and west coast fisheries and has determined that this allocation is consistent with the national standards and other provisions of the Magnuson Act and other applicable law. NMFS believes that the Councils' decision was based on many factors as discussed in Amendment 7, and that the Councils were not obliged to be guided solely by historical landing percentages for each sub-zone.

Equal (50/50) apportionment of the eastern zone commercial quota for Gulf group king mackerel between Florida's east and west coasts has historical precedence and acceptance. Continuation of the State/Federal management regime for Florida's commercial fishery for Gulf group king mackerel appears to be supported by most affected fishermen from both coasts. Amendment 7's delineation of east and west coast sub-zones and establishment of equal quotas for each area is similar to management provided by Florida regulations during the 1990-91 and 1991-92 seasons, vacated during the 1992-93 fishing year, and resumed for the 1993-94 fishing year under a Federal emergency interim rule (58 FR 51789, October 5, 1993).

Withdrawal of enforcement of Florida regulations during the 1992-93 season in response to a Federal court ruling resulted in disproportionate sharing of the eastern zone commercial quota of Gulf group king mackerel among east and west coast fishermen. To remedy socioeconomic hardships resultant from record low east coast catches, an emergency supplemental allocation of 259,000 lb (117,480 kg) was granted to Florida east coast fishermen (58 FR 10990, February 23, 1993). This final rule implementing Amendment 7 is intended to address permanently the fishery conditions that required previous emergency regulatory action.

NMFS disagrees with the contention that the Councils' decision was not based on the best available information. The Councils considered several apportionment ratios for the east coast-west coast allocation, including the preferred alternative, based on the best scientific information available. The Councils concluded, and NMFS concurs, that the 50/50 apportionment is supported by the best available information. Also, the NMFS Science and Research Director, Southeast Fisheries Science Center, has certified

that the scientific information contained in Amendment 7 is the best available.

NMFS also does not agree that insufficient time was allowed for public review and comment on alleged new data presented to and considered by the Gulf Council at its March 1994 meeting when it voted to support the 50/50 west/east coast allocation. Representatives of the South Atlantic Council presented landings data to the Gulf Council, although in a different form, that had already been the subject of public review and comment and were part of the public record for a substantial period of time prior to the meeting. The same data presented to and considered by the Gulf Council at its meeting were available previously to the public as monthly landings from the Florida Department of Environmental Protection, NMFS, and the Councils. Reliable landings estimates of the most recent fishing year (1992-93 season) were available to the public by mid-1993, 7 to 8 months before the Gulf Council's March 1994 meeting.

Comment: The SBA commented that the IRFA does not comply with the RFA because it fails to contain an examination of other management alternatives as required by the RFA. Specifically, SBA indicated that the IRFA did not include an examination of alternatives that might further protect and enhance the coastal migratory pelagic fisheries of the Gulf of Mexico without unduly burdening small businesses.

Response: NMFS concurs. Consequently, NMFS has included such analyses in the FRFA.

Changes From the Proposed Rule

In § 642.2, the address in the definition of "Regional Director" is corrected.

In § 642.4(m)(4), the proposed rule specified that initial requests for gillnet endorsements on vessel permits must be postmarked or hand delivered "during the 45-day period commencing on the first day of effectiveness of the final rule implementing this measure." In this final rule, the quoted language is replaced with, "not later than October 31, 1994." Advance notification has been given to the limited number of fishermen affected by this new requirement for gillnet endorsements. Accordingly, NMFS believes that the cutoff date of October 31 provides fishermen with adequate time to submit requests for endorsements.

As discussed above, a measure and related prohibition are added at §§ 642.28(b)(2)(iii) and 642.7(u), respectively, to allow vessels with gillnet endorsements to retain king

mackerel in or from the EEZ in the Florida west coast sub-zone only when harvested with run-around gillnet gear.

Additional Changes Proposed

Under the FMP's framework procedure for adjusting management measures, the Councils have proposed changes in the total allowable catch for the Atlantic groups of king and Spanish mackerel and changes in the commercial trip limits for Gulf group king mackerel in the eastern zone. Preliminary notice of these changes was published on August 9, 1994 (59 FR 40509).

Effective Dates

The gillnet endorsement procedural requirements (§ 642.4(m)) and incorporation of the OMB approval number for the collection-of-information requirement associated with applications for gillnet endorsements in the table of OMB Control Numbers for NOAA Information Collection Requirements (§ 204.1(b)) are made effective immediately in that they are not substantive rules subject to a delay in effective date under section 553(d) of the Administrative Procedure Act.

The provisions for the initial applications for gillnet endorsements, contained in § 642.4(m)(4), are temporary. Therefore, that paragraph is effective only through October 31, 1994.

The provisions of new § 642.28(b)(2), which depend on the presence or absence of a gillnet endorsement on a vessel permit, and the related prohibitions at § 642.7(t), (u), and (v), are not effective until November 1, 1994. This will allow sufficient time for fishermen to submit requests for gillnet endorsements and for NMFS to process and issue them.

Classification

The Regional Director determined that Amendment 7 is necessary for the conservation and management of the fishery for coastal migratory pelagic resources and that it is consistent with the Magnuson Act and other applicable law.

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

The Councils prepared an IRFA as part of Amendment 7, which concluded that this rule may have a significant economic impact on a substantial number of small entities. In response to a comment from the SBA, NMFS prepared an FRFA that provides additional analysis of the effects of management alternatives on small businesses; the FRFA supports the same conclusions regarding significant

economic impacts as were reached by the IRFA. A copy of the FRFA is available from the Councils (or NMFS) (see ADDRESSES).

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act—specifically, applications for gillnet endorsements on vessel permits. This collection of information has been approved by OMB under OMB control number 0648-0205. The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to Edward E. Burgess, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 18, 1994.

Gary C. Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 204 and 642 are amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

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

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by adding in numerical order, the entry “§ 642.4(m)”, in the first column and the control number “-0205” in the second column.

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

3. The authority citation for part 642 continues to read as follows:

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

4. In § 642.2, the definition of Regional Director is revised to read as follows:

§ 642.2 Definitions.

* * * * *

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702, telephone 813-570-5301; or a designee.

* * * * *

5. In § 642.4, new paragraph (m) is added to read as follows:

§ 642.4 Permits and fees.

* * * * *

(m) *Gillnet endorsement.* (1) For a vessel to use a run-around gillnet for king mackerel in the Florida west coast sub-zone (see § 642.25(a)(1)(i)(B)), a vessel for which a king and Spanish mackerel permit has been issued pursuant to this section must have a gillnet endorsement on such permit and such permit and endorsement must be on board the vessel.

(2) An owner of a permitted vessel may add or delete a gillnet endorsement on a permit by returning to the Regional Director the vessel's existing permit with a written request for addition or deletion of the gillnet endorsement. Such request must be postmarked or hand delivered during June, each year.

(3) A gillnet endorsement may not be added or deleted from July 1 through May 31 each year, any renewal of the permit during that period notwithstanding. From July 1 through May 31, a permitted vessel that is sold, if permitted by the new owner for king and Spanish mackerel, will receive a permit with or without the endorsement as was the case for the vessel under the previous owner. From July 1 through May 31, the initial king and Spanish mackerel permit issued for a vessel new to the fishery will be issued without a gillnet endorsement.

(4) The provisions of paragraphs (m)(2) and (m)(3) of this section notwithstanding, the initial requests for gillnet endorsements must be postmarked or hand delivered not later than October 31, 1994.

6. In § 642.7, paragraph (p) is revised, paragraphs (s) and (u) are removed, paragraph (t) is redesignated as paragraph (x), and new paragraphs (s) through (w) are added to read as follows:

§ 642.7 Prohibitions.

* * * * *

(p) After a closure specified in § 642.26(a), sell, purchase, trade, or barter, or attempt to sell, purchase,

trade, or barter a king or Spanish mackerel of the closed species/migratory group/zone/sub-zone/gear type, as specified in §§ 642.22(c), 642.24(a)(4), and 642.26(b)(3).

(s) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.28(a) or § 642.28(b)(1)(ii), or transfer at sea such king mackerel, as specified in § 642.28(e).

(t) In the Florida west coast sub-zone, possess or land Gulf group king mackerel in or from the EEZ aboard a vessel that uses or has aboard a run-around gillnet on a trip when such vessel does not have on board a commercial permit for king and Spanish mackerel with a gillnet endorsement, as specified in § 642.28(b)(2)(i).

(u) In the Florida west coast sub-zone, aboard a vessel for which a commercial permit for king and Spanish mackerel with a gillnet endorsement has been issued, retain Gulf group king mackerel in or from the EEZ harvested with gear other than run-around gillnet, as specified in § 642.28(b)(2)(iii).

(v) In the Florida west coast sub-zone, transfer at sea Gulf group king mackerel taken by a vessel for which a commercial permit for king and Spanish mackerel with a gillnet endorsement has been issued, as specified in § 642.28(e).

(w) Violate any prohibitions or restrictions for the prevention of gear conflicts that may be specified in accordance with § 642.29.

7. In § 642.25, paragraph (c) is removed and paragraphs (a)(1) introductory text and (a)(1)(i) are revised to read as follows:

§ 642.25 Commercial allocations and quotas.

* * * * *

(a) * * *

(1) The commercial allocation for the Gulf migratory group of king mackerel is 2.50 million pounds (1.13 million kg) per fishing year. The Gulf migratory group is divided into eastern and western zones separated by a line extending directly south from the Alabama/Florida boundary (87°31'06" W. long.) to the outer limit of the EEZ. Quotas for the eastern and western zones are as follows:

(i) 1.73 million pounds (0.78 million kg) for the eastern zone, which is further divided into quotas as follows:

(A) 865,000 pounds (392,357 kg) for the Florida east coast sub-zone, which is that part of the eastern zone north of a line extending directly east from the

Dade/Monroe County, Florida boundary (25°20.4' N. lat.); and

(B) 865,000 pounds (392,357 kg) for the Florida west coast sub-zone, which is that part of the eastern zone south and west of the Dade/Monroe County, Florida boundary (25°20.4' N. lat.), which is further divided into quotas by gear types as follows:

(1) 432,500 pounds (196,179 kg) for vessels fishing with hook-and-line gear; and

(2) 432,500 pounds (196,179 kg) for vessels fishing with run-around gillnets.

* * * * *

8. Section 642.26 is revised to read as follows:

§ 642.26 Closures.

(a) *Notice of closure.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will close the commercial fishery in the EEZ for king mackerel from a particular migratory group, zone, sub-zone, or gear type, and for Spanish mackerel from the Gulf migratory group, when the allocation or quota under § 642.25(a) or § 642.25(b)(1) for that migratory group, zone, sub-zone, or gear type has been reached or is projected to be reached. The commercial fishery for Atlantic group Spanish mackerel is managed under the commercial trip limits specified in § 642.27 in lieu of the closure provisions of this section.

(b) *Fishing after a closure.* On and after the effective date of a closure invoked under paragraph (a) of this section, for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a):

(1) A person aboard a vessel in the commercial fishery may not fish for king or Spanish mackerel in the EEZ or retain fish in or from the EEZ under a bag limit specified in § 642.24(a)(1) for the closed species, migratory group, zone, sub-zone, or gear type, except as provided for under paragraph (b)(2) of this section.

(2) A person aboard a vessel for which the permit indicates both commercial king and Spanish mackerel and charter vessel for coastal migratory pelagic fish may continue to retain fish under a bag and possession limit specified in § 642.24(a)(1) and (a)(2) provided the vessel is operating as a charter vessel.

(3) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of king or Spanish mackerel of the closed species, migratory group, zone, sub-zone, or gear type is prohibited. This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and sold, traded, or bartered prior to the closure and held in cold storage by dealers or processors.

§ 642.31 [Removed]

§§ 642.28 through 642.30 [Redesignated as §§ 642.29 through 642.31]

9. Section 642.31 is removed; §§ 642.28 through 642.30 are redesignated as §§ 642.29 through 642.31, respectively; and new § 642.28 is added to read as follows:

§ 642.28 Additional limitations for Gulf group king mackerel in the eastern zone.

(a) *Florida east coast sub-zone.* In the Florida east coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4:

(1) From November 1, each fishing year, until 50 percent of the sub-zone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day; and

(2) From the date that 50 percent of the sub-zone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast sub-zone has been effected under § 642.26—in amounts not exceeding 25 king mackerel per day.

(b) *Florida west coast sub-zone.* (1) In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4:

(i) From July 1, 1994, until 75 percent of the sub-zone's fishing year quota of king mackerel has been harvested—in unlimited amounts of king mackerel; and

(ii) From the date that 75 percent of the sub-zone's fishing year quota of king mackerel has been harvested until a closure of the Florida west coast sub-zone has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

(2) In the Florida west coast sub-zone:

(i) King mackerel in or from the EEZ may be possessed aboard or landed from a vessel that uses or has aboard a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement;

(ii) King mackerel from the west coast sub-zone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 642.25(a)(1)(i)(B)(2); and

(iii) Aboard a vessel for which such commercial permit with endorsement has been issued, king mackerel in or from the EEZ harvested with gear other

than run-around gillnet may not be retained.

(c) *Notice of trip limit changes.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a) and (b)(1)(ii) of this section when the requisite harvest levels have been reached or are projected to be reached.

(d) *Combination of trip limits.* A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a) or (b)(1)(ii) of this section or a gear limitation specified in paragraph (b)(2) of this section applies may not transfer at sea from one vessel to another a king mackerel:

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such king mackerel was taken.

[FR Doc. 94-20730 Filed 8-24-94; 8:45 am]

BILLING CODE 3510-32-W

50 CFR Part 675

[Docket No. 931100-4043; I.D. 081994B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Recision of closures

SUMMARY: NMFS is rescinding the closures to directed fishing for pollock by vessels catching pollock for processing by the inshore component and vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the allowances of the total allowable catch (TAC) of pollock for the inshore and offshore components in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 25, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

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

The directed fishery for pollock in the AI by vessels catching pollock for

processing by the inshore component closed on March 18, 1994 (59 FR 13662, March 23, 1994).

The directed fishery for pollock in the AI by vessels catching pollock for processing by the offshore component closed on March 1, 1994 (59 FR 10082, March 3, 1994).

The Regional Director, Alaska Region, NMFS, has determined that the allowances of the TAC of pollock allocated to the inshore and offshore components in the AI have not been reached.

Therefore, NMFS is rescinding those closures and is reopening directed fishing for pollock in the AI by vessels catching pollock for processing by the inshore component or the offshore component effective at 12 noon, A.l.t., August 25, 1994, until 12 midnight, A.l.t., December 31, 1994.

Classification

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

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

Dated: August 19, 1994.

David S. Crestin,

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

[FR Doc. 94-20973 Filed 8-24-94; 8:45 am]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 59, No. 164

Thursday, August 25, 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 39

[Docket No. 94-CE-08-AD]

Airworthiness Directives; Brackett Aircraft Company, Inc.; Air Filter Assemblies Installed on Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to airplanes with certain Brackett Aircraft Company, Inc. (Brackett) air filter assemblies incorporating a neoprene gasket design installed between the carburetor heat box and the air filter frame. The proposed action would require repetitively inspecting (visually) the air filter frame for a loose or deteriorating gasket, and replacing any gasket found loose or deteriorated. An accident report where a Cessna Model 172 airplane experienced engine loss because a six-inch piece of neoprene gasket material was lodged in the carburetor prompted the proposed action. The actions specified by the proposed AD are intended to prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power.

DATES: Comments must be received on or before October 31, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-CE-08-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the

Brackett Aircraft Company, Inc., 7045 Flightline Drive, Kingman, Arizona 86401. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806; telephone (310) 988-5265; facsimile (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94-CE-08-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-CE-08-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Supplemental Type Certificate (STC) SA71GL specifies the incorporation of numerous Brackett air filter assemblies. The following Brackett air filter assemblies utilize a neoprene gasket between the carburetor heat box and the air filter frame:

BA-2010
BA-4106
BA-4210
BA-5110
BA-5110A
BA-6110
BA-8910

The FAA has received a report of an accident report where a Cessna Model 172 airplane experienced engine loss because a six-inch piece of gasket material was lodged in the carburetor venturi throat. The material matched the remaining neoprene gasket on the Brackett air filter, Assembly No. BA-5110, installed in accordance with STC SA71GL.

The Brackett Aircraft Company, Inc., has issued Brackett Air Filter Document I-194, dated March 16, 1994. This document specifies inspection and replacement procedures for these Brackett air filters utilizing neoprene gaskets installed in accordance with STC SA71GL.

After examining the circumstances and reviewing all available information related to the incident described above including the referenced service information, the FAA has determined that AD action should be taken to prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power.

Since an unsafe condition has been identified that is likely to exist or develop in other airplanes incorporating the Brackett air filter neoprene gasket design installed in accordance with STC SA71GL, the proposed AD would require repetitively inspecting (visually) the air filter frame for a loose or deteriorated gasket, and replacing any gasket found loose or deteriorated. The proposed actions would be accomplished in accordance with Brackett Air Filter Document I-194, dated March 16, 1994.

The FAA estimates that 50,000 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed

inspection, and that the average labor rate is approximately \$55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$2,750,000 or \$55 per operator. This figure does not reflect costs for repetitive inspections or possible replacements; only the initial inspection. The FAA has no way of determining how many gaskets may need replacement or how many repetitive inspections each operator may incur.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Brackett Aircraft Company, Inc.: Docket No. 94-CE-08-AD.

Applicability: The following air filter assemblies that utilize a neoprene gasket incorporated in accordance with Supplemental Type Certificate (STC) SA71GL and installed on, but not limited to, the following corresponding airplanes, certificated in any category:

Air filter assembly	Airplanes installed on
BA-2010 ..	Beech Model 77 Airplanes
BA-4106 ..	Cessna Models 120, 140, 140A, 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150M, 152, and A152; Champion Models 7ACA, 7ECA, and 7FC; Christain Industries Model Husky A-1; Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, and T-8F; and Piper Models PA-22, PA-22-135, PA-22-150, PA-22-160, PA-22-180, PA-20-115, PA-20-135, PA-38, J-3, J3C-65, J3C-65's, PA-11, PA-11's, J4A, J4AS, J4E, J5A, J5A-80, PA-12, PA-12's, PA-16, PA-17, PA-18, PA-18A, PA-18's, PA-18-"125", PA-18AS-"125", PA-18's-"125", PA-18-"135", PA-18A-"135", PA-18AS-"135", and 8S-135 Airplanes.
BA-4210 ..	Grumman American Aviation Corporation Models AA-1, AA-1A, AA-1B, AA-1C, and AA-5 Airplanes.
BA-5110 ..	Cessna 170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, and 172M; and Mooney Mite Aircraft Corporation Model M-18C Airplanes.
BA-5110A	Cessna Models 172N and 172P Airplanes.
BA-6110 ..	Mooney Models M20, M20A, M20B, M20C, M20D, and M20G; and Maule Models M4, M4C, M4S, M4T, M-4-220, M-4-220C, M-4-220S, M-4-220T, M-4-180C, M-4-180S, M-4-180T, M-5-220C, M-5-235C, M-5-180C, M-5-210TC, M-6-180, M-6-235, and M-7-235 Airplanes.
BA-8910 ..	Aero Commander Models 100 and 100A Airplanes.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 100 hours TIS.

To prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or

complete loss of engine power, accomplish the following:

(a) Visually inspect the inside and outside of the air filter frame for gasket looseness, movement, or deterioration in accordance with Brackett Air Filter Document I-194, dated March 16, 1994. If any gasket looseness, movement, or deterioration is found, prior to further flight, accomplish the following:

(1) Remove the air filter frame by removing the screws, nuts, and washers on the air filter frame (3 to 4 each). Note that the screws securing the grill to the frame need not be removed.

(2) Remove and replace the neoprene gasket in accordance with Brackett Air Filter Document I-194. Inspect the carburetor in accordance with the applicable maintenance manual for gasket material ingestion. Remove any material ingested.

(3) Reinstall the filter frame to the carburetor heat box with the screws, nuts, and washers (3 to 4 each) that were removed earlier. Torque each nut to where the neoprene gasket is compressed to one-half its original thickness.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, 3229 E. Spring Street, Long Beach, California 90806. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Brackett Aircraft Company, Inc., 7045 Flightline Drive, Kingman, Arizona 86401; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 19, 1994.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-20905 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1960

[Docket No. F-01]

Request by the Federal Aviation Administration (FAA) for an Alternate Standard for Emergency Egress in Air Traffic Control Towers (ATCTs)

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

ACTION: Proposed rule; Request for Comments.

SUMMARY: The FAA has requested approval from OSHA for an alternate standard regulating emergency egress in Air Traffic Control Towers (ATCTs). In this notice, OSHA has published the proposed alternate standard for public review and comments.

DATES: The last date for interested persons to submit comments is September 26, 1994.

ADDRESSES: Comments are to be sent to the Docket Office, Docket No. F-01, U.S. Department of Labor, Room N2625, 200 Constitution Avenue, N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. John Plummer, OSHA, U.S. Department of Labor, Director, Office of Federal Agency Programs, Room N3112, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 219-8151.

SUPPLEMENTARY INFORMATION: Section 19 of the Occupational Safety and Health Act (the Act) contains provisions to assure safe and healthful working conditions for Federal employees. Under that section, it is the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6 of the Act. The Secretary of Labor (the Secretary), under section 19, is to report to the President certain evaluations and recommendations with respect to the programs of the various agencies, and the duties which section 24 of the Act imposes on the Secretary of Labor necessarily extend to the collection, compilation, and analysis of the occupational safety and health statistics from the Federal Government.

Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, issued February 26, 1980, prescribes additional responsibilities for

the heads of agencies, the Secretary, and the General Services Administrator. Among other duties, the Secretary is required to issue basic program element in accordance with which the heads of agencies shall operate their safety and health programs. These basic program elements are set forth in 29 CFR Part 1960. Although agency heads are required to comply with all standards issued under section 6 of the Act and to operate a program in accordance with the basic program elements, those elements contain numerous provisions which, by their terms, permit agency heads the flexibility necessary to implement their programs in a manner consistent with their respective missions, sizes, and organization. Thus, an agency head, after consultation with agency employees or their representatives and with appropriate safety and health committees may request the Secretary to consider approval of an alternate standard. Pursuant to 29 CFR 1960.17, when requesting an alternate standard the agency head must do the following:

(a) Any request by the head of the agency for an alternate standard shall be transmitted to the Secretary.

(b) Any such request for an alternate standard shall not be approved by the Secretary unless it provides equivalent or greater protection for affected employees. Any such request shall include:

(1) A statement of why the agency cannot comply with the OSHA standard or wants to adopt an alternate standard;

(2) A description of the alternate standard;

(3) An explanation of how the alternate standard provides equivalent or greater protection for the affected employees;

(4) A description of interim protective measures afforded employees until a decision is rendered by the Secretary of Labor; and

(5) A summary of written comments, if any, from interested employees, employee representative, and occupational safety and health committees.

This Notice is a request for comment on the proposed alternate standard submitted to OSHA by the FAA. This action is intended to assist the Secretary in assuring that ample opportunity has been given to allow affected employees, employee representatives and interested parties, such as occupational safety and health committees, to comment on the effectiveness of the proposed alternate standard and on its equivalence to appropriate OSHA standards. The Secretary also believes that review of this alternate standard by the scientific

community and those National Committees responsible for developing comparable standards is essential so that workers in ATCTs are free from the hazards posed by inappropriate means of egress.

Alternate Standard

The FAA provided materials in support of the proposed alternate standard to 29 CFR 1910.36 (b)(8). FAA's request was based on the following:

- A number of specifications established in the existing alternate standard for ATCTs require types of construction beyond those mandated in OSHA regulations or in life safety and building codes.

- A licensed fire protection engineer has provided several alternate protection measures for ATCTs which were not included in the existing alternate standard.

- The existing alternate standard does not address important operational ATCT requirements (e.g., 360 degrees field of vision at the cab level) or their relationship with protective structural or procedural features.

Additionally, FAA describes the alternate as follows:

The revision to the existing alternate standard provides types of ATCT construction and methods of operation which enhance the fire detection and notification, fire resistance, smoke control, and emergency response features for ATCTs. These features provide early warning of the presence of fire or smoke, flame and smoke spread control, and automatic notification of emergency response units such that a level of fire safety equivalent to two means of egress are afforded ATCT occupants.

FAA contends that the alternate standard provides equivalent or greater protection for the affected employees because of enhancements such as, but not limited to:

- An ATCT stairway smoke control system;
- Fire resistant rated materials for stairway enclosures and openings;
- Self-closing or automatic fire doors;
- ATCT fire alarm system wiring in accordance with NFPA 72 reliability standards;
- Automatic smoke detection;
- Automatic fire detection, alarm, and signaling systems with automatic fire department and ATCT notification and ATCT cab annunciator panels with battery backup;
- Prohibition of storage of high hazard materials or use of more than minimal amounts of high hazard materials for specific duties;

- Occupancy above the level of exit discharge only be able-bodied persons;
- Prescribed quality and type of interior finish materials;
- Specified levels of fire resistant rated opening protective to base buildings.

Commenters are requested to comment on FAA's finding of equivalency as well as on the appropriateness of the enhancements.

Comments are requested on the following:

- (1) Is an alternate standard necessary, or are technologies such that two means of egress are possible in ATCTs?
- (2) Should an alternate standard be designed and formatted like equivalent OSHA standards?
- (3) Does this alternate standard provide equivalent protection for affected employees as does the equivalent OSHA standard?
- (4) What interim measures should be in effect while approval for this alternate standard is being considered?
- (5) Should Chapter 12 be revised in accordance with the new Life Safety Codes (LSC)?
- (6) Are there requirements set forth in Chapter 12 which are inappropriate?
- (7) Should there be requirements proposed in Chapter 12 which go beyond the concept of allowing a single means of egress, e.g. width of steps, slopes of ladders, etc.?

Public Participation

Interested persons are invited to submit written data, views, and comments with respect to this alternate standard. These comments must be postmarked on or before (insert date 30 days after publication in the *Federal Register*), and submitted in quadruplicate to the Docket Office, Docket No. F-01, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Comments limited to 10 pages or less also may be transmitted by facsimile to (202) 219-5046, provided the original and three copies are sent to the Docket Office thereafter.

Written submissions must clearly identify the provisions of the alternate standard which are being addressed and the position taken with respect to each issue. The data, views, and comments that are submitted will be available for public inspection and copying at the above address.

Signed at Washington, DC this 12th day of August, 1994.

Joseph A. Dear,
Assistant Secretary of Labor.

Alternate Emergency Egress Standard for Airport Traffic Control Towers—Final Version

August 30, 1993.

Alternate Emergency Egress Standard for Air Traffic Control Towers (ATCT)

a. Scope and Application

1. General. Airport Traffic Control Towers (ATCTs) are unique structures used for the control of aircraft, usually over or near an airport facility. The distinctive mission of ATCTs requires ATCT designs that permit 360° visibility at the cab level and, in many cases, sufficient space for radar equipment and administrative activities related to ATCT operations.

2. This standard applies to all ATCTs.

3. Specific. This standard sets forth minimum fundamental requirements essential to providing a safe means of egress from fire and similar emergencies. Nothing in this standard shall be construed to prohibit a better type of building construction, more exits, or otherwise safer conditions than the minimum requirements specified herein.

4. Equivalent Protection. The use of alternative arrangements or construction, developed or approved by a licensed fire protection engineer, may be permitted by the authority having jurisdiction when it is shown that these features provide a level of safety to life equivalent to that required in this standard or, where this standard is silent on an issue, by other standards or codes.

b. Definitions

1. "Aisle" is a passageway between rows of desks, cabinets, equipment, etc, generally within a room or work area which leads to or connects with a corridor.

2. "Approved" refers to equipment listed or approved by a nationally recognized testing laboratory.

3. "ASTM" represents the American Society for Testing and Materials, who establishes flame spread characteristics for materials used in building construction and furnishing.

4. "ATCT" represents an airport traffic control tower and is an occupied structure containing equipment and supplies necessary for aircraft control and related activities.

5. "Authority Having Jurisdiction" is the Department of Labor, Occupational Safety and Health Administration. The Federal Aviation Administration (FAA) is responsible for implementing the requirements of this standard for FAA-owned or occupied ATCTs.

6. "Base Building" is a single or multiple level structure attached to an ATCT and which may house administrative, air traffic control, or facility management functions.

7. "Corridor" is an enclosed passageway which limits the means of egress to a single path of travel.

8. "Decorations" are curtains, hangings, draperies, mirrors, or other embellishments suspended from walls or ceilings.

9. "Draftstopping" is any building material installed to prevent the movement of air, smoke, gases, and flame to other areas of the building through large concealed passages such as attic spaces and floor assemblies with suspended ceilings or open-web trusses.

10. "Emergency action plan" is a plan for a workplace, or parts thereof, describing what procedures the employer and employees must take to ensure employee safety from fire or other emergencies.

11. "Emergency escape route" is the route that employees are directed to follow in the event they are required to evacuate the workplace or seek a designated refuge area.

12. "Exit" is that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment as required in this standard to provide a protected way of travel to the exit discharge.

13. "Exit access" is that portions of a means of egress which leads to an exit.

14. "Exit discharge" is that portion of a means of egress between the termination of an exit and a public way.

15. "Fire Partition" is a vertical assembly of material having protected openings and designed to restrict the spread of fire.

16. "Fire Resistive or Resistant" refers to the ability of materials or assemblies of construction to withstand exposure under standard fire test conditions for a prescribed temperature and period of time without structural failure.

17. "Fire Separation Assembly" is a continuous barrier, either horizontally or vertically oriented, with a fire resistance rating and protected openings, designed to restrict the spread of fire.

18. "Fire Separation Distance" is the distance in feet measured from the building face to the closest interior lot line, to the center line of a street or public way or to an imaginary line between two buildings on the same property.

19. "Firestopping" is approved noncombustible building material installed to prevent the movement of flame and gases to other areas of a building through small concealed passages in building components such as floors, walls, and stairs.

20. "Furnishings" are chairs, tables, plants, or other movable objects.

21. "Hazardous Areas" are areas of an ATCT possessing a degree of hazard greater than that normal to the facility, such as areas used for the storage of combustibles or flammable materials, or areas containing furnaces or boilers.

22. "High hazard contents" are contents classified as those which are liable to burn with extreme rapidity or from which poisonous fumes or explosions are to be feared in the event of fire (such as flammable or combustible liquids).

23. "Interior Finish" is the exposed interior surfaces of a building including, but not limited, to, walls and ceilings.

24. "Link" is a connecting passageway between an ATCT and a base building. Links are usually one story in height with direct access to the exterior.

25. "Listed" refers to equipment or material included in a list published by an organization acceptable to the "authority

having jurisdiction" and concerned with product evaluation, that maintains periodic inspection of listed equipment or material and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

26. "Means of Egress" is a continuous and unobstructed way of exit travel from any point in a building or structure to a public way and consists of three separate and distinct parts: the way of exit access, the exit, and the way of exit discharge. A means of egress comprises the vertical and horizontal ways of travel and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, horizontal exit, courts, and yards.

27. "Noncombustible Construction" is construction in which the materials have been tested in accordance with ASTM E136 and conform to the criteria contained in Section 7 of that test method (e.g., gypsum wallboard).

28. "NRTL" is a Nationally Recognized Testing Laboratory.

29. "Opening Protectives" are the parts of an opening in a fire barrier that ensure the integrity of the protected barrier. Opening protective fire protection ratings for different fire barrier ratings are established in NFPA 101—Life Safety Code.

30. "Protected Construction" is construction in which the structural members are protected from fire so that they can withstand exposure to fire for specified periods of time.

31. "Public way" is any street, alley, or other parcel of land open to the outside air leading to a public street, which has been deeded, dedicated, or otherwise permanently appropriated to the public for public use and which has a clear width and height of not less than 10 feet.

32. "Shaft" is an enclosed space extending through one or more stories of a building, connecting vertical openings in successive floors, or floors and the roof.

33. "Smokeproof enclosure" is an enclosed interior stairway designed to limit the infiltration of heat, smoke, and fire gases from a fire in any part of the building by either natural or mechanical means.

34. "Story" is that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

35. "Structural elements" are the beams, columns, and other or similar supporting members of an ATCT.

36. "Type of Construction Classifications" are classifications which designate the fire resistance rating requirements of protection provided for certain types of construction, as follows:

First number represents: Exterior bearing walls.

Second number represents: Structural frame or columns and girders, supporting loads for more than one floor.

Third number represents: Floor construction.

37. "Type I Construction" is that type in which the structural members, including walls, columns, beams, floors, and roofs, are of approved noncombustible or limited-combustible materials and have fire resistance ratings not less than 443 or 332 (see NFPA 220, Table 3).

38. "Type II Construction" is that type not qualifying as Type I construction in which the structural members, including walls, columns, beams, floors, and roofs, are of approved noncombustible or limited-combustible materials and have fire resistance ratings not less than 222, 111, or 000 (see NFPA 220, Table 3).

39. "Type III Construction" is that type in which exterior walls and structural members that are portions of exterior walls are of approved noncombustible or limited-combustible materials, and interior structural members, including walls, columns, beams, floors, and roofs, are wholly or partly of wood of smaller dimensions than required for Type IV construction or of approved noncombustible, limited-combustible, or other approved combustible materials. In addition, structural members have fire resistance ratings not less than 221 or 200 (see NFPA 220, Table 3).

40. "Type IV Construction" is that type in which exterior and interior walls and structural members that are portions of such walls are of approved noncombustible or limited-combustible materials. Other interior structural members, including columns, beams, arches, floors, and roofs, are of solid or laminated wood without concealed spaces and comply with the provisions of NFPA 220 section 3-4.2 through 3-4.6. In addition, structural members have fire resistance ratings not less than 2HH (see NFPA 220, Table 3 and section 3-4 for additional information on Type IV construction).

Interior columns, arches, beams, girders, and trusses of approved materials other than wood are permitted by NFPA 220 section 3-4.1 provided they are protected to provide a fire resistance rating of not less than 1 hour. Certain concealed spaces are permitted by NFPA 220 section 3-4.4.

41. "Vertical opening" is an opening through a floor or roof.

c. General Provisions

1. Existing ATCTs occupied at the time of adoption of this standard may remain in use provided:

(a) The occupancy classification remains the same.

(b) No serious life safety hazard exists that would constitute an imminent threat.

2. Federally-owned or operated ATCTs shall be provided with protection of occupants and means of egress which meets the requirements of this chapter or shall have a plan established for bringing the structure into compliance with this chapter.

3. Compliance with this standard shall not be construed as eliminating or reducing the necessity for other provisions for safety of persons using a structure under normal occupancy conditions.

d. Protection of Employees During Construction and Repair Operations

1. No new ATCT under construction shall be occupied in whole or in part until all means of egress and fire protection features for that area of the structures are completed and ready for use.

2. No existing ATCT shall be occupied during repairs or alterations unless all existing means of egress and any existing fire protection features are continuously maintained, or in lieu thereof, other measures are taken which provide equivalent safety (e.g., contractor-provided fire watches).

3. No flammable or explosive substances or equipment used for repairs or alterations shall be introduced or stored in an ATCT while the ATCT is in operation, unless safeguards are provided to prevent any additional danger (e.g., contractor-provided fire watches, use of only those amounts of flammable substances in the ATCT necessary for the immediate task at hand).

e. Protection for Persons With Disabilities

1. Persons who are unable to use the stairway for emergency egress and who are permitted access to the ATCT shall be restricted to the level of exit discharge only.

2. Provisions must be made for employees who are temporarily unable to use the ATCT stairway.

3. Such provisions may include:

(a) requiring duties to be performed at the level of exit discharge only; or,

(b) ensuring that pre-planned procedures have been established to facilitate the egress of persons with disabilities during emergencies.

f. Structural and Architectural Design Requirements

1. General. The structural elements of new ATCT facilities shall be noncombustible.

(a) The new ATCTs shall be of Type I, II, III, or IV construction as defined by NFPA 220, as follows:

Type of construction	Height in feet, measured from grade to cab floor
I (443 or 332)	Unlimited
II (222)	240
II (111)	100
II (000)	85
III (211)	65
IV (2HH)	65

Exception: Existing ATCTs may be constructed of protected combustible materials provided they meet the other criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems and the provisions of section c.1).

(b) The minimum fire resistance ratings of structural elements shall be as follows:

Structural elements		Type of construction						
		I (443)	I (332)	II (222)	II (III)	II (000)	III (211)	IV (2HH)
Exterior Walls	Loadbearing	4	3	2	1	0	2	2
	Nonloadbearing ..	0	0	0	0	0	10	10
Fire Separation Assemblies	Exits	2	2	2	2	2	2	2
	Shafts (other than exits).	2	2	2	2	2	2	2
Fire Partitions	Hazardous Area Separations.	< =Not less than the fire resistance rating required by f.12= >						
	Exit Access Corridors.	< =Not less than the fire resistance rating required by f.4= >						
Other Nonloadbearing Partitions	Tenant Space Separations.	1	1	1	1	0	1	1
	Supporting more than 1 floor.	10	10	10	10	10	10	0
Interior loadbearing walls, loadbearing partitions, columns, girders, trusses (other than roof trusses), and framing.	Supporting 1 floor/roof only.	4	3	2	1	0	10	See Note a.
	Supporting 1 floor/roof only.	3	2	1½	1	0	11	
Structural members supporting wall		3	2	1½	1	0	11	11
Floor construction incl beams		< =Not less than the fire resistance rating of wall supported= >						
Roof construction, including beams, trusses and framing, arches and roof deck.	15 feet or less in height to lowest member.	3	2	1½	1	0	11	See Note a. ¹
	More than 15 feet, but less than 20 feet to lowest member.	2	1½	1	1	0	11	See Note a. ¹
	20 feet or more to lowest member.	1	1	1	0	0	10	See Note a. ¹
		0	0	0	0	0	10	See Note a. ¹

¹ May be combustible construction.
Note a: See NFPA 220 for details.

(c) Combustible Materials. Where an ATCT or part of an ATCT is required to be constructed of noncombustible construction, the use of combustible elements shall be permitted subject to the limitations of this section without altering the construction classification.

(1) Roofs, Floors, and Walls. Combustible elements in roofs, floors, and walls are permitted to be used for the following components:

A. Interior finish and trim materials as prescribed in section g.1.

B. Fire retardant treated wood.

C. Mastic and caulking materials applied to provide flexible seals between components of exterior wall construction.

D. Roof covering materials as prescribed in section f.1.(b).

2. Exterior Walls.

(a) Exterior walls of ATCTs shall be noncombustible.

Exception: Exterior nonloadbearing walls of existing ATCTs may be constructed of combustible materials if the structural elements of the ATCT are protected.

(b) Exterior walls of ATCTs shall be protected from weather damage.

3. Exterior Opening Protectives.

(a) Approved protected construction shall be provided for every opening that is less than 15 feet vertically above the roof of an adjoining building and within a horizontal fire separation distance of 15 feet of an adjacent building, unless the building's roof

construction affords a fire resistance rating of not less than one hour.

4. Fire Separation Assemblies.

(a) Fire separation assemblies installed to enclose exits, floor openings, vertical shafts, and for separation of hazardous areas shall be constructed of approved materials consistent with the limitations for the type of construction and shall have not less than the fire resistance rating prescribed by section f.1.(b).

(b) Openings in exit enclosures other than unexposed exterior openings shall be limited to those necessary for exit access to the enclosure from normally occupied spaces and for egress from the enclosure. All opening protectives in fire separation assemblies shall have the minimum fire resistance rating as prescribed in section f.9.

(c) All vertical fire separation assemblies shall extend from the top of the fire resistance rated floor assembly below to the underside of the slab or deck above and shall be securely attached thereto. These walls shall be continuous through all concealed spaces such as the space above a suspended ceiling. The supporting construction shall be protected to afford the required fire resistance rating of the fire separation assembly supported. All hollow vertical spaces shall be firestopped at every floor level as required in section f.11.

Exception: Interstitial (crawl space) subjunction (immediately below the cab) levels do not require fire separation

assemblies provided the ATCT meets the other criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

(d) Where exterior walls serve as a part of a required fire resistance rated enclosure, such walls shall comply with the requirements of section f.2 of exterior walls and the fire resistance rated enclosure requirements shall not apply.

5. Vertical Shafts.

(a) Vertical shafts include stairways; HVAC, mechanical, electrical, and plumbing chases; elevators; and dumbwaiters.

(b) Vertical shafts and their enclosures shall be constructed of materials permitted by f.1 for the type of construction of the ATCT. Vertical shaft walls which are exterior walls shall be constructed of materials approved for exterior walls.

(c) All vertical shafts in ATCTs shall be enclosed with fire separation assemblies having at least a 2-hour fire resistive rating.

Exception: Vertical shafts connecting fewer than four (4) stories may be enclosed by 1-hour rated construction.

(d) A vertical shaft that does not extend to the underside of the roof deck shall be enclosed at the top with a fire separation assembly having a fire resistance rating of not less than that required for the shaft enclosure walls.

(e) Shafts which do not extend to the bottom of the ATCT shall be enclosed at the lowest ATCT level with a fire separation

assembly (e.g., fire resistant construction) having a fire resistance rating of not less than that required for the shaft enclosure walls, or the shaft shall terminate in a room having an occupancy related to the purpose of the shaft. The room shall be separated from the remainder of the ATCT by fire separation assemblies having a fire resistance rating with openings protected as prescribed in section f.9.

(f) Every shaft opening shall be protected by a normally closed, self-closing, or automatic closing door, cover, hatch, removable section, damper, or other device arranged to meet the requirements of f.9 or f.10.

6. Elevators and Dumbwaiters. Elevators and dumbwaiters shall conform to the requirements of the Safety Code for Elevators and Escalators (ASME A17.1 for new elevators and dumbwaiters and ASME/ANSI A17.3 for existing elevator and dumbwaiters) American Society of Mechanical Engineers and the American National Standards Institute, New York, New York.

Exception: For existing elevators, Phase II emergency in-car operation shall not be required.

7. Fire Partitions.

(a) Fire partitions for new ATCTs shall be noncombustible and have the minimum fire resistance rating prescribed by section f.1.(b) for the type of construction.

Exception: Existing partitions may be of combustible construction provided the ATCT meets the other criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

(b) All fire partitions must extend from the floor slab to the bottom of the slab above or shall connect with ceiling construction having a fire resistance rating of not less than that required for the fire partition walls.

(c) All opening protectives (e.g., doors, windows) in fire partitions shall have the minimum fire resistance rating as set forth in section f.9.

(d) Penetrations through assemblies shall comply with section f.11.(b).

8. Floor/Ceiling and Roof/Ceiling Assemblies.

(a) All floor openings connecting two or more stories shall be protected by a vertical shaft enclosure that complies with section f.5.

(b) All penetrations of a floor/ceiling assembly shall be protected by a shaft enclosure that complies with section f.5.

Exception: A shaft enclosure shall not be required where cables, cable trays, conduits, tubes, or pipes penetrate a floor assembly and are protected with an approved through-penetration protection system tested in accordance with ASTM E814. The system shall have an "F" rating and a "T" rating of not less than 1 hour, but not less than the required fire resistance rating of the assembly being penetrated.

Exception: Hatch openings at the top of the shaft are permitted when a 1.5 hour fire rated assembly is provided at the hatch opening or when a protected enclosure around the shaft opening is a 1.5 hour fire rated assembly.

(c) All roof/ceiling assembly penetrations shall be protected in accordance with section f.1.(b).

9. Fire Door Assemblies.

(a) Fire door assemblies shall provide a fire resistance rating in accordance with the following table:

Type of assembly	Required assembly rating (hours)	Minimum opening protection
Fire separation assemblies having a fire resistance rating greater than one hour	4 3 2 1½	3 3 1½ 1½
Fire separation assemblies:		
Shaft and exit enclosure walls	1	1
Other fire separation assemblies	1	¾
Fire partitions:		
Exit access corridor enclosure wall	1 ½	½ ½
Other fire partitions	1	¾

(b) Operation. Fire doors shall be self-closing and latching. Stairwell doors may be held open by approved devices that will meet all of the following requirements:

(1) The device shall release the door and the door shall automatically close and latch if the ATCT fire alarm is operated.

(2) The fire door shall be provided with appropriate hardware so that it can be instantly reopened manually by some simple and readily obvious operation (e.g., panic hardware, door knob).

10. Fire Dampers. Fire dampers shall be installed in accordance with the applicable provisions of NFPA 90A, Standard for the Installation of Air Conditioning and Ventilating Systems.

11. Firestopping and Draftstopping.

(a) Firestops or draftstops shall be provided as specified herein in all walls, partitions, and other concealed spaces or openings, horizontal and vertical, to prevent the free passage of flame and the products of combustion and shall be sufficient to maintain the fire resistance rating of the wall, partition, or floor pierced.

(b) Wall and floor openings penetrated by materials (e.g., telephone and communication cables) where the materials are required to be frequently changed, added, etc., may be firestopped using mineral wool, firestop pillows, or other fire resistive material.

(c) Firestops shall be provided in any concealed space where there is the potential for fire, heat, or smoke passage, other than a properly enclosed service shaft, pass, or chase.

(d) Firestopping shall consist of approved noncombustible materials securely fastened in place. In open spaces of wood framing, firestops may be of approved noncombustible materials or of two-inch lumber installed with tight joints or the equivalent.

(e) The integrity of all firestopping and draftstopping materials shall be continuously maintained.

(f) Firestopping shall be installed in the locations specified in section f.11.(a), including:

(1) concealed wall spaces;
(2) connections between horizontal and vertical spaces;

(3) concealed spaces between stairway stringers at the top and bottom of the run; and

(4) ceilings and floor openings.

(g) Draftstopping shall be installed in ATCTs of Types III and IV construction in locations specified below:

(1) Floors. Where ceilings are suspended below solid wood joists or suspended or attached directly to the bottom of open-web wood floor trusses, the space between the ceiling and the floor above shall be divided by draftstopping installed so that horizontal areas do not exceed 1,000 square feet.

(2) Draftstopping materials shall not be less than half-inch gypsum board, ¾-inch plywood or other approved materials adequately supported.

(3) Concealed roof spaces shall be provided with draftstopping such that no horizontal area exceeds 3,000 square feet.

Exception: Draftstopping is not required in a concealed space when ATCTs are equipped throughout with an automatic sprinkler system, provided that automatic sprinklers are also installed in combustible concealed spaces.

12. Hazardous Areas. Rooms or Areas designated as hazardous areas shall be separated from the remainder of the ATCT by fire separation assemblies as follows:

(a) Boiler and furnace rooms. Boiler and furnace rooms shall be separated by 1-hour fire resistance rated construction or provided with an automatic fire suppression system.

(b) Storage rooms.

(1) Storage rooms greater than 50 square feet in area shall be separated by 1-hour fire resistance rated construction.

(2) Storage rooms greater than 100 square feet in area shall be separated by 2-hour fire resistance rated construction.

(c) Engine generator rooms shall be separated from the remainder of the ATCT by 2-hour fire resistance rated construction.

(d) Other Electrical Equipment Rooms. Other electrical equipment rooms shall be separated by 1 hour fire resistance rated construction or provided with an automatic fire suppression system.

13. Connections to Base Buildings.

(a) The base building shall be separated from the ATCT by a fire separation assembly with a minimum fire resistance rating equivalent to the rating required of the stair shaft.

(b) The exit stairway of an ATCT which is directly connected to a base building, or is connected to a base building by a link, shall be a smokeproof enclosure or pressurized in accordance with this standard.

(c) ATCTs surrounded by a base building shall have the following:

A. At least one smokeproof or pressurized stairway.

B. ATCT stairways that discharge into a base building at the level of exit discharge with these considerations:

(a) Means of Egress on the level of exit discharge shall be free and unobstructed to the exterior of the building.

(b) Entire level of exit discharge is provided with automatic sprinkler protection, and any nonsprinklered areas are separated by fire rated construction equivalent to the rating required for the stair shaft.

(c) Smoke detectors shall be provided in all hazardous areas of the base building not separated by fire rated construction equivalent to the rating required for the stairway.

(d) Smoke detectors shall be provided on the base building side of openings between the ATCT and the base building.

C. Where the ATCT exist stairway does not discharge onto the level of exit discharge of the base building (as in an ATCT on top of a terminal) safe and continuous passageways, aisles, or corridors leading directly to base building exits shall be maintained and so arranged as to provide convenient access for each occupant to at least two exists by separate ways of travel, except as a single exit or limited dead ends are permitted by other provisions of this standard.

g. Interior Finishes

1. Interior Finish and Trim.

(a) All materials used for interior finish and trim shall be classified in accordance with ASTM E84. The classifications of interior finishes referred to in this section correspond to flame spread ratings on the flame spread test scale determined by ASTM E84 as follows: Class A flame spread, 0-25; Class B flame spread, 26-75; Class C flame spread, 76-200.

(1) Foam plastics shall not be installed as interior trim or finish.

(2) Interior wall and ceiling finish materials that have a smoke developed rating greater than 450 when tested in accordance with ASTM E84 shall not be permitted.

(b) All materials used inside an exit stairway shall have fire hazard ratings of not more than 25 for flame spread and not more than 50 for smoke development.

(c) Other than in sprinklered ATCTs, all materials used for interior finish shall have fire hazard ratings of not more than 25 for flame spread and not more than 450 for smoke development and fuel contribution (Class A).

Exception: Carpeting may be used as wall covering in non-sprinklered areas provided the carpet type meets the requirements of the 8x12x0 ft room/corner fire test procedure described in NFPA 101, Section A-6-5.2.3 (1991 edition).

(d) In sprinklered ATCTs, all materials used for interior finish in enclosed rooms and spaces and in means of egress shall have fire hazard ratings of not more than 75 for flame spread and not more than 450 for smoke development.

Exception: Carpeting with a Class A flame spread classification may be used as wall covering provided it is used only in rooms protected by an approved automatic fire suppression system.

(e) Baseboards, chair rails, moldings, trim around openings and other interior trim, not

in excess of 10 percent of the aggregate wall and ceiling areas of any room or space, shall be of Class A, B, or C materials.

(f) Paint, veneer, and other thin final finishing materials not over 0.035-inch thick and applied directly to a noncombustible base are permitted and may be used provided that such materials do not significantly increase the fire hazard ratings of the base material involved.

(g) Fire retardant paints. Fire retardant paints or solutions shall be re-applied as necessary to maintain the required flame retardant properties.

2. Interior Floor Finish.

(a) Finished floors or floor covering materials of a traditional type, such as wood, vinyl, linoleum, terrazzo, and other resilient floor covering materials, are exempt from the requirements of this section. Floor coverings judged by the authority having jurisdiction to represent an unusual hazard, such as carpet, shall meet the requirements of this section.

(b) Interior floor finish in means of egress shall be of not less than Class B materials in accordance with ASTM E648. Class B corresponds to a critical radiant flux of 0.22 watts/cm² as defined in ASTM E648. In all other areas the interior floor finish shall comply with the Department of Commerce FF-1 "pill test" (CPSC 16 CFR 1630).

(c) The requirement for rooms or enclosed spaces is based on the condition that the areas have partitions which extend from the floor to the ceiling. Where partitions do not satisfy this criterion, the room or space is considered part of the corridor.

3. Furnishings and Decorations.

(a) No furnishings, decorations, or other objects shall be so placed as to obstruct exits, access thereto, egress therefrom, or visibility thereof.

(b) No furnishings or decorations of an explosive or highly flammable character shall be used in any occupancy.

h. ATCT Console Construction

Consoles in the ATCT which are not constructed entirely of noncombustible materials shall comply with National Electrical Manufacturers Association Standard LD3, which incorporates a "Radiant Heat Resistance" test which measures the ability of the surface of high pressure decorative laminate to resist spot damage when subjected to a radiant heat source.

i. Electrical Requirements

All electrical wiring and equipment shall comply with the National Electrical Code, NFPA 70, 1993, National Fire Protection Association, Quincy, Massachusetts.

j. Means of Egress

1. General. Every ATCT shall be provided with exits of kinds, number, location, protective features, and capacity appropriate to the individual building or structure, with due regard to the unique character of ATCTs, the number of persons exposed, the fire protection available, and the height and type of construction of the building or structure, to afford all occupants convenient facilities for escape.

2. Occupancy and Use Requirements.

(a) ATCT structures are occupied by personnel and contain equipment and

supplies necessary for aircraft control operations. ATCTs are designed to provide 360° visibility from the cab level.

(b) ATCTs may not be used for living or sleeping purposes.

(c) ATCTs may be occupied above the level of exit discharge by only able-bodied persons.

(d) No combustible materials shall be located in, under, or within the immediate vicinity of the ATCT except necessary furniture and equipment.

(e) High hazard contents shall not be permitted in the ATCT or the immediate vicinity thereof.

(f) ATCT exits shall be so arranged and maintained as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. No locks or fastening which prevents unimpeded escape from the inside of any building shall be installed.

3. General Limitations

(a) Permissible Means of Egress components. Means of egress shall consist only of the approved components as described in this section. Means of egress shall be constructed as components of the building or shall be permanently affixed thereto.

(b) Headroom. Means of egress shall be so designed and maintained as to provide adequate headroom, but in no case shall the ceiling height be less than 7 feet 8 inches nor any projection from the ceiling be less than 6 feet 8 inches from the floor.

Exception: In existing ATCTs where the headroom is less than that required in this section, signs reading "Low Clearance" shall be placed on both sides of the obstruction.

(c) Changes in elevation. Where changes in elevation exceed 21 inches in a means of egress, the difference in elevation shall be negotiated by stairs or ramps.

(d) Means of egress walking surfaces shall provide sufficient friction to prevent slipping under normal conditions.

4. Types and Location of Means of Egress

(a) Access to means of egress.

(1) Means of egress shall be so located and exit access shall be so arranged that exits are readily discernible and unobstructed at all times.

(2) In no case shall access to an exit be through a bathroom, or other room subject to locking, except where the exit is required to serve only the room subject to locking.

(3) Exit access shall be so arranged that it will not be necessary to travel toward any area of hazardous occupancy in order to reach the nearest exit, unless the path of travel is effectively shielded from the high hazard location by suitable partitions or other physical barriers.

(b) Discharge from exits.

(1) All exit discharges shall empty directly to the street, or to a yard, court, or other open space that gives safe access to a public way. The streets to which the exits discharge shall be of width adequate to accommodate all persons leaving the building. Yards, courts, or other open spaces to which exits discharge shall also be of adequate width and size to provide all persons leaving the building with ready access to the street.

(2) The exit discharge shall be so arranged as to make clear the direction of egress to the public way.

(c) Exterior ways of exit access.

(1) Access to an exit may be by means of any exterior balcony, porch, gallery, or roof that conforms to the requirements of this standard.

(2) Exterior ways of exit access shall have smooth, solid floors, substantially level, and shall have guards on the unenclosed sides.

(3) Where accumulation of snow or ice is likely because of the climate, the exterior way of exit access shall be maintained so that these accumulations of snow and ice will be regularly removed.

(4) A permanent, direct path of travel shall be maintained over the required exterior way of exit access. There shall be no obstruction by railings, barriers, or gates that divide the open space into sections.

(5) An exterior way of exit access, such as a courtyard, balcony, bridge, or porch shall be so arranged that there are no dead ends in excess of 20 feet.

(6) Any gallery, balcony, bridge, porch, or other exterior exit access that projects beyond the outside wall of the building shall comply with the requirements of this section (j.4.(c)) as to width and arrangement.

5. Occupant Load

(a) ATCTs may have an occupant load of 20 persons per floor and not more than 80 persons total provided that the type of ATCT construction is Type I, II, III, or IV.

(b) The occupant load shall be the maximum number of persons that may be in the space at any time.

(c) Where exits serve more than one floor, only the occupant load of each floor considered individually need be used in computing the capacity of the exits at the floor, provided that exit capacity shall not be decreased in the direction of exit travel.

6. Width and Capacity of Means of Egress

(a) The capacity of the means of egress for any floor, balcony, tier, or other occupied space shall be sufficient for the occupant load thereof.

(b) The minimum exit width shall not be less than 28 inches for existing ATCTs and not less than 36 inches for new ATCTs.

(c) Exit width shall be measured in the clear at the narrowest point of the means of egress.

(d) A door during its swing shall not reduce the width of the means of egress to one-half of the required exit width.

(e) When fully open, a door shall not project more than 7 inches into the required width of an aisle, corridor, passageway, or landing.

(f) Where a single way of exit access leads to an exit, its capacity in terms of width shall be at least equal to the required capacity of the exit to which it leads. Where more than one way of exit access leads to an exit, each shall have a width adequate for the number of persons it must accommodate.

(g) Means of egress shall be measured in inches per person. The ATCT egress capacity shall be 0.3 inch per person for stairways and 0.2 inch per person for level components.

(1) Level Egress Components. (including Class A Ramps). If an entry doorway has 28

inches clear width, a discharge doorway has 28 inches clear width, and a stairway is 30 inches wide, the egress capacity would be 100 persons, or the smallest of the three capacities.

Example:

28 in./0.2 = 140 persons for the entry doorway

28 in./0.2 = 140 persons for the discharge doorway

30 in./0.3 = 100 persons for the stairway

(2) Inclined Egress Components (including Class B Ramps). For Class B ramps used for ascent, the width per person shall be increased by 10 percent beyond what is required for Class A ramps. Widths for Class B ramps used for descent shall be calculated the same as for Class A ramps.

(h) A ramp shall be designated as Class A or Class B based on the following table:

	Class A	Class B
Minimum width	44 inches	30 inches.
Maximum slope ..	1 in 10	1 in 8.
Maximum height between landings.	12 feet	12 feet.

7. Number of Exits

(a) A single means of egress from an ATCT is permitted where:

(1) the exit is protected by a smokeproof enclosure as set forth in section j.13, or a pressurized enclosure as set forth in section j.13.(d).

(2) An automatic fire detection and alarm system is provided.

(3) ATCTs are not used for living or sleeping purposes.

(4) ATCTs are occupied by only able-bodied persons.

(5) No combustible materials are located in, under, or in the immediate vicinity of the ATCT except necessary furniture and equipment.

(6) The tower is subject to occupancy by no more than 20 persons per floor and not more than 80 persons total.

(7) Other requirements and exceptions specified in this standard for existing ATCTs are satisfied.

(b) Base buildings shall have as a minimum two exits remote from each other so arranged as to minimize the possibility that both may be blocked by any one fire or other emergency condition.

Exception: A single means of egress is permissible for those base buildings consisting of a single story, above ground and having less than 350 square feet gross floor area, and where all other requirements of this standard are met.

(c) Neither elevators nor ladders are acceptable as an approved exit component or a means of egress from an ATCT facility.

Exception: Ladders may be used for access to or egress from normally unoccupied roof areas.

8. Exit Access Passageways and Corridors

(a) Every corridor shall be not less than 44 inches in width.

Exception: Exit access passageways and corridors in existing ATCTs shall be no less than 28 inches provided they meet the other

criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

(b) Aisles shall not be less than 28 inches in width.

9. Means of Egress Doorways

(a) Every door which is required to serve as an exit shall be so designed and constructed that the way of exit travel is obvious and direct. Windows that, because of their physical configuration or design and the materials used in their construction, could be mistaken for doors shall be made inaccessible to the occupants by barriers or railings.

(b) Any door in a means of egress shall be of the side-hinged, or pivoted-swinging type. The door shall be so designed and installed that it is capable of swinging from any position to the full use of the opening in which it is installed. Doors shall swing in the direction of exit travel where serving a room or area with an occupant load of 50 or more, where used in an exit enclosure, and where serving a high hazard area.

Exception: Horizontal sliding doors may be used in means of egress provided they comply with the criteria established in NFPA 101—Life Safety Code Section 5-2.1.14.

Exception: Revolving doors may be used in means of egress provided they comply with NFPA 101—Life Safety Code Section 5-2.1.10.

(c) Every required exit doorway shall be of a size to permit the installation of a door not less than 36 inches in width.

(d) Exit doors shall be capable of opening at least 90 degrees and shall be mounted so as to provide a clear width of exit not less than 28 inches.

(e) A means of egress door shall be so arranged as to be readily opened from the side from which egress is to be effected at all times when the building is occupied. No lock or fastening to prevent free escape from the inside of an ATCT facility shall be installed.

(f) Doors shall latch upon closing except that a latch or other fastening device on a door shall be provided with a knob, handle, panic bar, or other simple type of releasing device.

(g) Doors required to be fire rated shall be marked by the manufacturer with a label indicating the fire resistive rating of the door and the approved testing laboratory. Door hardware shall be labeled appropriately.

(h) Automatic or self-closing doors shall operate so that in the event that the fire alarm is activated either manually or automatically, the "hold open device" automatically releases and the door automatically closes and latches.

(i) All doors shall be equipped with hardware which can be instantly reopened manually by some simple type of releasing device.

10. Stairways

(a) ATCT stairways serving an occupant load of more than 50 shall be not less than 44 inches in width. Stairways serving an occupant load of 50 or less may be 36 inches wide. Handrails may project from each side of a stairway at a distance of 3½ inches into the required width. A stringer may project inside the measured width not more than 1½ inches.

Exception: The width of a stairway may be 28 inches in existing ATCTs provided the ATCT meets the other criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

(b) Circular stairways are prohibited except in ATCT cabs where the circular stairway serves an occupant load of 10 or less and the minimum width of run is not less than 5 inches and the rise is not more than 9 inches.

Exception: The run of steps from the cab for existing ATCTs may be less than 5 inches (when measured 12 inches from the center column) provided the ATCT meets the other criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

(c) The maximum riser height of every step in an existing ATCT stairway shall not exceed 7½ inches and the minimum run (tread depth) shall not be less than 10 inches. For stairways constructed after the effective date of this standard, the stair rise shall not be less than 4 inches and shall not exceed 7 inches and the minimum run shall be 11 inches.

Exception No. 1: Stairways serving an occupant load of less than 10 and stairways to roofs may be constructed with an 8-inch maximum rise and 9-inch minimum run.

Exception No. 2: Circular stairways as permitted by section j.10.(b) are excluded from this requirement.

Exception No. 3: The rise of steps from the cab for existing ATCTs may be greater than 7½ inches and the run in existing ATCTs may be greater than 10 inches (when measured 12 inches from the center column) provided the ATCT meets the other criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

(d) The least dimension of a stair landing shall not be less than the required width of the stairway (36 inches for new ATCTs and 28 inches for existing ATCTs), except that the landing dimension in the direction of egress travel need not exceed 4 feet where the travel from one stair flight to the next stair flight is a straight run.

(e) There shall be not more than 12 feet vertically between landings.

Exception: Distances between landings in existing ATCTs serving an occupant load of 10 or less may be more than 12 feet provided the ATCT meets the other criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

(f) Exit stairs that continue beyond the floor of discharge shall be interrupted at the floor of discharge by partitions, doors, or other effective means.

11. Guards

(a) Means of egress such as stairs or landings that are more than 30 inches above the floor or the grade below shall be provided with guards at least 42 inches high to prevent falls over the open side.

Exception: Existing handrails meeting the requirements of section j.12 below shall be permitted to serve as guards.

(b) Guards shall have a pattern such that a sphere 4 inches in diameter cannot pass through the opening.

Exception: Guards in existing ATCTs may have an approved intermediate rail.

12. Handrails

(a) Handrails shall continue for the full length of each flight of stairs. At turns of stairs, inside handrails shall be continuous between flights and landings.

Exception: On existing stairs, the handrails are not required to be continuous between flights of stairs at landings provided the ATCT meets the other criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

(b) Handrails on stairs shall not be less than 34 inches nor more than 38 inches above the surface of the tread.

Exception No. 1: Handrails that form part of a guard shall be permitted to have a maximum height of 42 inches above the surface of the tread provided the ATCT meets the other criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

Exception No. 2: Handrails in existing ATCTs shall not be less than 30 inches above the surface of the tread.

Exception No. 3: Additional handrails, beyond those required in this standard, are permitted at heights other than those stipulated provided the ATCT meets the other criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

(c) Handrails shall not project more than 3½ inches into the required passageway, aisle, corridor, stair, or ramp width.

(d) The clear space between the handrail and the adjacent wall or surface shall not be less than 1½ inches.

13. Smokeproof Enclosures

(a) A smokeproof enclosure shall consist of a continuous stairway enclosed by walls of fire resistive construction. The top of the enclosure shall be located within 50 feet travel distance from the most remote point of the cab for existing ATCTs and 20 feet travel distance from the most remote point of the cab for new ATCTs.

(b) The smokeproof enclosure shall be designed for natural or mechanical ventilation in compliance with NFPA 101—Life Safety Code.

(c) Every ATCT shall have at least one exit which shall be a smokeproof enclosure. The enclosure construction meet the requirements of section f.5.(c) of this standard.

Exception: A pressurized stairway system may be used where the ATCT is protected by an automatic sprinkler system or is provided with equivalent levels of protection established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

(d) Pressurized Stairway Requirements. Smokeproof enclosures by stairway pressurization shall comply with the following:

(1) The ATCT meets the other criteria established in this standard (e.g., fire

resistance rated protectives, fire detection and alarm systems); and

(2) the exist stairways are pressurized to a minimum of 0.15 inch of water column and a maximum of 0.35 inch of water column in the shaft relative to the building measured with all stairway doors closed under maximum anticipated stack pressures.

14. Exit Signs

(a) Exits shall be marked by a readily visible sign. Access to exits shall be marked by readily visible signs in all cases where the exit or pathway to an exit is not immediately visible to the occupants.

(b) Any door, passage, or stairway which is neither an exit nor a way of exit access, and which is so located or arranged as to be likely to be mistaken for an exit, shall be identified by a sign reading "Not an Exit" or similar designation, or shall be identified by a sign indicating its actual character, such as "To Basement," "Storeroom," "Linen Closet," or the like.

(c) Every required sign designating an exit or way of exit access shall be so located and of such size, color, and design as to be readily visible. No decorations, furnishings, or equipment which impair visibility of an exit sign shall be permitted, nor shall there be any brightly illuminated sign (for other than exit purposes), display, or object in or near the line of vision to the required exit sign of such a character as to so detract attention from the exit sign that it may not be noticed.

(d) Lettering of exit signs shall be at least 6 inches high with the principal strokes of letters not less than three-fourths of an inch wide.

(e) A sign reading "Exit," or similar designation, with an arrow indicating the directions, shall be placed in every location where the direction(s) of travel to reach the nearest exit is not immediately apparent.

(f) Every exit sign shall be suitably illuminated by a reliable light source of not less than 5 foot-candles, either internally or externally, on the illuminated surface.

Exception: Approved internally illuminated signs which evenly illuminate letters shall have a minimum luminance of 0.06 foot lambert.

15. Illumination of Means of Egress

(a) An emergency lighting system for means of egress shall be provided for every ATCT facility.

(b) In the absence of an emergency lighting system consisting of a prime mover-operated electric generator, electric battery-operated emergency lights shall be used which comply fully with the National Electrical Code, NFPA 70.

(c) Illumination of means of egress shall be continuous during the time the ATCT is occupied.

(d) The floors throughout the means of egress shall have an illumination of not less than 1 footcandle.

(e) Any required illumination shall be arranged so that failure of any single lighting unit will not leave any area in total darkness.

16. Emergency Power Requirements

(a) ATCTs more than 75 feet high shall have stand-by power in accordance with

NFPA 70—National Electrical Code and NFPA 110—Emergency Standby Power Systems, Class I, Type 60 for the emergency lighting, automatic fire alarm system, electrical fire pump, central control station, mechanical equipment for smokeproof enclosures, and at least one elevator serving all floors except the cab which is transferable to any elevator.

(b) ATCTs less than 75 feet shall have emergency power for emergency lighting, automatic fire alarm systems, and mechanical equipment for smokeproof enclosures.

Exception: In existing ATCTs, emergency power to elevators is not required provided the ATCT meets the other criteria established in this standard (e.g., fire resistance rated protectives, fire detection and alarm systems).

17. Fire Escape Ladders and Exterior Stairs

(a) Fire escape ladders and exterior stairs shall not constitute any of the required means of egress in ATCTs.

(b) Although this standard contains provisions for fire escape ladders and exterior stairs on ATCTs, it does not recommend their use for several primary reasons:

- (1) possible icing in cold conditions;
- (2) fear of height by users;
- (3) poor condition due to low maintenance;
- (4) lack of protection from smoke and fire;
- (5) lack of appropriate fall protection; and
- (6) slow descent rate of users.

(c) Fire Escape Ladders.

(1) Fire escape ladders shall be permitted to be used only under the following conditions:

A. the ladders comply with OSHA requirement 29 CFR 1910.27, Fixed Ladders;

B. to provide access to unoccupied roof or maintenance areas; and

C. To provide a second means of escape from ATCTs only if fire conditions prevent the use of the primary means of egress or prevent other less dangerous means of escape or rescue.

(d) Fire Escape Exterior Stairs.

(1) Fire escape stairs shall be permitted in existing ATCTs but shall not constitute more than 50 percent of the required exit capacity.

(2) Fire escape stairs shall provide a continuous, unobstructed, safe path of travel to the exit discharge or a safe area of refuge.

(3) Fire escape stairs shall also comply with the other provisions of 1991 edition of NFPA 101—Life Safety Code, Chapter 5-2.8 for fire escape stairs.

Exception: Existing noncomplying fire escape stairs may be continued to be used subject to the authority having jurisdiction.

18. Openings in exit enclosures shall be confined to those necessary for access to the enclosure from normally occupied spaces and for egress from the enclosure.

k. Fire Protection

1. General. Fire detection, alarm, and suppression equipment including detectors, manual and automatic alarms, and portable extinguishers shall be provided at ATCT facilities.

2. Automatic Fire Detection and Alarm Systems. In every ATCT, automatic fire detection and alarm systems shall be

provided to warn occupants of the existence of fire.

(a) Fire detection and alarm systems. Fire detection and alarm systems shall be maintained and tested in accordance with the requirements of 29 CFR 1910.164(c) and NFPA 72.

(b) The fire alarm control panel which indicates the existence and location of a fire shall be installed in a constantly attended area in a location acceptable to the responding fire department, typically at the ATCT front entrance.

(c) The system shall be fully supervised at all times in accordance with the following styles of wiring per NFPA 72:

A. Initiating device circuits shall be Style D.

B. Indicating appliance circuits shall be Style Z.

C. If a multiplex system, signaling line circuits shall be Style 6 or 7.

Exception: Any style of wiring that complies with NFPA 72 shall be permitted if the ATCT is fully sprinklered.

(d) The fire detection and alarm system shall automatically notify the fire department providing service to the ATCT, or an effective plan for notifying the fire department shall be established.

(e) Alarms shall sound in all occupied spaces at a sound level of 15 dBA above the ambient sound pressure level to assure notification of all personnel in accordance with NFPA 72.

Exception: Alarm horns or bells are not required in ATCT cab or TRACON. An annunciator complying with k.2. (g), below, shall be provided.

(f) Manual fire alarm stations shall be provided in the path of escape. The stations shall be plainly marked, and lighted for ease of use in an emergency.

(g) When automatic sprinkler systems are employed, the systems shall be supervised by the alarm system.

(h) An annunciator panel to indicate the location of an actuated manual station, automatic detector, or waterflow switch shall be provided in the ATCT cab and TRACON which incorporates a silencing feature in accordance with NFPA 72 and Underwriters Laboratory. Additionally, annunciators shall resound an alarm indication at the annunciator after a period of 90 seconds if the system has not been reset or cleared.

(i) All detection and alarm equipment shall be listed by a Nationally Recognized Testing Laboratory (NRTL).

(j) Products of combustion (smoke) detectors shall be provided in all areas throughout an ATCT. Spacing of detectors shall not exceed the maximum distance indicated by tests performed by the approving laboratory for the particular device used.

(k) A secondary power source shall be provided for every fire detection and alarm system and shall operate automatically in the event of failure of the primary power source. Secondary power may be supplied by either an engine driven generator or by storage batteries of sufficient capacity.

(l) Detectors need not be provided in spaces above suspended ceilings where no combustibles are present.

(m) Detectors shall be installed below raised floors in accordance with the applicable provisions of NFPA 72.

(n) Detectors shall be installed in air handling systems downstream of air handlers with a capacity of greater than 2,000 cubic feet per minute. Upon activation of a detector, the associated air handling unit will be shut down.

3. Standpipe Systems. Standpipe systems, where required by local building code, shall conform to those local building codes.

4. Automatic Sprinkler, Halon 1301, Other Extinguishing Systems, and Portable Fire Extinguishers.

(a) Sprinkler Systems.

(1) Where automatic sprinklers are installed in an ATCT, sprinklers shall be provided in all areas or rooms.

(2) Sprinkler systems shall generally be of the wet type unless subject to freezing conditions. Waterflow and valve tamper supervision shall be annunciated with a listed alarm check valve or other listed waterflow detecting alarm device with the necessary attachments required to give an alarm. Installation shall comply with NFPA 13.

(3) All automatic sprinkler systems shall be continuously maintained in reliable operating condition at all times, and such periodic inspections and tests shall be made as are necessary to assure proper maintenance.

(b) Halon or Other Extinguishing Systems (see note in section k.3.(c)(4)).

(1) Halon 1301 extinguishing systems or other alternative extinguishing systems may be used in lieu of automatic sprinklers for existing ATCT computer or electronic equipment areas. Such areas include but are not limited to ATCT cabs, TRACON rooms, communications equipment rooms, and radar equipment rooms. However, a Halon 1301 or other alternative extinguishing system shall not be considered to be equivalent to an automatic sprinkler system for purposes of omitting the requirement for fire resistive construction as required in this standard unless it has automatic standby capacity.

(2) Halon 1301 or other alternative extinguishing systems shall be designed as an automatic sensing and actuating type with sufficient standby capacity.

(3) Halon 1301 systems shall be installed and maintained in accordance with the manufacturer's recommendation and NFPA No. 12A, 1973, Halogenated Fire Extinguishing Agent Systems—Halon 1301, National Fire Protection Association, Quincy, Massachusetts.

(4) Other alternative extinguishing systems shall be maintained in accordance with manufacturer's recommendations and the appropriate NFPA standard.

(c) Portable Fire Extinguishers.

(1) General.

A. Portable extinguishers shall be maintained in a fully charged and operable condition, and kept in their designated places at all times when they are not being used.

B. Extinguishers shall be conspicuously mounted where they will be readily accessible and immediately available in the event of fire. They shall be mounted along normal paths of travel.

C. Extinguishers shall not be obstructed or obscured from view. In large rooms and in certain locations where visual obstruction cannot be completely avoided, signs shall be provided to conspicuously indicate the location and intended use of extinguishers.

D. All extinguishers shall be marked conspicuously as to their intended use upon different classes of fire to ensure choice of the proper extinguisher.

(2) Inspection and Maintenance.

A. Extinguishers shall be inspected monthly, or at more frequent intervals when circumstances require, to ensure they are in their designated places, to ensure they have not been actuated or tampered with, and to

detect any obvious physical damage, corrosion, or other impairments. Any extinguisher showing defects shall be given a complete maintenance check and repaired or replaced, as necessary.

B. At regular intervals, not more than 1 year apart, or when specifically indicated by an inspection, extinguishers shall be thoroughly examined and/or recharged or repaired to ensure operability and safety; or replaced as needed.

C. Extinguishers removed from the premises to be recharged or repaired shall be replaced by spare extinguishers during the period they are gone.

D. Each extinguisher shall have a durable tag securely attached to show the maintenance or recharge date and the initials or signature of the person who performs this service.

E. If, at any time, an extinguisher shows evidence of corrosion or damage, it shall be subjected to a hydrostatic pressure test, or replaced.

(3) Selection and Location. A fire extinguisher of proper size and type shall be available within 75 feet from any point in a room. This requirement may increase the number of extinguishers over the quantity required in the table on Minimum Quantity and Type of Fire Extinguishers.

MINIMUM QUANTITY AND TYPE OF FIRE EXTINGUISHER (NOTE 1)

Room or area type	Water, antifreeze and loaded stream	Carbon Dioxide (CO ₂)	Halon 1301
ATCT, All Occupied and Support Areas	Note 2, 4 .....	.....	Note 4
Electronic Equipment Room	Note 2, 4	Note 3, 4	Note 4
Mechanical Equipment Room	Note 2, 4	Note 3, 4	Note 4
Telco Equipment Room	Note 2, 4	Two 15 lb. Extinguishers Note 3, 4.	Note 4
Engine Generator Room	Note 2, 4	One 15 lb. Extinguisher Note 3, 4.	Note 4
Electric Storage Area	Note 2, 4	Note 3, 4	Note 3
General Storage Area	Note 2, 4	One 15 lb. Extinguisher Note 3, 4.	
Maintenance Shop	Note 2, 4	One 15 lb. Extinguisher Note 3, 4.	
Kitchen	Note 2, 4 Multipurpose.	.....	One 2A, 10B:C Halon Extinguisher
Office Space .....	.....	.....	.....
ATCT Cab	Note 2, 4	Note 3, 4	Note 4
TRACON Room	Note 2, 4	Note 3, 4	Note 4

Note:

1. An extinguisher shall be available within 75 feet from any point in a room. This may increase the number of extinguishers over the quantity required in the above table. Multiple extinguishers of a lesser rating may not be substituted for one larger extinguisher.
2. One 2½ gallon extinguisher shall be provided per 300 square feet of floor area or portion thereof.
3. One 15 lb. CO₂ extinguisher shall be required for each 1600 square feet of floor area or portion thereof.
4. Halon 1301 or 1211 extinguishers may be used instead of CO₂ or water, antifreeze and loaded stream extinguishers in existing ATCTs. A Halon extinguisher rated 10 B:C may be substituted for a 15 lb. CO₂ extinguisher. A Halon extinguisher with 2A rating may be substituted for a water, antifreeze and loaded stream extinguisher with a 2½ gallon capacity.
5. Multipurpose dry chemical extinguishers are preferred for use on all types of fires. Multipurpose dry chemical extinguishers may be used instead of CO₂, or water, antifreeze and loaded stream extinguishers in ATCTs. A multipurpose dry chemical extinguisher rated 10 B:C may be substituted for a 15 lb. CO₂ extinguisher. A multipurpose dry chemical extinguisher with 2A rating may be substituted for a water, antifreeze and loaded stream extinguisher with a 2½ gallon capacity.

(4) Halogenated extinguishing agents are no longer in production. Existing supplies of Halon extinguishers may remain in use until they are either discharged or require repair.

(5) ATCTs constructed and occupied after the date this standard is promulgated shall not be equipped with halogenated fire extinguishers.

1. Fire Prevention and Evacuation Plan

1. Fire Prevention Plan.

(a) Each ATCT shall develop a written fire prevention plan which shall include at a minimum the following:

(1) a list of all of the major workplace fire hazards and their proper handling and storage procedures, potential ignition sources (e.g., welding, smoking) and their control procedures, and the type of fire protection equipment or systems which can control a fire involving those hazards;

(2) names or job titles of personnel responsible for maintaining equipment and systems installed to prevent or control fire;

(3) names or job titles of personnel responsible for controlling fuel source hazards; and

(4) a list of extinguishers installed at the facility and their locations.

(b) Housekeeping. The employer shall control accumulations of flammable and combustible materials so that they do not contribute to a fire emergency. Housekeeping procedures shall be included in the written fire prevention plan.

(c) Training.

(1) The employer shall inform employees of the fire hazards of the materials and processes to which they are exposed.

(2) The employer shall review with each employee upon initial assignment and annually thereafter those parts of the fire prevention plan which the employee must know in the event of an emergency. The written fire prevention plan shall be kept in the workplace and be available for employee review.

(3) Employers shall train employees on the use of the various type of fire extinguishers used in their facility.

(4) Supervisors shall document employee fire prevention training in employee records.

2. Emergency Evacuation Plan.

(a) An emergency egress plan shall be developed and posted at each ATCT facility where it is available for employee review.

(b) This plan shall include actions employers and employees must take to ensure safety from fire and other emergencies. The plan shall include, at a minimum the following:

(1) emergency escape procedures and emergency escape route assignments;

(2) procedures to be followed by employees who remain to perform critical ATCT operations before they evacuate;

(3) procedures to account for all employees after emergency evacuation has been completed;

(4) rescue and medical duties for those employees who are to perform them; and

(5) names or job titles of persons or departments who can be contacted for further information or explanation of duties under the plan.

(6) This plan shall be posted in a place readily available to employees. A diagram of designated emergency egress routes shall be posted along the path of egress.

(c) Training.

(1) Before implementing the emergency action plan, the employer shall designate and train a sufficient number of persons to assist in the safe and orderly emergency evacuation of employees.

(2) The employer shall review the plan with each employee covered by the plan at the following times:

A. initially when the plan is developed;

B. whenever the employee's responsibilities or designated actions under the plan change; and

C. whenever the plan is changed.

D. The employer shall review with each employee upon initial assignment and annually thereafter those parts of the evacuation plan which the employee must know to protect the employee in the event of an emergency.

(d) Fire drills shall be held periodically. Fire drills shall be held often enough to ensure that each employee participates in at least one drill annually.

(e) Since all personnel may not be able to leave their positions during a fire drill, employees who were not able to participate shall be briefed on the emergency evacuation route and instructed to use this route the next time they leave the facility in order to familiarize themselves with the exit route. Supervisors shall document employee briefings in employee records.

(f) Ladders shall not be used during evacuation drills as their use during drills poses unnecessary risk.

Material Provided in Support of the Proposed Alternate Standard to 29 CFR 1910.36(b)(8)

A statement of why the agency cannot comply with the OSHA standard or wants to adopt an alternate standard.

The existing alternate standard was proposed by the Department of Transportation (DOT) and accepted by the Occupational Safety and Health Administration (OSHA) for Airport Traffic Control Towers (ATCTs) in 1982 in recognition of the characteristic structure of ATCTs and the unique FAA mission to control aircraft from these buildings. Contributing factors in the DOT pursuit of an alternate standard included the feasibility of using alternate life safety measures which provided an equivalent level of protection for ATCT occupants, the enormous expense and impracticality of adding a second exit to existing ATCTs or constructing ATCTs with two remote exits, and the need to minimize disruption of the commercial and private aviation activities.

DOT requests modification to the existing alternate standard for ATCTs for the reasons stated below.

- A number of specifications established in the existing alternate standard for ATCTs require types of construction beyond those mandated in OSHA regulations or in life safety and building codes.

- A licensed fire protection engineer has provided several alternative protection measures for ATCTs which were not included in the existing alternate standard.

- The existing alternate standard does not address important operational ATCT requirements (e.g., 360° field of vision at the cab level) or their relationship with protective structural or procedural features.

A description of the alternate standard.

The revision to the existing alternate standard provides types of ATCT construction and methods of operation which enhance the fire detection and notification, fire resistance, smoke control, and emergency response features for ATCTs. These features provide early warning of the presence of fire or smoke, flame and smoke spread control, and automatic notification of emergency response units such that a level of fire safety equivalent to two means of egress are afforded ATCT occupants.

An explanation of how the alternate standard provides equivalent or greater protection for the affected employees.

Enhancements to the alternate standard include:

- an ATCT stairway smoke control system;
- fire resistant rated materials for stairway enclosures and openings;
- self-closing or automatic fire doors;
- ATCT fire alarm system wiring in accordance with NFPA 72 reliability standards;
- automatic smoke detection;
- automatic fire detection, alarm, and signalling systems with automatic fire department and ATCT notification and ATCT cab annunciator panels with battery backup;
- prohibition of storage of high hazard materials or use of more than minimal amounts of high hazard materials for specific duties;
- occupancy above the level of exit discharge only by able-bodied persons;
- prescribed quality and type of interior finish materials;
- specified levels of fire resistant rated opening protectives to base buildings.

These and other measures in the proposed revision to the alternate standard will provide equivalent or greater protection for ATCTs.

A description of interim protective measures afforded employees.

Pending approval of the proposed alternate standard, DOT has completed standard design ATCT structural fire safety enhancements proposed by the Rolf Jensen Associates licensed fire protection engineer. These enhancements comply with the proposed alternate standard. Other ATCTs are currently under going review by the licensed fire protection engineer contractor and up-grades are scheduled for completion by December 1994. In the interim, DOT has initiated a program in which ATCT employees are trained in emergency response techniques (evacuation plan, fire response techniques, and fire extinguisher use), agreements are made with local fire and rescue response units to ensure prompt fire control and medical service response, smoke detectors and fire alarms are installed, and housekeeping material and storage practices are improved.

[FR Dec. 94-20473 Filed 8-24-94; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID2-1-5552b; FRL-5012-9]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Idaho for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements for an acceptable moderate nonattainment area PM-10 SIP for Pinehurst, Idaho. In the final rules section of this *Federal Register*, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment 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 this proposed rule, no further activity is contemplated in

relation to this rule. If the EPA receives adverse comments, 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 document. Any parties interested in commenting on this document should do so by September 26, 1994.

DATES: Comments on this proposed rule must be received in writing by September 26, 1994.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT-082), Air Programs Section, 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. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency,
Region 10, Air Programs Section, 1200
6th Avenue, Seattle, WA 98101.
State of Idaho Division of
Environmental Quality, 1410 N.
Hilton, Boise, ID 83720.

FOR FURTHER INFORMATION CONTACT:
Stephen Fry, Air Programs Branch (AT-082), EPA, 1200 6th Avenue, Seattle,
WA 98101, (206) 553-2575.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this Federal Register.

Dated: July 5, 1994.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 94-20807 Filed 8-24-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[CA 83-2-6581b; FRL-5030-3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from Polyester Resin Operations, Fugitive Emissions of Volatile Organic Compounds, Manufacture of Polymeric

Cellular (Foam) Products, and Sumps and Wastewater Separators.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this 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 EPA receives adverse comments, 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 document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by September 26, 1994.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:
Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 2020 "L" Street,
Sacramento, CA 92123-1095.
South Coast Air Quality Management
District, 21865 E. Copley Drive,
Diamond Bar, CA 91765-4182.

FOR FURTHER INFORMATION CONTACT:

Daniel A. Meer, Chief, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901. Telephone: (415) 744-1185.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District (SCAQMD), Rule 1162, Polyester Resin

Operations; Rule 1173, Control of Emissions from the Manufacture of Polymeric Cellular (Foam) Products; Rule 1173, Fugitive Emissions of Volatile Organic Compounds; and Rule 1176, Sumps and Wastewater Separators submitted to EPA by the California Air Resources Board (CARB) on May 24, 1994.

For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401-7671q.

Dated: July 29, 1994.

Jeffrey Zelikson,

Regional Administrator.

[FR Doc. 94-20913 Filed 8-24-94; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 70

[LA-001; FRL-5057-6]

Clean Air Act Interim Approval of Operating Permits Program; Louisiana Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by the Governor of Louisiana for the Louisiana Department of Environmental Quality (LDEQ) for the purpose of complying with Federal requirements which mandate that States develop, and submit to the EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources with the exception of sources on Indian Lands.

DATES: Comments on this proposed action must be received in writing by September 26, 1994.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the EPA Region 6 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency,
Region 6, Air Programs Branch (6T-AN),
1445 Ross Avenue, suite 700, Dallas,
Texas 75202-2733.

Louisiana Department of
Environmental Quality, Office of Air
Quality, 7290 Bluebonnet Blvd., P.O.

Box 82135, Baton Rouge, Louisiana
70884-2135.

FOR FURTHER INFORMATION CONTACT:

Joyce P. Stanton, New Source Review
Section, Environmental Protection
Agency, Region 6, 1445 Ross Avenue,
suite 700, Dallas, Texas 75202-2733,
telephone 214-665-7218.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act as amended on November 15, 1990 ("the Act"), the EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of a State operating permits program (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 the 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 the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval and disapproval. Where a program substantially, but not fully, meets the requirements of 40 CFR part 70, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after the November 15, 1993, 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 State Submission

1. Support Materials

Pursuant to section 502(d) of the Act, the Governor of each State is required to develop and submit to the Administrator an operating permits program under State or local law or under an interstate compact, meeting the requirements of title V of the Act. Louisiana submitted, under the signature of Governor Edwin W. Edwards, the operating permits program, prepared by LDEQ, to be implemented in all areas of the State of

Louisiana with the exception of Indian Lands.

In the LDEQ operating permits program submittal, LDEQ does not assert jurisdiction over Indian lands or reservations. To date, no tribal government in Louisiana has authority to administer an independent air program in the State. Upon promulgation of the Indian air regulations, the Indians will then be able to apply as a State, and receive the authority from the EPA to implement an operating permits program under title V of the Act. The EPA will, where appropriate, conduct a Federal title V operating permits program in accordance with forthcoming EPA regulations, for those Indian tribes which do not apply for treatment as States under the Act.

40 CFR 70.4(b)(1) requires that the submittal contain a program description of Louisiana's operating permits program describing how LDEQ intends to carry out its responsibilities under the part 70 regulations. The program description, contained in Volume I of the submittal, explains that this operating permits program was developed to satisfy all of the requirements of 40 CFR part 70. The operating permits program will incorporate the review and issuance procedures for part 70 operating permits into the existing State preconstruction permit review and issuance procedures.

The program description contains a description of the organizational structure of the LDEQ Air Quality Division and a description of the agency's permit related responsibilities. The Air Quality Division is divided into nine sections. Through the Small Business Assistance Section, the LDEQ provides technical assistance to small businesses to help them comply with new regulations under the Act.

40 CFR 70.4(b)(3) requires the Governor to submit a legal opinion from the Attorney General (or the attorney for the State air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The State of Louisiana submitted an Attorney General's Opinion under the First Assistant Attorney General's signature demonstrating adequate legal authority as required by Federal law and regulation for source category-limited interim approval as further discussed below.

The Attorney General's Opinion contains documentation of adequate legal authority to carry out the issuance of permits to all sources subject to the requirements of the part 70 regulations,

and to promulgate regulations in compliance with applicable State and Federal laws. The Attorney General's Opinion cites 30 Louisiana Revised Statute (L.R.S.) 2023, which establishes a maximum permit term of ten years, and allows LDEQ to modify a permit for cause in accordance with law, rule or regulation. Through these statutory provisions LDEQ has developed regulations which provide a five-year permit term for all sources, and which allow permits to be terminated, modified, or revoked and reissued for cause.

The LDEQ has the authority to enforce the regulations either through an administrative action to require compliance or a civil action to compel compliance and recover penalties. Penalties for administrative and civil enforcement are consistent with the penalty requirements contained in 40 CFR 70.11. The State also possesses criminal authority to compel enforcement. However, for criminal violations, the State law requires a willful and knowing violation, while part 70 only requires a knowing violation. The Attorney General's Opinion demonstrates through case law that there is no distinction between these two requirements under Louisiana law. Therefore, this difference is not a defect for purposes of part 70.

30 L.R.S. section 2025(F)(1) provides that an emission of any substance in contravention of regulations, permit terms, and conditions pursuant thereto, that endangers or that could endanger human life or health, is a felony subject to a fine of not more than \$1,000,000 or the cost of cleanup, and an additional fine of up to \$100,000 per violation, which may be assessed for each day the violation continues, and imprisonment of up to ten years. 30 L.R.S. section 2025(F)(2) requires that a person who commits a violation of an emission limitation or non-emission related applicable requirement or permit condition that does not endanger or could not endanger human life or health is guilty of a misdemeanor and may be fined not more than \$25,000 per violation, which may be assessed for each day the violation continues and imprisonment of up to one year. This is consistent with 40 CFR 70.11 which requires criminal penalties to be recoverable in a maximum amount of not less than \$10,000 per day per violation for any knowing violation of any applicable requirement, any permit condition, or fee or filing requirement.

All records of LDEQ are available to the public under 44 L.R.S. sections 1 and 31, unless the Secretary determines that disclosure would either impair an

ongoing investigation or disclose trade secrets. This statute provides that certain environmental information such as air emission data may not be held confidential. However, it is not clear whether these confidentiality provisions could be interpreted to protect from disclosure the contents of the permit itself. As a condition of full approval, LDEQ will be required either to submit an Attorney General's Opinion demonstrating that its statute is interpreted not to allow any portion of a permit to be held confidential, consistent with section 503(e) of the Act, or to revise Louisiana Administrative Code (LAC) 33:III, Chapter 5, AQ#70, section 517.F to clarify that no portion of the permit may be considered confidential.

The State statute requires judicial review and a civil judicial order to proceed with permit issuance as the only remedy available for failure of LDEQ to act on a permit application within the specific time requirements. The judicial review provided by the State meets the requirements of 40 CFR part 70.

30 L.R.S. sections 2011(D)(2), 2022, and 2023 of the State statute allows LDEQ discretionary authority to issue variances. The EPA regards this provision as wholly external to the operating permits program submittal and therefore the statutory variance provision is not being approved as part of the title V operating permits program. Any variances that may be issued by LDEQ will not have the effect of revising the title V permit or relieving the source from compliance with any requirements of the Act unless the variance is processed through title V modification procedures.

The Attorney General's opinion has demonstrated that oil and gas wellheads and pipelines will not constitute part 70 sources. Such a demonstration was required by the State statutory provision at 30 L.R.S. section 2022(C)(1) which allowed for default issuance of State permits to wellheads and pipelines 74 days after receipt of a permit application by the permitting authority.

The Attorney General's opinion has also demonstrated that cotton gins will not constitute part 70 sources. This demonstration was required because the State statute prohibits the State from regulating controlled burning of cotton gin agricultural wastes in connection with cotton gin operations.

30 L.R.S. section 2054(B)(2)(b) provides that the Secretary of the LDEQ has no jurisdiction or authority to make any regulation with respect to burning of agricultural by-products in the field in connection with the planting,

harvesting or processing of agricultural products, or with respect to controlled burning in connection with timber stand management or with respect to controlled burning of pastureland or marshland in connection with trapping or livestock production. These sources do not meet the part 70 definition of major source because air emissions from these sources are fugitive, and 40 CFR 70.2 does not require that fugitive emissions be counted in determining whether such sources are major for purposes of section 302(j) of the Act or title I nonattainment definitions of "major source." Therefore, the State's lack of authority to permit the types of controlled burning described in this section of Louisiana law is not a defect in Louisiana's part 70 operating permits program.

40 CFR 70.4(b)(4) requires the submission of relevant permit program documentation not contained in the regulations, such as permit forms and relevant guidance to assist in the State's implementation of its operating permits program. The State addresses this requirement in Volumes I and III of its title V operating permits program submittal. Volume III contains a model permit, application forms and instructions, including the standard Phase II acid rain forms. Volume I contains a description of the State's compliance tracking and enforcement program, including the criteria for monitoring source compliance.

2. Regulations and Program Implementation

The State of Louisiana has submitted Air Quality Division regulations LAC 33:III, Chapter 5, AQ#70—"Permit Procedures" ("the permit regulations") and LAC 33:III, Chapter 65, AQ#76—"Rules and Regulations for the Fee System of the Air Quality Control Programs" ("the fee regulations"), for implementing the State's operating permits program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was submitted in Volume III of the submittal. Copies of all applicable State and local statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program.

The following requirements, set out in the EPA's part 70 regulation, are addressed in the State's submittal: (1) Provisions to determine applicability (40 CFR 70.3(a)); AQ#70 section 507.A.1; (2) Provisions to determine complete applications (40 CFR 70.5(a)(2)) and program documentation (40 CFR 70.4(b)(4)); AQ#70 section 519 and AQ#70 section 517 respectively,

and Volume III, Permit Forms and Instructions; (3) Public Participation (40 CFR 70.7(h)); AQ#70 section 531.A; (4) Provisions for minor permit modifications (40 CFR 70.7(e)(2)); AQ#70 section 525; (5) Provisions for permit content (40 CFR 70.6(a)); Volume III, Permit Forms and Instructions; (6) Provisions for operational flexibility (40 CFR 70.4(b)(12)); AQ#70 section 507.G; (7) Provisions to determine insignificant activities (40 CFR 70.4(b)(2)); A list of insignificant activities was not included with the submittal and may be submitted as a revision at a later date; (8) Enforcement provisions (40 CFR 70.4(b)(5) and 70.4(b)(4)(ii)); 30 L.R.S. section 2025.F and Volume I, Enforcement and Compliance Programs.

Following is a discussion of certain specific provisions in the State's submission as they relate to requirements of 40 CFR part 70:

(a) Applicability criteria, including any criteria used to determine insignificant activities or emissions levels (40 CFR 70.4(b)(2) and 70.3(a)): These requirements are met by AQ#70 section 517 which requires the permit application to include information regarding emissions from sources of all regulated air pollutants and does not allow an exemption for insignificant activities. The permit regulations require that the applicable sources submit an application prior to construction, reconstruction, or modification which may result in an increase in air contaminants. AQ#70 section 507.A.3 requires that permits incorporate all federally applicable requirements for each emissions unit at the source. AQ#70 section 507.A requires all major sources, all sources required to obtain an operating permit pursuant to regulations promulgated under sections 111 or 112 of the Act (except sources that would be required to obtain a permit solely because they are regulated sources pursuant to section 112(r) of the Act), and all affected sources under the acid rain program to apply for and receive an operating permit.

Because of a regulation involving research and development (R & D) facilities discussed below, the State will lack authority to ensure that all part 70 sources submit an application in the first year after interim approval. This defect in the State's authority will render the interim approval granted to the Louisiana operating permits program, a source category-limited interim approval. Further discussion of this issue follows.

AQ#70 section 501.B.7 provides that the permitting authority may allow a

certain complex within a facility to be considered as a source separate from the facility with which it is co-located, provided that the complex is used solely for R & D of new processes and/or products, and is not engaged in the manufacture of products for commercial sale. The permit regulations are inconsistent with 40 CFR 70.3 which requires that a State's operating permits program provide for the permitting of all major sources, and 40 CFR 70.4(b)(3)(i) which requires that the State demonstrate adequate legal authority to issue permits and assure compliance with each applicable requirement by all part 70 sources.

Confusion over this issue has occurred as a result of language in the preamble to the final July 21, 1992, 40 CFR part 70 rulemaking (57 FR 32264). The preamble language indicates that States would have the flexibility in many cases to treat R & D facilities separately from the manufacturing facilities with which they are co-located. The EPA intended for this language to clarify the flexibility in part 70 for allowing R & D facilities to be treated separately in cases where the R & D facility has a different two-digit Standard Industrial Classification ("SIC") code and is not a support facility. This approach is consistent with the treatment of R & D facilities in the New Source Review program.

40 CFR 70.2 requires all sources located on contiguous or adjacent properties, under common control, and belonging to a single major industrial grouping to be considered as the same source. The Louisiana permit regulations could cause certain part 70 major sources, as defined in 40 CFR 70.2, or portions of such sources with the same SIC code, to be treated as separate sources. This could cause some part 70 sources to be exempted from coverage by part 70 permits which must ensure all part 70 requirements for these sources are met.

The EPA's August 2, 1993, guidance provides that the EPA can grant source category-limited interim approval to States whose programs do not provide for permitting all required sources if the State makes a showing that two criteria are met: (1) That there were "compelling reasons" for the exclusions; and (2) that all required sources will be permitted on a schedule that "substantially meets" the requirements of 40 CFR part 70. The EPA considers Louisiana's misinterpretation of the preamble language to be a compelling reason for granting this type of interim approval. Louisiana has not requested additional time for issuing initial permits. In addition, it has been estimated that a

small number of major sources will be deferred from permitting due to the Louisiana R & D provision, and that such sources can still be permitted within the three-year time frame. This substantially meets the requirements of 40 CFR part 70. Also, for these reasons, the EPA is not requesting a detailed, written analysis supporting the State's claim that its program substantially meets the part 70 applicability requirement.

Source category-limited interim approval will allow Louisiana to develop a permitting schedule to provide for the permitting of any "exempted" sources during the latter part of the program's three-year transition period, after the permit regulations have been revised.

Notwithstanding the granting of source category-limited interim approval based on the possibility that some major sources will not be required to submit applications within the first year after program approval, the EPA expects that any permits issued will address all applicable requirements, as required by 40 CFR 70.7(a)(1)(iv).

For full part 70 approval, the LDEQ will be required to revise its permit regulations and demonstrate that no source or portion of a source which would be defined as major under 40 CFR 70.2 will be exempted from part 70 requirements because an R & D facility is co-located with the source. Guidance on the R & D issue is expected to be forthcoming from the EPA Office of Air Quality Planning and Standards in the near future.

AQ#70 section 502 defines "title I modification" as a change at a site that qualifies as a modification under section 111 of the Act, or section 112(g) of the Act, or that results in a significant net emissions increase under part C or part D of the Act. The EPA believes the phrase "modifications under any 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 the EPA into the State Implementation Plan (SIP) under section 110(a)(2)(C) of the Act and regulations addressing source changes that trigger National Emission Standards for Hazardous Air Pollutants (NESHAPS) established pursuant to section 112 prior to the 1990 amendments. The EPA intends to revise its criteria for interim approval in 40 CFR 70.4(d) prior to final approval on the proposal to grant Louisiana interim

approval so that interim approval may be granted to State programs, like Louisiana's, that adopt a narrower definition of "title I modification" than the Federal definition.

As noted, the EPA believes the better interpretation of "title I modification" would preclude granting full approval to the Louisiana operating permits program. However, in the proposal to revise 40 CFR part 70, the 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 the minor modification process to be used for changes reviewed under programs approved pursuant to section 110(a)(2)(C) of the Act and changes that trigger the application of NESHAPS established pursuant to section 112 of the Act prior to the 1990 amendments. Should the EPA adopt this alternative interpretation of "title I modification" which allows the minor modification process to be used for changes reviewed under programs approved pursuant to section 110(a)(2)(C) of the Act and changes that trigger the application of NESHAPS established pursuant to section 112 of the Act prior to the 1990 amendments, the definition of "title I modification" in Louisiana's operating permits program would then be fully consistent with the 40 CFR part 70 "title I modification" definition without change.

With regard to the definition of "major source", the definition in AQ#70 section 502 is broader than the part 70 definition because it does not require the sources to belong to a single major industrial grouping. This is approvable under part 70, and will result in more sources being covered by the State's operating permits program than would be required by the part 70 definition of "major source."

(b) Permit application requirements (40 CFR 70.5(c)): These requirements are addressed in AQ#70 section 517. In addition to the information required to be submitted by 40 CFR 70.5(c), the permit regulations also require the submittal of a location map of the facility. AQ#70 section 507.G provides for alternative operating scenarios, consistent with the requirements of 40 CFR 70.4(b)(12), and requires the sources requesting alternative operating scenarios to submit the information in accordance with AQ#70 section 517.

(c) Permit issuance and revision procedures (40 CFR 70.7): These requirements are met by the permit regulations. AQ#70 section 507.C.1 requires all existing sources to submit an application within one year of the

effective date of the State's operating permits program approval. AQ#70 section 507.C.2 requires that a permit application be submitted prior to construction, reconstruction, or modification of any source. Permit applications for renewal are required at least six months prior to the date of permit expiration, but not more than eighteen months prior to the date of permit expiration. The permit regulations contain criteria for determining completeness of applications consistent with 40 CFR 70.5(a)(2). Consistent with 40 CFR 70.7, the permit regulations prohibit a source from operating after the time that the source is required to submit a timely and complete application. AQ#70 section 507.B includes provisions for continuing permits or permit terms if a timely and complete application is submitted, but action is not taken on a request prior to permit expiration consistent with 40 CFR 70.4(b)(10).

AQ#70 section 507.C.1.b contains the deadlines for submittal of acid rain permit applications. Although this section purports to cover all relevant dates for submittal of acid rain permit applications, however, this section does not contain the deadlines required by 40 CFR 72.30(b)(2)(iii) for new units and for units that did not serve a generator with a name plate capacity greater than 25 Megawatts electrical on November 15, 1990, but which serve such a generator after November 15, 1990. AQ#70 section 505.D.2 contains the deadlines for submittal of acid rain permit applications consistent with those required by title IV of the Act, but contradicts AQ#70 section 507.C.1.b. Even though AQ#70 section 505.A.4 states that any requirement, provision, or emissions limitation of the Federal regulations of the acid rain program, where applicable to an affected source, shall supersede LAC 33:III Chapter 5 of the Louisiana Regulations to the extent that such Federal regulations are inconsistent with those permit regulations, the inconsistency between the Federal acid rain regulations creates a lack of clarity and should be eliminated. Therefore, for full part 70 approval, AQ#70 section 507.C.1.b must be revised to require the affected sources to comply with the deadlines in LAC 33:III.505.D.2 consistent with 40 CFR parts 70 and 72.

AQ#70 section 519 contains provisions regarding completeness determinations and requests for additional information consistent with 40 CFR 70.4(b)(6), 70.5(a)(2) and 70.7(a)(4). Requirements for application contents are found in AQ#70 section

517.D and are consistent with 40 CFR 70.5(c).

AQ#70 section 521 contains the requirements for administrative amendments. AQ#70 section 521.A.5 allows an administrative amendment for the incorporation of changes to render preconstruction permit terms and conditions consistent with emissions data and operating parameters as determined by start-up testing results provided the following criteria are met:

- The changes are a result of a test performed upon start-up of newly constructed, installed, or modified equipment or operations;
- increases in permitted emissions will not exceed 5 tons per year for any regulated pollutant;
- increases in permitted emissions of Louisiana toxic air pollutants or of Federal hazardous air pollutants would not constitute a modification under LAC 33:III Chapter 51 or under section 112(g) of the Act;
- changes in emissions would not require new source review for prevention of significant deterioration or nonattainment, and would not trigger the applicability of any federally applicable requirement;
- changes in emissions would not qualify as a significant modification;
- the request is submitted no later than 12 months after commencing operation; and
- the permit contains a term which provides for the incorporation of test results by administrative amendment in accordance with the section entitled "Administrative Amendments." The EPA considers these provisions to be similar in many respects to the authority allowed for reasonably anticipated operating scenarios without a permit revision under 40 CFR 70.6(a)(9), because the permit will give adequate notice of and provide limitations on the changes that may occur through a subsequent administrative amendment. In addition, these provisions are consistent with part 70 revision procedures because they achieve substantially the same result as would be the case if Louisiana's preconstruction and operating permitting programs were separate. Since, if these programs were separate, 40 CFR 70.5(a)(1)(ii) and 70.4(b)(14) together would allow changes to preconstruction permits to occur prior to revision of the part 70 permit (unless such changes conflicted with an existing part 70 permit), the use of an expedited revision procedure for incorporation of test results, such as that in AQ#70 section 521.A.6, produces substantially equivalent results where the preconstruction and operating permit programs are merged. In light of these

considerations, the EPA believes this provision is consistent with part 70.

AQ#70 section 521.A.6 provides that an administrative amendment may be used to revise a permit for changes that would not violate any applicable requirement or standard, which do not require permit modifications under 40 CFR part 70 and which the permitting authority considers to be similar in nature to the changes listed in that subsection. This provision could be interpreted to allow administrative amendments to permits to incorporate changes authorized by 40 CFR 70.4(b)(14). These "off-permit" changes, which are not addressed or prohibited by the permit, may be made under part 70 without permit revisions. However, the part 70 rule contains no authority for such changes to be incorporated into operating permits except through the appropriate part 70 permit procedures, which may be either a minor or significant modification. Therefore, for full part 70 approval, section 521.A.6 must be revised to eliminate administrative amendments for this type of change. In the interim, the EPA expects Louisiana to implement this provision in a manner consistent with 40 CFR part 70.

AQ#70 section 521.A.6 also allows changes to be made to operating permits by administrative amendment where the State's permitting authority has determined they are similar to the changes listed in AQ#70 section 521.A. Part 70 allows changes submitted as part of a State's part 70 program, in addition to those specified in 40 CFR 70.7(d)(1), to be made as administrative amendments where the EPA Administrator determines those changes to be similar to the changes listed in 40 CFR 70.7(d)(1)(i)-(iv). However, no such proposed changes were submitted by the State as part of its operating permits program, and part 70 does not allow for the substitution of the State permitting authority's approval for the Administrator's approval, which is required by 40 CFR 70.7(d)(1)(vi). Therefore, for full part 70 approval, this defect in AQ#70 section 521.A.6 of the permit regulations must be corrected.

The requirements of 40 CFR 70.4(b)(13), (16), 70.7(h), and 70.8 for permit issuance, renewals, reopenings and revisions, including public notice, and EPA and affected State review are met by the provisions of AQ#70 sections 519, 531, and 533. AQ#70 section 533.B of the permit regulations requires the applicant, rather than the permitting authority, to submit the permit applications directly to the Administrator. The notification to affected States will be provided by the

permitting authority within 5 working days of receipt of a complete permit application as required by 40 CFR part 70. AQ#70 sections 533.C and D and 531.B provide EPA review, objection and affected State notice only for major sources. The Administrator may, at the time of an operating permits program approval, waive the requirement for affected State and EPA review for any category of sources other than major sources pursuant to 40 CFR 70.8(a)(2). Pursuant to 40 CFR 70.3(b)(1), the State is, under AQ#70 section 507.A.1, also deferring from the part 70 program at this time, non-major sources with the exception of acid rain sources and solid waste incineration units required to obtain permits pursuant to section 129(e) of the Act. This deferral is acceptable under 40 CFR 70.3(b)(1) until the Administrator completes a rulemaking to determine how the program should be structured for non-major sources and whether any permanent exemptions in addition to those provided for in 40 CFR 70.3(b)(4) are appropriate.

The requirements of 40 CFR 70.7(e) for minor modification procedures are established in AQ#70 section 525. 40 CFR 70.7(e)(2) allows the use of these expedited minor modification procedures for certain types of changes. Among other limitations, the minor modification procedures may not be used for any changes to "case-by-case" determinations. AQ#70 section 525.A.2 of the permit regulations defines the criteria for minor modifications.

Questions have been raised concerning whether the 40 CFR 70.7(e)(2)(i)(A)(3) provisions prohibiting changes in "case-by-case" determinations would apply in the instance of a preconstruction permit in which the permitting authority, through a minor modification procedure, changes a source-specific control technology requirement not required under part C or D or section 111 or 112 of the Act, or an emission limitation determination established on a source-specific basis. The EPA believes the better interpretation of 40 CFR 70.7(e)(2)(i)(A)(3) requires that any requirement imposed on a source-specific basis, such as one in which the permitting authority has discretion in setting the requirement for the particular source, must be considered to be a "case-by-case" determination. Therefore, the EPA believes that a change involving a source-specific requirement in a preconstruction permit would be considered a "case-by-case determination of an emission limitation" under 40 CFR 70.7(e)(2)(i)(A)(3), ineligible for

processing as a minor permit modification. AQ#70 section 525.A.2.d allows the use of minor modification procedures for some changes which would be considered "case-by-case" emission limits under the interpretation referred to above. The EPA intends to revise 40 CFR part 70 to make interim approval possible for a State which uses the approach taken in the Louisiana operating permits program for the "case-by-case" restriction. The EPA is also soliciting comment in the proposal to revise 40 CFR part 70 with regard to whether the criteria in 40 CFR 70.7(e)(2)(i)(A)(3) should be interpreted to allow source specific minor preconstruction permit review changes in control technology determinations or emission limitation determinations to be eligible for minor modification procedures. Should EPA decide in favor of this interpretation, Louisiana's approach to the "case-by-case" restriction would be fully consistent with 40 CFR part 70 without change. If the EPA decides, instead, to adopt its current position described above, the Louisiana operating permits program would be inconsistent with 40 CFR part 70 requirements, because it allows changes in control technology determinations and emission limitation determinations among other changes that may fall within the 40 CFR 70.7(e)(2)(i)(A)(3) restriction to be processed through the minor modification procedures. Therefore, as a condition of full part 70 approval, Louisiana would be required to revise these permit regulations to provide that such changes must be processed as significant modifications, as required by 40 CFR 70.7(e)(4).

AQ#70 section 525 requires that the application for a minor modification be submitted to and approved by the permitting authority prior to making the proposed change at the source. AQ#70 section 525.B.6 states that for any minor modification pertaining to a change which affects federally enforceable permit terms and conditions at a part 70 source, the terms of the permit revision shall not be federally enforceable pursuant to 40 CFR part 70 until after the required EPA 45-day review period has expired or until the EPA has notified the permitting authority that the EPA will not object to final issuance of the permit modification, whichever is first. If the permitting authority has issued approval of the modification prior to such time, the terms of the permit revision shall be enforceable by the State upon approval by the permitting authority consistent with the approved SIP. AQ#70 section 525.B.7

further provides that, if at any time after the approval by the permitting authority the EPA objects, the permit will be reopened. This is consistent with 40 CFR 70.7(e)(2)(v). This section of the permit regulations provides time-frames for action on the minor modification applications consistent with 40 CFR 70.7(e)(2)(iv). The permit regulations do not provide for group processing of minor modifications for groups of sources. Since the requirements in 40 CFR part 70 for group processing are not mandatory, this is acceptable.

AQ#70 section 527 addresses the criteria for significant modifications and substantially meets the requirements of 40 CFR 70.7(e)(4). AQ#70 section 527.A.3, in allowing certain changes that render existing compliance terms irrelevant to be incorporated through minor modification procedures, appears to refer to changes such as those described in 40 CFR 70.4(b)(14), "off-permit" changes. However the language of the permit regulations is unclear and requires clarification. To remedy this defect, the State should add language clarifying that the modification is one which would qualify as a change under 40 CFR 70.4(b)(14) because it is not addressed or prohibited by the permit and would otherwise qualify for treatment as a minor modification under 40 CFR 70.7(e)(2)(i)(A).

Provisions for permit reopenings are addressed in AQ#70 section 529 and are consistent with the requirements of 40 CFR 70.7(f).

40 CFR 70.8(a)(3) requires that each State permitting authority keep for five years such records as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act and 40 CFR part 70. 44 L.R.S. section 1 contains a very broad definition of "public records." 44 L.R.S. section 36 requires the records to be kept for three years unless a longer formal retention schedule has been developed. As a condition of full part 70 approval, a statutory change will be necessary or a supplemental Attorney General's Opinion will need to be submitted demonstrating how the current statute ensures that the required records will be kept for at least five years.

(d) Permit Content (40 CFR 70.6(a)): The permit content requirements of 40 CFR 70.6(a) are met by the model permit submitted in Volume III of the State's part 70 submittal. However, 40 CFR 70.4(b)(16) also requires provisions in the State's program implementing the requirements of 40 CFR 70.6 and 70.7. To meet these part 70 requirements, AQ#70 sections 501.C.5 and 6 speak generally to permit terms and

conditions, but do not set out all requirements for each operating permit. Specifically they do not include a requirement that the permit specify the origin of and reference the authority for each term or condition, nor do they identify differences in form from the applicable requirements upon which the terms are based. Other elements required by 40 CFR 70.6 are also not addressed. 40 CFR 70.6(a) includes requirements for emission limitations, monitoring and recordkeeping, and specifies that the regulation must state that no permit revision shall be required under any approved economic incentive, marketable permits or similar program. A severability clause is also required to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit. These elements must be addressed in the permit regulations in order to afford citizens the opportunity to legally challenge permits. Although some of these elements are contained in the State's model operating permit, one condition of full part 70 approval will be that the permit regulations be revised to require that all permit elements of 40 CFR 70.6(a) be included in each permit.

AQ#70 section 507.H meets the compliance requirements of 40 CFR 70.6(c). General permits as allowed by 40 CFR 70.6(d) and temporary sources as allowed by 40 CFR 70.6(e) are provided for in AQ#70 sections 513.A and 513.B, respectively. These sections meet the requirements of 40 CFR part 70.

40 CFR 70.6(f) provides that the State may allow a provision in the part 70 permit stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirement as of the date of permit issuance provided certain requirements are met. AQ#70 section 507.I allows a very restricted use of such a "permit shield." If the permit does not specifically state that a permit shield exists for a specific Federal program, no shield is presumed to exist. AQ#70 section 507.I requires all permit shields to undergo public notice requirements.

40 CFR 70.6(g) contains provisions which state that certain "emergencies" may constitute affirmative defenses to actions for noncompliance. AQ#70 section 507.J provides emergency provisions consistent with those of 40 CFR 70.6(g), using the term "upset" rather than "emergency."

40 CFR 70.4(b)(12) requires that the State's part 70 submittal contain operational flexibility provisions. AQ#70 section 507.G provides for

operational flexibility consistent with 40 CFR 70.4(b)(12).

The permit regulations do not include a definition of "emissions allowable under the permit," because the State interprets the plain meaning of this term to be clear in the context of the permit regulations without further definition. The EPA agrees that the Louisiana permit regulations taken as a whole adequately define "emissions allowable under the permit."

(e) Off-permit (40 CFR 70.4(b)(14) and (70.4(b)(15)): Section 507.F of the permit regulations allows off-permit changes which meet the requirements and provisions of 40 CFR 70.4(b)(14) and (15).

3. Permit Fee Demonstration

The fees for criteria air pollutants contained in the fee regulations are below the presumptive minimum; therefore a detailed fee demonstration was submitted in Volume I of the title V operating permits program submittal. The fee regulations require a fee of \$9.00 per ton for criteria pollutants based on actual emissions at major sources. For facilities which emit hazardous air pollutants (HAPs), the fees are \$25, \$50 or \$100 per ton based on the class of the pollutant. These fees, when totaled and divided by the total emissions, result in the collection of approximately \$19 per ton for part 70 sources. After careful review, the State determined that these fees would support the title V permit program costs as required by 40 CFR 70.9(a). The fee demonstration explains that this fee structure allows program costs to be covered without unduly penalizing any industry in the State, and the fees generated would meet the program costs. The fee demonstration is detailed and contains direct and indirect costs as well as the cost for the implementation of enhanced monitoring, and titles III and IV of the Act. The number of resource-hours and positions needed to implement the program was calculated and the fees were adjusted to meet these costs. The fee regulations contain a provision requiring an annual review of the program fee schedule and fee regulations, based on the previous year's costs of permit program operation. The Louisiana fee demonstration shows that this fee schedule meets the requirements for an operating permits program in Louisiana. The State will collect \$11,000,000 per year to support all applicable part 70 activities. Total costs to administer the operating permits program are projected to be \$10.6 million per year. The State will also increase State air quality staff by 14 positions. Any changes in the fees

would need to be made by a revision to the fee regulations.

4. Provisions Implementing the Requirements of Other Titles of the Act

The State of Louisiana acknowledges that its request for approval of a part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards under the authority of section 112(l) as they apply to part 70 sources. Upon receiving approval under section 112(l), the State may receive delegation of any new authority required by section 112 of the Act through the delegation process.

The State also has the option at any time to request, under section 112(l) of the Act, delegation of section 112 requirements in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by the EPA. At this time, the State plans to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 requirements into its regulations.

The radionuclide NESHAP is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclides is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Section 112(g) of the Act requires that, after the effective date of a permits program under title V, no person may construct, reconstruct or modify any major source of HAPs unless the State determines that the maximum achievable control technology emission limitation under section 112(g) will be met. Such determination must be made on a case-by-case basis where no applicable limitations have been established by the Administrator. During the period from the title V effective date to the date the State has taken appropriate action to implement the final section 112(g) rule (either adoption of the unchanged Federal rule or approval of an existing State rule under 112(l)), Louisiana intends to implement section 112(g) of the Act through the State's preconstruction process.

The State of Louisiana commits to appropriately implementing and enforcing the existing and future requirements of sections 111, 112 and 129 of the Act, and all maximum achievable control technology (MACT) standards promulgated in the future, in a timely manner.

The State of Louisiana developed acid rain permit rules as AQ#70 section 505, which was submitted with the operating permits program package. The State also submitted standard acid rain permit application forms. These forms will be revised as updated model forms are provided by the EPA. These rules and permit applications meet the requirements of the acid rain program.

5. Enforcement Provisions

Louisiana's operating permits program submittal addressed the enforcement requirements of 40 CFR 70.4(b)(4)(ii) and 70.4(b)(5) in Volume I which included a signed Memorandum of Understanding between EPA Region 6 and LDEQ. 30 L.R.S. section 2025.F.1 allows for injunctive relief for violations that are emissions-related, and 30 L.R.S. section 2025.F.2 allows for criminal penalties for violations of emissions limitations, fee and filing requirements, tampering with a monitoring device, and false statements. 30 L.R.S. section 2025.F.2.c provides that a person shall not be considered to be in willful or knowing violation of a fee or filing requirement that was not complied with through excusable neglect.

The Louisiana Attorney General's Opinion has demonstrated that the State's enforcement authority is adequate under the requirements of 40 CFR part 70, as discussed above.

6. Summary

The State of Louisiana submitted to the EPA, under a cover letter from the Governor dated November 15, 1993, the State's operating permits program. The submittal has been reviewed for adequacy under the requirements of 40 CFR part 70. The results of this review are included in the technical support document. The submittal has adequately addressed all sixteen (16) elements required for full approval as discussed in part 70, except with regard to the 70.4(b)(16) requirement to include requirements for all permit conditions in the permit regulations, the requirement that a permit, or any portion of a permit, may not be held confidential, the requirement that the permit regulations ensure that no source, or portion of a source which would be defined as major under 40 CFR 70.2 will be exempted from part 70 requirements because an R & D facility

is co-located with a manufacturing facility, the requirement that AQ#70 section 521.A.6 ensure that "off-permit" changes are not processed as administrative amendments, the requirement for approval by the Administrator for any changes similar to those allowed by AQ#70 section 521.A to be processed as administrative amendments, the requirement that AQ#70 section 527.A.3 be clarified as referring to "off-permit" changes, the requirement that AQ#70 section 507.C.1.b be revised to require that affected sources comply with the deadlines in AQ#70 section 505.D.2, and the requirement that records be kept for five years, as discussed above. According to EPA's current interpretation of "title I modification" and "case-by-case determination," the Louisiana operating permits program would also need to be revised for full approval consistent with the Federal interpretation, by making the definition of "title I modification" consistent with the Federal definition, and by requiring that changes to "case-by-case" emission limitation determinations and source-specific control technologies among other changes must be processed as significant modifications as required by 40 CFR 70.7(e)(2)(i)(3). However, if, as discussed above, 40 CFR part 70 is revised to adopt the alternative interpretation of "title I modification" and "case-by-case determination," Louisiana's regulation with regard to these issues would be fully consistent with 40 CFR part 70 without change. Louisiana's operating permits program submittal meets all requirements necessary to receive source category-limited interim approval of the State operating permits program pursuant to title V, 1990 Amendments and 40 CFR part 70.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by Louisiana on November 15, 1993. Interim approvals under section 502(g) of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. As discussed above, the State's regulation regarding R & D facilities causes the State to lack the authority to ensure that all part 70 sources submit an application in the first year following interim approval. Therefore, Louisiana will be granted source category-limited interim approval. In order to receive source category-limited interim approval, Louisiana's operating permits program must substantially meet the part 70

requirements and demonstrate a compelling reason. The EPA is satisfied that these requirements have been met. If promulgated, the State must make the changes noted above to receive full approval.

Evidence of these statutory and regulatory revisions and their procedurally correct adoption must be submitted to the EPA within 18 months of the EPA's approval of the Louisiana operating permits program. This interim approval, 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 the EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval would have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

If the interim approval is converted to a disapproval, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal would not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal would not impose a new Federal requirement.

III. Proposed Rulemaking Action

In this action, the EPA is proposing interim approval of the operating permits program submitted by the State of Louisiana. The program was submitted by the State to the EPA for the purpose of complying with Federal requirements found in title V of the Act, and in 40 CFR part 70, which mandate that States develop, and submit to the EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands.

Requirements for title V approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of Federal section 112 standards as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under 40 CFR part 70. Therefore, as part of this interim approval, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards.

as promulgated. This applies to existing and future standards as they apply to sources covered by the part 70 program.

The EPA has reviewed this submittal of the Louisiana operating permits program and is proposing source category-limited interim approval. Certain defects in the State's statutes and regulations preclude the EPA from granting full approval of the State's operating permits program at this time. The EPA is proposing to grant interim approval, subject to the State obtaining the needed regulatory and statutory revisions within 18 months after the Administrator's approval of the Louisiana title V program pursuant to 40 CFR 70.4.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal 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, the EPA in the development of this proposed interim approval. 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. The EPA will consider any comments received by September 26, 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. 600, et seq., the 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, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Operating permits 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 permits

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 the EPA to base its actions concerning operating permits 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, Intergovernmental relations, Operating permits.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 12, 1994.

W.B. Hathaway,

Acting Regional Administrator (6A).

[FR Doc. 94-20951 Filed 8-24-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 94-95; DA 94-895]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, through this action, invites comments on its proposal to amend its rules regarding the listing of major television markets, to change the designation of the Tampa-St. Petersburg-Clearwater television market to include the community of Lakeland, Florida. This action is taken at the request of Public Interest Corporation, licensee of television station WTMV(TV), channel 32, Lakeland, Florida and it taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before September 14, 1994 and reply comments are due on or before October 14, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William H. Johnson, Cable Services Bureau (202) 418-0856

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of*

Proposed Rulemaking, Docket 94-95, adopted August 12, 1994 and released August 15, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1919 M Street, NW, Washington, D.C. 20554.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rule Making filed by the petitioner, proposed to amend § 76.51 of the Rules to add the community of Lakeland to the Tampa-St. Petersburg-Clearwater, Florida television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before us that the television stations licensed to Tampa, St. Petersburg, Clearwater, and Lakeland do compete for audiences and advertisers throughout much of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to the market designation and the market as a whole. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. Accordingly, comment is requested on the proposed addition of

Lakeland to the Tampa-St. Petersburg-Clearwater, Florida television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by § 601 (3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR §§ 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties

may file comments on or before September 14, 1994, and reply comments on or before October 14, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 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) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

7. Accordingly, this action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by § 0.321 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.
Federal Communications Commission.
William H. Johnson,
Acting Chief, Cable Services Bureau.
[FR Doc. 94-20856 Filed 8-24-94; 8:45 am]
BILLING CODE 6712-01-F

DEPARTMENT OF DEFENSE

48 CFR Parts 211, 227, and 252

Defense Federal Acquisition Regulation Supplement; Rights in Technical Data

AGENCY: Department of Defense.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the public comment period for the proposed rule on Rights in Technical Data that the Department of Defense had published on June 20, 1994 (59 FR 31584).

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 9, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Deputy Director, Major Policy Initiatives, PDUSD (A&T) DP; ATTN: Ms. Angelina Moy; 1211 S. Fern Street, Room C-109, Arlington, VA 22202-2808. Please cite DAR Care 91-312 in all correspondence related to this proposed rule.

FOR FURTHER INFORMATION CONTACT: Ms. Angelina Moy, telephone (703) 604-5386.

Claudia L. Naugle,
Deputy Director, Defense Acquisition Regulations Council.
[FR Doc. 94-20969 Filed 8-24-94; 8:45 am]
BILLING CODE 5000-04-M

Notices

Federal Register

Vol. 59, No. 164

Thursday, August 25, 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

Agricultural Marketing Service

[TMD-94-00-2]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act of 1990, as amended (Act), requires the establishment of a National Organic Standards Board (NOSB) to assist in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of the Act. The NOSB was originally established on January 24, 1992, with individual members appointed for staggered appointments of 3, 4, and 5 years. Appointments for four members will be up in January 1995, and the Secretary seeks nominations of individuals to be considered for selection as NOSB members.

DATES: Written nominations, with resumes, must be postmarked on or before September 30, 1994.

ADDRESSES: Nominations should be sent to Dr. Harold S. Ricker, Assistant Director, Transportation and Marketing Division, Agricultural Marketing Service, U.S. Department of Agriculture (USDA), Room 4006 South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, (202) 720-2704.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law Number 92-463, notice is hereby given that the Organic Foods Production Act of 1990, as amended, requires the Secretary to establish an organic certification program for producers and handlers of agricultural

products that have been produced using organic methods. In developing this program, the Secretary is required to establish a NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the program.

The current NOSB has worked to develop recommendations to the Secretary to establish the initial program. It is anticipated that the NOSB will continue to work on recommendations for refinements in the program and the ongoing review of substances considered for organic production and processing. A member of the NOSB shall serve for a term of 5 years, except that the Secretary appointed the original members of the NOSB for staggered terms of 3, 4, and 5 years. The terms of four members of the current NOSB, who were appointed for 3-year terms, will be completed on January 24, 1995. A member may serve consecutive terms if such member served an original term that was less than 5 years. However a member of the NOSB, with 3 years of service, seeking reappointment may only be reappointed for 3 years in accordance with 7 U.S.C. 2283 (c) which states "No person other than an officer or employee of the Department of Agriculture may serve more than six consecutive years on an advisory committee, unless authorized by the Secretary."

Nominations are sought for the positions of Farmer, Handler or Processor, Retailer, and Environmentalist. Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic farming operation, an owner or operator of an organic handling or processing operation, an owner or operator of a retail establishment with significant trade in organic products, or an expert in the area of environmental or resource conservation.

One member of the NOSB must be a certifying agent as defined in Public Law Number 101-624. That member shall be appointed at an appropriate date after the accreditation of a number of individuals as certifying agents has been completed.

Selection criteria will include such factors as: demonstrated experience and interest in organics; commodity and geographic representation; endorsed

support of industry organizations; demonstrated experience with environmental concerns; and other factors as may be appropriate for specific positions.

After applications have been reviewed, individuals receiving nominations will be contacted and supplied with biographical forms. The biographical information must be completed and returned to USDA within 10 working days of its receipt, to expedite the security clearance process that is required by the Secretary.

Dated: August 19, 1994.

Lon Hatamiya,
Administrator.

[FR Doc. 94-20993 Filed 8-24-94; 8:45 am]

BILLING CODE 3410-02-P

Forest Service

Creaky Hart Project Area; Idaho Panhandle National Forests, Shoshone County, ID

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for public comment on proposed activities in the Creaky Hart Project Area.

DATES: The comment period on this DEIS ends October 12, 1994.

ADDRESSES: Comments should be addressed to Responsible Official, District Ranger, Steve E. Williams, Wallace Ranger District, Idaho Panhandle National Forest, P.O. Box 14, Silverton, ID 83867.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS should be directed to Ted J. Pettis, NEPA Coordinator, Wallace Ranger District, Idaho Panhandle National Forest, P.O. Box 14, Silverton, ID 83867. Phone: (208) 752-1221.

SUMMARY: Notice is hereby given that the Forest Service is issuing a DEIS for public comment. The DEIS documents proposed timber management practices that move the Creaky Hart Project Area toward the desired future conditions as directed by the 1987 Idaho Panhandle National Forest's (IPNF) Forest Plan. The area is located approximately 10 air miles north of Wallace, Idaho and is approximately 13,960 acres in size.

Public participation has been on going throughout the project. Comments are requested on the DEIS for the next 45

days. During this 45 day comment period, comments and concerns should be addressed to the NEPA Coordinator to assist in preparing a final EIS.

The District Ranger is the responsible official for this DEIS. Alternative 7 is the preferred alternative at this time.

SUPPLEMENTARY INFORMATION: A proposed action was developed for the area that included timber harvest, reforestation activities, and minimum entry into the Trouble Creek Roadless Area through implementation of timber sales. The scope of the proposed action is limited to timber harvesting, reforestation, and related road construction/reconstruction activities. During development of the proposed action and alternatives to the proposed action, emphasis has been placed on forest health, roadless, wildlife, and water resource concerns.

Seven alternatives were developed, including a No-Action Alternative. Alternative 7 is the alternative preferred by the Forest Service. Under Alternative 7, the harvest of green, dead and dying timber is scheduled for implementation. The project would produce an estimated 6.6 million board feet of timber and treat 56 timber harvest units. Openings would be no larger than 5 acres. Harvest methods include, clearcut, shelterwood, and overstory removal using helicopter and cable yarding. In this proposal 3.6 miles of road would be constructed. Roads would generally follow ridgetops and not cross any live streams.

Management activities would be administered by the Wallace Ranger District of the Idaho Panhandle National Forests in Shoshone County, Idaho. This DEIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area.

Dated: August 10, 1994.

Steve E. Williams,

District Ranger, Wallace Ranger District,
Idaho Panhandle National Forests.

[FR Doc. 94-20735 Filed 8-24-94; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Watershed Projects; Deauthorization of Funds; Boydsville Watershed, AR

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act,

Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for Boydsville Watershed Project (Clay County, Arkansas).

FOR FURTHER INFORMATION CONTACT:

Ronnie D. Murphy, State Conservationist, Soil Conservation Service, Room 5404, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, Telephone: (501) 324-5445.

SUPPLEMENTARY INFORMATION: A determination has been made by Ronnie D. Murphy that the proposed works of improvement for the Boydsville Watershed Project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Ronnie D. Murphy, state conservationist, at the above address and telephone number. No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

Dated: August 12, 1994.

Ronnie D. Murphy,

State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

[FR Doc. 94-20908 Filed 8-24-94; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Minority Business Development Agency.

Title: 1992 Characteristics of Business Owners Survey.

Form Number(s): CBO-1, -2, and -3.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 59,750 hours.

Number of Respondents: 152,000.

Avg Hours Per Response: .39 hour.

Needs and Uses: This survey will collect data for comparing characteristics among different groups of business owners. The collected data will be used to evaluate existing Government programs designed to promote businesses and to plan and manage future programs and research efforts.

Affected Public: Individuals or households, businesses or other for-profit institutions, small businesses or organizations.

Frequency: Single time.

Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle,
(202) 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 22, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94-20978 Filed 8-24-94; 8:45 am]

BILLING CODE 3510-CW-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Company Organization Survey.

Form Number(s): NC-9901.

Agency Approval Number: 0607-0444.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 196,794 hours.

Number of Respondents: 115,000.

Avg Hours Per Response: 1 hour 43 minutes.

Needs and Uses: The Census Bureau conducts the Company Organization Survey (COS) annually to update and maintain the Standard Statistical Establishment List (SSEL). The SSEL is a computerized list of all employer organizations and their establishments and contains such information as name, address, physical location, Standard Industrial Classification (SIC) code,

employment size code, and company affiliation. It provides a single universe for the selection and maintenance of statistical samples of establishments, legal entities, or enterprises; provides a standard basis for assigning SIC codes; and provides establishment level data from multi-establishment companies that are summarized and published in the annual County Business Patterns series of reports.

Affected Public: Business or other for-profit institutions, Non-profit institutions, Small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 22, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94-20977 Filed 8-24-94; 8:45 am]

BILLING CODE 3510-07-F

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000-2009

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, as amended by Pub. L. 94-409), we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000-2009. The meeting will convene on Thursday, September 8, 1994, continuing through Friday, September 9, 1994, at the DuPont Plaza Hotel, 1500 New Hampshire Avenue, N.W., Washington, D.C. The Advisory Committee is composed of a Chairperson, twenty-five member organizations, and nine ex officio

members, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 1:00 p.m. on Thursday, September 8, 1994 and adjourn at 5:00 p.m. on Friday, September 9, 1994.

ADDRESSES: The meeting will take place at the DuPont Plaza Hotel, 1500 New Hampshire Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Thomas P. DeCair, Department of Commerce, Bureau of the Census, Room 2066, Federal Building 3, Washington, D.C. 20233. Telephone: (301) 763-7298.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes discussions on cooperative ventures with state, local, and tribal governments; evaluation plans for the 1995 Test Census; non-federal content solicitation; residency rules; an update of the federal review of racial and ethnic categories; an explanation of estimation and sampling; and other items that the Chair and Advisory Committee members deem appropriate for this meeting.

The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Susan Knight on (301) 763-7298.

Dated: August 18, 1994.

Paul A. London,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 94-20901 Filed 8-24-94; 8:45 am]

BILLING CODE 3510-EA-M

International Trade Administration

[A-588-817]

Electroluminescent High Information Content Flat Panel Displays (EL FPDs) and Display Glass Therefor From Japan; Amendment of Notice of Court Decision and Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment of May 6, 1994, Notice of Court Decision and Revocation of Antidumping Duty Order.

SUMMARY: On April 15, 1994, in the case of *Hosiden Corporation v. United States*, 18 CIT ____, Slip Op. 94-60 (April 14, 1994) (*Hosiden I*), the United States Court of International Trade (CIT) affirmed the International Trade Commission's (ITC) amended determination on remand that there is no material injury to the U.S. industry from imports of electroluminescent (EL) flat panel displays and display glass therefor (FPDs) from Japan. In accordance with the decision of the Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department of Commerce (the Department) published a Notice of Court Decision in the *Federal Register* on May 6, 1994 (59 FR 23690, May 6, 1994) stating that The Department will continue to order the suspension of liquidation of the subject merchandise and that "[i]f the case is not appealed, or is affirmed on appeal, then the antidumping duty order on EL FPDs will be revoked." 59 FR at 23690.

On May 10, 1994, Sharp Corporation filed with the CIT a Motion for Writ of Mandamus to Enforce Judgment requesting that the CIT order the Department to take four specific actions to carry out the CIT's April 14, 1994, Order. On August 12, 1994, the CIT issued a Memorandum and Order granting Sharp Corporation's Motion for Writ of Mandamus to Enforce Judgment. *Hosiden Corporation v. United States*, Slip Op. 94-128, August 12, 1994 (*Hosiden II*). This notice is published in accordance with the CIT's August 12, 1994, Order and amends the Department's May 6, 1994, Notice of Court Decision.

EFFECTIVE DATE: August 17, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Diminich or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, N.W.,
Washington, D.C., 20230; telephone
(202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1991, the ITC determined that a U.S. industry was being materially injured by reason of imports of EL FPDs from Japan (56 FR 43937, Sept. 5, 1991). On September 4, 1991, the Department published an antidumping duty order on EL FPDs (56 FR 43741, September 4, 1991).

The ITC determination was appealed to the CIT by exporters of FPDs. Sharp Corporation obtained a preliminary injunction, dated January 20, 1994 (Preliminary Injunction Order), enjoining liquidation of entries of EL FPDs entered after February 21, 1991, the date of publication of the Department's preliminary determination of sales at less than fair value (56 FR 7008, February 21, 1991). The CIT remanded the determination to the ITC to reconsider its injury determination, and on March 8, 1993, the ITC determined on remand that no U.S. industry was being materially injured by reason of imports of EL FPDs. This remand was affirmed by the CIT on April 14, 1994 in *Hosiden I*. The Department published a *Timken* notice on May 6, 1994, stating that the Department will continue to order the suspension of liquidation of the subject merchandise and that "[i]f the case is not appealed, or is affirmed on appeal, then the antidumping duty order on EL FPDs will be revoked." 59 FR at 23690.

On May 10, 1994, Sharp Corporation filed with the CIT a Motion for Writ of Mandamus to Enforce Judgment objecting to the steps taken by the Department in its May 6, 1994 Federal Register notice to enforce the CIT's April 14, 1994 Order and requesting that the CIT order the Department to: (1) Terminate the collection of cash deposits for estimated antidumping duties on EL FPDs; (2) suspend liquidation of entries of EL FPDs; (3) refrain from imposing any further obligation on any party involved in any administrative review by the Department relating to EL FPDs; and (4) execute all documents and take all necessary actions to effectuate a revocation of the antidumping duty order. On August 12, 1994, the CIT issued a Memorandum and Order granting Sharp Corporation's Motion for Writ of Mandamus to Enforce Judgment. *Hosiden II*, Slip. Op. 94-128. Pursuant to the CIT's August 12, 1994 Order, we are hereby amending the Department's May 6, 1994, Notice of Court Decision

and revoking the antidumping duty order on EL FPDs from Japan.

Actions Pursuant to Writ of Mandamus

Pursuant to *Hosiden II*, the Department will instruct the U.S. Customs Service (Customs) to cease collection of cash deposits on entities of EL FPDs as of the date of publication of this Order and instruct Customs to release any bonds and to refund cash deposits. The Department will further instruct Customs to suspend the liquidation of entries of EL FPDs effective on entries made on or after February 21, 1991. The Department will take no further action with respect to any administrative review under section 751 of the Tariff Act of 1930, as amended, 19 U.S.C. 1675, relating to EL FPDs. Finally, the Department hereby revokes the antidumping duty order on EL FPDs from Japan (56 FR 43741, September 4, 1991), which revocation shall be effective February 21, 1991, the date of the Department's publication in the *Federal Register* of the preliminary determination of sales at less than fair value in this case.

Dated: August 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-21043 Filed 8-23-94; 9:24 am]

BILLING CODE 3510-DS-M

[A-401-603]

Stainless Steel Hollow Products From Sweden; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On December 30, 1993, the Department of Commerce (the Department) published the preliminary results of two administrative reviews of the antidumping duty order on stainless steel hollow products (SSHP) from Sweden. We have completed these reviews and determined the margins for Sandvik AB, AB Sandvik Steel, and Sandvik Steel Company (collectively, Sandvik) to be 3.65 percent for the period May 22, 1987 through November 30, 1988, and 1.33 percent for the period December 1, 1988 through November 30, 1989.

EFFECTIVE DATE: August 25, 1994.

FOR FURTHER INFORMATION CONTACT: David Mason Jr. or Richard Herring, Office of Countervailing Duty

Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3389.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1987, the Department published in the *Federal Register* an antidumping duty order on SSHP from Sweden (52 FR 45985, as amended, 57 FR 52761). On December 5, 1988, pursuant to the Department's notice of "Opportunity to Request Administrative Review" (53 FR 48004) of the order for the period May 22, 1987 through November 30, 1988, Sandvik requested that the Department conduct an administrative review. On December 19, 1989, pursuant to the Department's notice of "Opportunity to Request Administrative Review" (54 FR 52436) of the order for the period December 1, 1988 through November 30, 1989, Sandvik again requested that the Department conduct an administrative review.

On December 30, 1993, the Department published the preliminary results of these administrative reviews (58 FR 69332). We gave interested parties an opportunity to comment on the preliminary results. On March 16, 1994, we received comments from Sandvik. The Department has completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Reviews

The merchandise covered by these reviews is stainless steel hollow products, including pipes, tubes, hollow bars and blanks of circular cross section, containing over 11.5 percent chromium by weight. This merchandise is currently classified under subheadings 7304.41.00 and 7304.49.00 of the Harmonized Tariff System (HTS). Prior to January 1, 1989, this merchandise was classified under subheadings 610.5130, 610.5202, 610.5229 and 610.5230 of the Tariff Schedules of the United States Annotated (TSUSA). Although the HTS and TSUSA subheadings are provided for convenience and customs purposes, the written description of the scope of these reviews remains dispositive.

Analysis of the Comments Received

Based upon our analysis of the comments received, we have changed the results from those presented in the preliminary results of these reviews as discussed below in the comments

section of this notice. In addition, where we found clerical errors, we made appropriate corrections.

Comment 1: Sandvik contends that the Department should grant a level of trade adjustment in those situations in which sales to distributors are compared with sales to end-users. In support of its argument, Sandvik states that 19 CFR 353.58 (1994) provides that, when comparisons at the same level of trade are not possible, the Department will "make appropriate adjustments for differences affecting price comparability." Sandvik notes that the Department has correctly made comparisons of merchandise at the same level of trade, where possible, and that it should make a level of trade adjustment where sales to distributors are matched with sales to end-users.

Sandvik also asserts that, contrary to the Department's contention that the company failed to "demonstrate that it incurred different indirect selling expenses on sales to different levels of trade in the German market," the company demonstrated, in significant detail, that discounts were granted exclusively to German distributors to compensate these distributors for their cost of holding a stock of Sandvik products. Sandvik claims that the fact that these distributor discounts were granted is undisputed in the case record.

Finally, contrary to the Department's traditional reliance on cost differences as the basis for the adjustment, Sandvik contends that other methods of valuing the adjustment may also be used since the Department's regulations do not expressly limit the grant of the adjustment to those instances in which cost differences are present. Rather, Sandvik argues that the regulation simply "requires a level of trade adjustment whenever prices are not comparable." According to Sandvik, the distributor discount in this case is exactly the amount by which the sale price at the distributor level of trade varies from the price of an identical sale at the end-user level of trade. Sandvik concludes that the distributor discount is the best basis, if not the only basis, for valuing the level of trade adjustment. Accordingly, since the company has shown that "the discount is uniformly provided in all German distributor sales", the Department must make the level of trade adjustment whenever sales at different levels of trade are compared.

Department's Position

To determine whether a level of trade adjustment is warranted when sales to distributors are matched with sales to end-users, we compared the reported

unit sale prices to distributors with reported unit prices to end-users for the same product, month of sale, and quantity bracket. Based upon our examination of these prices in both reviews, we found wide price fluctuations without any discernible pattern. Moreover, in some instances, we found that prices to distributors exceeded prices to end-users. Based upon these facts, Sandvik has not demonstrated that there are differences affecting price comparability relating solely to the fact that sales are made at different levels of trade. Thus, the Department maintains that there is insufficient justification to make a level of trade adjustment in those situations where distributor and end-user sales are compared.

Comment 2: Sandvik contends that two separate and distinct exporters are under review in the first administrative review, and therefore, the Department should calculate separate rates for these companies. According to Sandvik, it sold to an unrelated Canadian distributor a small volume of hollow bar, most, if not all, of which has never been sold into the United States. Sandvik contends that the Department incorrectly assumes these sales have entered the United States since the dumping calculation is based on Sandvik's sales to the Canadian company, not on the Canadian company's subsequent sales into the United States.

Second, Sandvik maintains that the Department has an established practice of calculating a separate margin for each manufacturer/exporter investigated in an antidumping duty action provided the firms operate as separate and distinct entities. In discussing its position, Sandvik addresses *Certain Granite Products from Italy* (53 FR 27187, July 19, 1988), where the Department collapsed firms with common ownership and boards of directors and similar production facilities such that the firms would not have to retool in order to produce jointly; *Certain Granite Products from Spain* (53 FR 24337, June 28, 1988), where the firms shared sales opportunities, manufacturing decisions, and were billed jointly; and *Certain Granite Products from Italy* (53 FR 27189, June 28, 1988) where the firms acted in concert in the marketplace. Sandvik claims, in contrast to these cases, that it and the Canadian company are independently owned, possess no corporate or other close relationship, and never operated closely or in concert for the production or sales of hollow bar.

Finally, citing *Hot-Rolled Carbon Steel Plate and Hot-Rolled Carbon Steel Sheet from Brazil* (49 FR 3104, January 25, 1984), Sandvik contends that the only other situation in which the Department may consider calculating a single margin for two companies involves entities with cooperative sales operations or firms that do not separately negotiate prices with U.S. customers. Once again, Sandvik maintains that the facts in this case do not warrant such treatment. Sandvik argues that it maintained separate sales operations at all times. Moreover, Sandvik asserts that in those instances in which the Canadian company made sales to the United States, it directly competed with Sandvik. Sandvik further maintains that each firm separately negotiated prices with potential U.S. customers.

As a final point, Sandvik contends that the Department has consistently published separate rates for sales made through unrelated third-country trading companies or resellers. According to Sandvik, that practice should apply in this case as the Canadian company is an unrelated third-country reseller.

Department's Position

We normally treat sales by a respondent to an unrelated purchaser as sales to the United States where the seller knows that the merchandise is being sold for export to the United States. This is true of sales to trading companies in the country of origin or those in third country locations. (*Sandvik AB v. United States*, 721 F.Supp 1322, 1341 (CIT 1989); *Final Determination of Sales at Less Than Fair Value; Stainless Steel Hollow Products from Sweden*, (52 FR 37819, 37813, October 9, 1987); see also *Urea from USSR; Final Determination of Sales at Less Than Fair Value* (52 FR 19560, May 26, 1987) and *Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value* (51 FR 5573, February 14, 1986).

The antidumping duty rate calculated for Sandvik in the first administrative review pertains to Sandvik's sales of the subject merchandise (1) made directly to the United States and (2) destined for consumption in the United States. In its response, Sandvik stated that the Canadian company "was authorized to sell the merchandise in the U.S." and that the merchandise was intended for ultimate importation into the United States (Sandvik's April 5, 1989 response at 10). Accordingly, we have continued to treat Sandvik's sales to the Canadian company as sales to the United States because they were made with the knowledge that the merchandise was

destined for consumption in the United States. Therefore, we believe that such sales properly belong in the calculation of Sandvik's antidumping duty rate.

Comment 3: Sandvik contends that it was inappropriate for the Department to apply, as best information available (BIA), the antidumping duty rate from the less than fair value (LTFV) investigation for those instances in which constructed value was not available for comparison to U.S. sales. Instead, according to Sandvik, in several recent administrative reviews the Department has found that, where a gap existed in the record for certain U.S. sales, and the Department had to use "other information," not "BIA," it could use a neutral and reasonable surrogate to bridge the gap. Sandvik argues that the Department derives its authority to use reasonable, "other information" from its own inherent authority to administer the U.S. antidumping law in a fair and equitable manner.

Sandvik further points out that in this case the Department has already calculated margins on the overwhelming majority of Sandvik's U.S. sales transactions. Therefore, Sandvik maintains that, rather than apply the rate from the LTFV investigation as BIA, the Department should apply the weighted-average margin derived from the pool of sales with calculated margins as the more appropriate rate for unmatched sales in this review.

Department's Position

Section 776(c) of the Act requires the Department to apply BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation." When a company substantially cooperates with our requests for information, but fails to provide the information requested in a timely manner or in the form required, we use as BIA the higher of (1) The highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the class or kind of merchandise from the same country of origin (*Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of An Antidumping Duty Order (referring to Antifriction Bearings (Other Than Tapered Roller Bearings) And Parts Thereof from France; et al.)* (58 FR 39729, 39739, July 26, 1993); and *Antifriction Bearings (Other Than Tapered Roller Bearings) And Parts*

Thereof from France; et al.; Final Results of Antidumping Duty Administrative Review, (57 FR 28360, 28379, June 24, 1992)).

In cases where a firm failed to supply certain FMV information (e.g., corresponding home market sales within the contemporaneous window or constructed value data for a few U.S. sales), we apply the BIA rate as outlined above, and limit its application to the particular transactions involved.

In this case, Sandvik substantially cooperated with the Department in furnishing the requested information. Therefore, for those few sales in which we found it necessary to use partial BIA, we applied the rate of 20.47 percent from the LTFV investigation, which is the highest rate ever applicable to Sandvik for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review.

Comment 4: Sandvik contends that the Department's use of mean average shipment, entry, and payment dates to represent missing shipment, entry, and payment dates imposes an unjustified penalty on the company. According to Sandvik, there were a number of sales for which this particular information could not be furnished because, at the time the response was prepared, payment, shipment and entry had not yet occurred.

Sandvik claims that the use of mean shipment and entry dates greatly and arbitrarily increases the size of any adjustments based on such dates. In particular, Sandvik notes that the time the merchandise is in inventory and the days for which credit is extended are both greatly overstated through the application of these mean dates. Accordingly, Sandvik urges the Department to adopt the company's earlier proposal of using the substituted date of June 1, 1989, the date on which the first review tape was prepared, as the shipment date. According to Sandvik, this proposal is reasonable even though it still overstates these adjustments.

Department's Position

We note that since the June 1, 1989, date of preparation of the computer tape, Sandvik received subsequent opportunities to submit these missing data when replacement tapes were requested by the Department. Sandvik, however, provided no additional data for these missing values. Accordingly, we have continued to apply mean values as BIA for these missing data.

Comment 5: With respect to warranty expenses, Sandvik maintains that the Department based its calculation of U.S.

warranty expenses on the mistaken belief that Sandvik failed to report U.S. warranty expenses in its response. Contrary to the Department's belief, Sandvik maintains that all warranty-related costs, consisting of the cost of reworking defective merchandise and the transportation costs associated with returning the merchandise to the factory and reshipping the reworked merchandise, were included in the cost and expense data submitted in its responses.

According to Sandvik, reworking costs are indistinguishable from normal production costs and are accumulated in cost centers with other costs associated with further manufacturing. Thus, Sandvik maintains that reworking costs are fully accounted for in the direct labor and factory burden components of Sandvik's conversion costs. Accordingly, Sandvik argues there is no need to create a separate adjustment for costs incurred in reworking defective merchandise. With respect to the freight expenses for returned merchandise and reshipment of reworked merchandise, Sandvik claims that these expenses were included in its total freight calculation. Thus, to the extent the Department deducted total freight expense from the U.S. price (USP), it must not deduct separate freight expenses pertaining to return of defective and reshipment of reworked merchandise.

In addition, Sandvik characterizes the Department's calculation of warranty expense as inappropriate since it is based on the total value of returned defective merchandise and the cost of reworking defective merchandise. Sandvik maintains that the value of returned merchandise does not constitute an expense incurred by the company because defective merchandise is not discarded or scrapped at the company's expense, but rather is reworked and either returned to the customer or placed in inventory for sale to another customer. Thus, Sandvik claims that the company only incurs the cost of reworking the merchandise and the cost of return freight, which therefore constitute the entire amount of U.S. warranty expenses. Sandvik claims that these warranty-related expenses were fully reported and have been deducted elsewhere in the cost and expense data. Thus, any additional deduction would be unfair and impermissible double-counting of warranty expenses for U.S. sales.

Department's Position

To the extent that freight expenses, pertaining to the return of defective

merchandise and reshipment of reworked merchandise, were part of Sandvik's total freight expense, we agree that such expenses should not be included in U.S. warranty expenses since they have already been deducted from USP. Thus, we have adjusted the warranty expense accordingly.

We disagree with Sandvik, however, that USP need not be adjusted for the cost of reworking the defective merchandise based upon Sandvik's contention that these costs are already part of the total cost of production. Inclusion of reworking costs in the cost of production by itself has no impact on the calculation of dumping margins. Rather, dumping margins are primarily price-based calculations, and therefore prices net of warranty expenses are essential for apples-to-apples comparisons. Hence, the Department has adjusted USP for warranty expenses. In addition, since Sandvik did not separately report the cost of reworking defective merchandise, we continued to use, as BIA, the value of the returned merchandise to represent Sandvik's warranty expenses.

Comment 6: Sandvik claims that the Department incorrectly treated expenses pertaining to transportation of merchandise from the U.S. port to Sandvik's U.S. factory as an element of further manufacturing contributing to U.S. value added, rather than as a cost of the imported input. Sandvik claims that, by attributing these movement expenses to U.S. further manufacturing costs rather than to the cost of the imported redraw hollow, the Department artificially increased the amount of U.S. value added, and thus allocated too large a share of profit to U.S. further manufacturing.

Second, Sandvik maintains that this method of allocation is inconsistent with the antidumping statute and the Department's regulations. Citing both section 772(e)(3) of the Act and 19 CFR 353.41(e), Sandvik contends that both authorities direct the Department to reduce exporter's sales price (ESP) by any increased value "resulting from a process of manufacture or assembly performed on the imported merchandise," which does not specifically include the cost of moving the component or product from the port to its factory.

Third, Sandvik contends that according to the Court of International Trade (CIT) ruling in *Sandvik AB v. United States* (721 F. Supp. 1322, 1335 (CIT 1989)) the Department must calculate profit based on the "increased value" as defined in the statute. Sandvik maintains that movement of a product or component does not constitute

performance of a "manufacture or assembly" process on the imported merchandise. Thus, Sandvik concludes that movement expenses may not be considered part of the U.S. value added.

Department's Position

The Department's standard practice is to subtract from USP any increased value added to the merchandise by a process performed after importation and before sale to the first unrelated customer (see e.g., *Roller Chain, Other Than Bicycle, from Japan; Final Results of Administrative Review of Antidumping Finding* (48 FR 51801, November 14, 1983), and *Cellular Mobile Telephones and Subassemblies from Japan; Final Results of Antidumping Duty Administrative Review* (54 FR 48011, November 20, 1989)). Accordingly, the Department correctly included the costs of transporting the product from the port to the U.S. factory as an element of further manufacturing. Contrary to respondent's claims, this practice is consistent with the statute and the Department's regulations, which allow for adjustments to USP for any increased value resulting from a process of manufacture or production, or assembly (see 19 USC § 1677a(e)(3) and 19 CFR 353.41(e)). The Department treats the costs of moving the product to the factory as part of the process of further manufacturing because, were it not for the further manufacturing, these costs would not be incurred. Furthermore, the Department's regulations allow for inclusion of transportation costs in calculating value added adjustments. Specifically, 19 CFR 353.41(e)(3) states that the Secretary "generally will" consider many factors, including "other expenses," in the determination of "increased value." Thus, the Department's practice is consistent with its authority to assess the costs of port to factory movement expenses in determining value added adjustments.

Sandvik's reliance on the CIT case, *Sandvik AB v. United States* (721 F. Supp. 1322, 1335 (CIT 1989)) (*Sandvik*), to support its contention that the movement of a product does not constitute performance of a "manufacture or assembly" process is misplaced. In *Sandvik*, the CIT held that the Department can deduct from the USP the profit associated with further manufacturing. In making this decision, the CIT simply quoted the relevant portions of the statute and regulations at issue, but never addressed the precise meaning of the statute or the issue of movement expenses.

Moreover, the Department's approach to these movement expenses is in accordance with longstanding practice (see *Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review* (56 FR 48826, September 20, 1991), as amended, 58 FR 53705, April 21, 1993) (the Department included freight from the U.S. port to the U.S. plant in the U.S. further manufacturing costs); see also, *Stainless Steel Hollow Products from Sweden; Final Results of Antidumping Duty Administrative Review* (57 FR 21389, 21392, May 20, 1992)). Finally, in *Final Results of Antidumping Duty Administrative Review, Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (57 FR 3167, 3169, January 28, 1992), the Department included transportation of merchandise as part of U.S. value added. Although these were delivery charges incurred in the transportation of the goods from the factory, this case nonetheless illustrates the Department's practice of including movement expenses as part of the costs of further manufacturing.

Therefore, the Department has included the costs of transporting the product from the port to the factory as an element of further manufacturing.

Comment 7: According to Sandvik, the company imposes a service charge for cutting each piece of hollow bar sold in Sweden to the length desired by each Swedish customer. Sandvik points out that since none of the hollow bar sold in the United States was cut to length, sales of hollow bar in the home market carry a selling expense that U.S. sales do not. Accordingly, Sandvik requests that the Department reduce the home market price by the amount of the service charge.

In support of its position, Sandvik contends that both the Department's regulations and current practice establish that Sandvik is entitled to a circumstance of sale adjustment for the service of cutting hollow bar to length. According to Sandvik, 19 CFR 353.56(a)(2) sets forth the types of differences in circumstances of sale for which the Department may normally make reasonable allowances, which includes "those involving differences in * * * servicing." Thus, Sandvik contends that the company's service charge is properly characterized as a circumstance of sale adjustment.

In addition, Sandvik cites cases demonstrating that the requested adjustment is supported by Department practice. In the antidumping duty investigation on *Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea (Pet Film)*

(56 FR 16305, April 22, 1991), Sandvik claims the Department granted a circumstance of sale adjustment to account for slitting costs when respondent cut its merchandise to the width desired by each home market customer. According to Sandvik, no such expenses were incurred for U.S. sales. Thus, Sandvik claims *Pet Film* is analogous to the situation in the present review on SSHP.

Moreover, Sandvik states that the Department previously determined in the LTFV investigation of SSHP that the service charge for cutting hollow bar to length should properly be treated as a circumstance of sale adjustment. Sandvik stresses that the Department, during its verification in the LTFV investigation, found that hollow bar sold in Sweden was in fact cut to length, while hollow bar sold in the United States was not. Sandvik claims that nothing has changed since the LTFV investigation to warrant a change in the treatment of the expense. Based upon Department practice and in particular, the Department's previous treatment of the service charge in the SSHP case, Sandvik concludes that the Department should make a circumstance of sale adjustment under 19 CFR 353.56 to account for the additional selling expense that Sandvik incurs when it sells hollow bar in the home market.

Finally, Sandvik contends that, contrary to the Department's claim in this administrative review that the company "did not provide * * * the necessary information to make the adjustment," Sandvik asserts that the record demonstrates otherwise. Specifically, Sandvik cites to its November 7, 1991, submission which sets forth the cutting charge as a percentage of total Swedish hollow bar sales.

Department's Position

The Department grants a circumstance of sale adjustment where the claimed expense is directly related to sales of the subject merchandise or sales used to represent foreign market value, in accordance with 19 CFR 353.56(a). In this case, Sandvik calculated a per unit servicing charge based upon the company's total servicing expense as a percentage of total sales of hollow bar in Sweden. As indicated in its January 19, 1990, response, the amount charged for cutting hollow bar to length for customers varies according to the grade and volume of hollow bar which is purchased. Thus, the service charge varies by sale, and should have been reported on a transaction-specific basis as specifically requested in the Department's deficiency questionnaire.

We have, therefore, denied Sandvik a circumstance of sale adjustment in this case.

With respect to treatment of the servicing charge as an indirect selling expense under 19 CFR 353.56(b), Sandvik calculated the total servicing expense using the largest fixed percentage of the invoice price rather than an application of either the grade or volume of the sales, which would have reduced the amount of the servicing charge. Therefore, we have denied Sandvik's servicing charge as an indirect selling expense for these sales because the methodology used to calculate the charge overstates the total expense by failing to account for the effect of different grades and volumes on the total amount.

Final Results of Review

The final results of our reviews are as follows:

Manufacturer/exporter	Time period	Margin (percent)
Sandvik ...	05/22/87-11/30/88	3.65
Sandvik ...	12/01/88-11/30/89	1.33

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Furthermore, the following cash deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company listed above will continue to be the rate established in the final results of the third administrative review (57 FR 21389, May 20, 1992); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacture of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 20.47 percent, the "all other" rate established in the original LTFV investigation by the Department (52 FR 37810, October 9, 1987; as amended 52 FR 45985, December 3, 1987), in accordance with the decisions of the CIT in *Floral Trade Council v. United States*, Slip Op. 93-79, and *Federal-*

Mogul Corporation v. United States, Slip Op. 93-83.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These administrative reviews and notice are in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 353.22 of the Department's regulations.

Dated: August 17, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-20846 Filed 8-24-94; 8:45 am] BILLING CODE 3510-DS-P

[C-542-401]

Certain Apparel From Sri Lanka; Revocation of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is revoking the countervailing duty order on certain apparel from Sri Lanka (50 FR 9826) pursuant to a decision of the Court of International Trade (CIT) on June 24, 1994.

EFFECTIVE DATE: May 18, 1992.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1993, the Department reinstated the countervailing duty orders on certain apparel and certain textile mill products from Sri Lanka, effective May 18, 1992 (58 FR 54552). These reinstatements were made pursuant to orders of the CIT and the Court of Appeals for the Federal Circuit. (*Belton Industries, Inc. v. United States*, Slip Op. 92-64 (CIT 1992), *aff'd*, 6 F.3d 756 (Fed Cir. 1993) "*Belton*".) On November 19, 1993, the Government of Sri Lanka filed an action with the CIT challenging the reinstatement of the countervailing duty order on certain apparel from Sri Lanka. The Government of Sri Lanka argued that the *Belton* decisions only applied to the countervailing duty order on certain textile mill products from Sri Lanka. The Department concurred with the Government of Sri Lanka, and consented to judgment in this case. On June 24, 1994, the CIT ordered the Department to revoke the countervailing duty order on certain apparel from Sri Lanka. Because an injunction was issued in this case, and because no adversely affected interested party has standing as a party to the litigation to appeal the CIT's decision, the Department is immediately revoking the countervailing duty order on certain apparel from Sri Lanka, effective May 18, 1992.

Scope of the Order

Imports covered by this order are shipments of certain apparel from Sri Lanka. The scope of this order, published in the Appendix of the Federal Register notice of Final Affirmative Countervailing Duty Determination and Order on Certain Apparel from Sri Lanka (50 FR 9826), was originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 11, 1989, the Department published a conversion from TSUSA to Harmonized Tariff Schedule (HTS) item numbers, and the U.S. Customs Service has been suspending liquidation according to that conversion since then.

Instructions to Customs

The Department will instruct the U.S. Customs Service to terminate suspension of liquidation of certain apparel from Sri Lanka as of the date of publication of this notice, and to liquidate, without regard to countervailing duties, all unliquidated

entries of certain apparel exported from Sri Lanka on or after May 18, 1992.

Dated: August 18, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94-20845 Filed 8-24-94; 8:45 am]

BILLING CODE 3510-DS-P

[C-201-001]

Leather Wearing Apparel From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On May 17, 1994, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Mexico (59 FR 25612). We have now completed the review and determine the net subsidy to be zero for the 65 companies listed in the Appendix and 13.35 percent *ad valorem* for all other companies for the period January 1, 1992 through December 31, 1992.

EFFECTIVE DATE: August 25, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Dana Mermelstein, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington D.C. 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 1994, the Department of Commerce (the Department) published in the Federal Register (59 FR 25612) the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Mexico (46 FR 21357; April 10, 1981). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The review period is January 1, 1992 through December 31, 1992. The review involves 65 companies and eight programs.

Scope of Review

Imports covered by this review are shipments of Mexican leather wearing apparel. These products include leather coats and jackets for men, boys, women, girls, and infants, and other leather apparel products including leather

vests, pants, and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4203.10.4030, 4203.10.4060, 4203.10.4085 and 4203.10.4095. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results. We received a written comment from the Amalgamated Clothing and Textile Workers Union (ACTWU), whose members produce leather wearing apparel. The ACTWU's comment supported the preliminary results of this review.

Final Results of Review

Since the comment received did not oppose any aspect of the preliminary results, we determine the net subsidy for these final results to be the same as in the preliminary results: zero for the 65 companies listed in the Appendix and 13.35 percent *ad valorem* for all other companies for the period January 1, 1992 through December 31, 1992.

Therefore, the Department will instruct the Customs Service to assess countervailing duties as follows for subject merchandise exported on or after January 1, 1992, and on or before December 31, 1992: zero on shipments from any of the 65 companies listed in the Appendix; and 13.35 percent of the f.o.b. invoice price on shipments from all other companies.

Further, the Department will instruct the Customs Service to continue to suspend liquidation on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. As provided by section 751(a)(1) of the Act, the Customs Service will collect cash deposits of estimated countervailing duties on such shipments as follows: zero on shipments of this merchandise from the companies listed in the Appendix, and 13.35 percent of the f.o.b. invoice price on shipments from all other companies. These instructions shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 13, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Appendix

1. Alfredo Costuras Originales S.A. De C.V.
2. Aeroenvios De Mexico S.A. De C.V.
3. Articulos De Piel De Guadalajara S.A. De C.V.
4. Bemisa S.A. De C.V.
5. Calzado Emege S.A. De C.V.
6. Cornell Piel S.A. De C.V.
7. Exclusive Design In Leather Felle S. De R.L.
8. Articulos Charros Y Vaqueros S.A. De C.V.
9. Importaciones Y Exportaciones Anaf S.A. De C.V.
10. Lusomoda De Mexico S.A. De C.V.
11. Loredano S.A. De C.V.
12. Manufacturera California S.A. De C.V.
13. Melmex S. De R.L.
14. Originales Hechos A Mano S.A. De C.V.
15. Price Club De Mexico S.A. De C.V.
16. Procopiel Exotica S.A. De C.V.
17. Pelet Jalisco-Baja California S.A. De C.V.
18. Servicio Harley Davidaon S.A. De C.V.
19. San Sebastian Curte S.A. De C.V.
20. Tapetes Tipicos S.A. De C.V.
21. United Parcel Service De Mexico S.A. De C.V.
22. Zuid De Mexico S.A. De C.V.
23. Pedro Alarcon Roman
24. Juan Martin Aguilla Alvarez
25. Rosa Isela Bocanegra Morales
26. Agustin Carillo Castillo
27. Gregoria Deitz Groswirte
28. Maria Azucena Flores Martinez
29. Rocio Gallardo
30. Jose Garcia
31. Enrique Garcia Avila
32. Antonio Garcia Gonzalez
33. Juan Manuel Garcia Gonzalez
34. Jose De Jesus Gonzalez De La Torre
35. Vicente Haro Navarro
36. Lino Salvador Hernandez Gonzalez
37. Jose De Jesus Hernandez Herrera
38. M. Teresa De Jesus Hernandez Rodriguez
39. Francisco Javier Hurtado Vasquez
40. Antonio Hurtado
41. J. Cruz Lopez Avila
42. Noe Martinez Bautista
43. Roberto Martinez Castillo
44. Guillermo Martinez Fernandez
45. Bartolo Morales Hernandez
46. Ismael Mora Hernandez
47. J. Cruz Orozco Alviso
48. Adolfo Penilla
49. Rosa Ramos
50. Salvador Rios Bueno
51. Jose Luis Rodriguez Juarez
52. J. Guadalupe Rodriguez Ortiz
53. Leonel Salceda Toledo
54. Martin Humberto Serrano Robles
55. Alejandro Sidransky Marcus
56. Marco Antonio Sotelo Salazar
57. Jose Sotelo
58. Juan Antonio Torres Torres
59. Laura Vilches Mares
60. Ricardo Zaragoza Gutierrez
61. Teresa Zedillo Lagos
62. George Zohn Tracktman
63. Exclusivos Baez
64. Comercializadora Cevis S.A. De C.V.
65. Cia. Exportadora De Chapala S.A. De C.V.

[FR Doc. 94-20847 Filed 8-24-94; 8:45 am]

BILLING CODE 3510-DS-P

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On August 12, 1994, U.S. Steel, a Division of USX Corp., Inland Steel Company, I/N Kote, and LTV Steel filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final determination of dumping made by the Canadian Deputy Minister Of National Revenue (Customs, Taxation and Excise) respecting Certain Corrosion-Resistant Steel Sheet Products from the United States of America. This determination was published in the Canada Gazette on July 16, 1994. The NAFTA Secretariat has assigned Case Number CDA-94-1904-03 to this request.

FOR FURTHER INFORMATION CONTACT:

James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the *Federal Register* on February 23, 1994 (59 F.R. 8686). The panel review in this matter will be conducted in accordance with these rules.

A first Request for Panel Review was filed with the Canadian Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on August 12, 1994, requesting panel review of the final determination of dumping described above.

Rule 39(1) of the Rules provides, inter alia that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is September 12, 1994);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is September 26, 1994); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 18, 1994.

James R. Holbein,

United States Secretary, NAFTA Secretariat.
[FR Doc. 94-20976 Filed 8-24-94; 8:45 am]
BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

[Docket No. 940826-4226] [I.D. 071294B]

Atlantic Swordfish Catches by Minor Harvesting Nations; Possible Restrictions on Imports

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

ACTION: Notice; request for comments.

SUMMARY: NMFS has been asked to conduct an investigation with respect to invoking restrictions on swordfish imports under the provisions of the Atlantic Tunas Convention Act (ATCA or the Convention). This document provides background information concerning this request and solicits comments to be considered in the NMFS investigation of the issue.

DATES: Comments must be received by September 14, 1994.

ADDRESSES: Comments should be directed to: Dr. Kevin Chu, Office of International Affairs, Room 14247, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kevin Chu at (301) 713-2276 or Richard Stone at (301) 713-2347.

SUPPLEMENTARY INFORMATION: Blue Water Fishermen's Association asked NMFS to conduct an investigation with respect to invoking restrictions on swordfish imports under the provisions of the ATCA. The request expressed concern about fisheries developing in Canada, as well as in the Caribbean and Latin America. It included information showing a 37-percent decline in U.S. catches from 1988 to 1992 and a 72-percent increase in Canadian landings during the same period. The request also expressed a concern that Canadian vessels were apparently expanding operations into tropical regions and Bermuda. It expressed the belief that NMFS should conclude that the apparent absence of effective Canadian regulations to control harvest (fishing mortality) has undermined the effectiveness of the International Commission for the Conservation of Atlantic Tunas (ICCAT or the Commission) swordfish management program and has jeopardized what was predicted as a reasonable probability of a stock increase based on the 1992 swordfish stock assessment by ICCAT.

In response to the request, NMFS has undertaken an investigation pursuant to the ATCA, which could lead to the prohibition of swordfish imports from certain countries. As part of this investigation, NMFS has had a series of formal and informal exchanges with the Department of Fisheries and Oceans in Canada on swordfish catches and on Canadian vessels fishing outside its exclusive economic zone.

NMFS also has conducted a series of investigations about Canadian-harvested tuna shipped through Bermuda and has collated import data from a number of countries fishing for swordfish in the Atlantic. This notice explains the legal basis for the investigation, provides background information, and seeks additional information.

Regulations Implementing the ATCA

Regulations implementing the ATCA are published at 50 CFR 285, subpart D. They direct NOAA, with the approval of the Secretary of Commerce and with the concurrence of the Secretary of State, to prohibit: (1) The entry into the United States of fish in any form of those species which are subject to regulation

pursuant to a recommendation of the ICCAT and which were taken from the ICCAT regulatory area "in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission"; and (2) the entry into the United States, from any country when vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of ICCAT, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the ICCAT regulatory area.

The Assistant Administrator for Fisheries, NOAA (AA) is required to make inquiries and investigations, from time to time, so as to keep informed of the nature and effectiveness of the measures for the implementation of the Commission's recommendations concerning those activities which are being carried out by foreign countries whose vessels engage in fishing within the ICCAT regulatory area. The AA also must undertake an investigation when a member of the public submits a proper request. There are three related issues that the AA must consider:

1. Whether fish in any form are being taken in a manner or under such circumstances that would tend to diminish the effectiveness of the conservation recommendations of ICCAT.

2. Whether a country is condoning the use of vessels in the conduct of fishing operations in the ICCAT regulatory area in such a manner or under such circumstances that would tend to diminish the effectiveness of the conservation recommendations of ICCAT, or

3. Whether a country is condoning the use of vessels in repeated and flagrant fishing operations which seriously threaten the achievement of the objectives of the ICCAT recommendations.

In conducting the investigation, the AA is to take into account, among other considerations as may be pertinent:

1. Whether the country provides to ICCAT pertinent statistics on a timely basis;

2. Whether the country has in force conservation measures applicable to its own fishermen adequate for the implementation of the Commission's recommendations;

3. Whether the country has in force measures for the control of landing in its ports of species subject to regulations which are taken in the ICCAT regulatory

area by fishermen of other countries contrary to the ICCAT conservation recommendations;

4. Whether the country, having put conservation measures into effect, takes reasonable action to enforce such measures;

5. The number of vessels of the country which conduct fishing operations in the ICCAT regulatory area; and

6. The quantity of species subject to regulation taken from the regulatory area by the country's vessels contrary to the ICCAT conservation recommendations and its relationship to: (A) The total quantity permitted to be taken by the vessels of all countries participating in the fishery; and (B) the quantity of such species sought to be restored to the stocks of fish pursuant to the Commission's conservation recommendations.

ICCAT Recommendations

In 1990, ICCAT recognized that swordfish yields were not sustainable and that fishing mortality needed to be reduced. As a result, six management recommendations were approved. First, mortality on fish weighing more than 25 kg was to be reduced 15-percent from recent levels, using 1988 as a base year. Mortality reductions could be made by reducing catch or by reducing equivalent effort. Second, taking and landing of fish smaller than 25 kg was prohibited. Tolerances were allowed for incidental small fish catches, provided that small fish do not exceed 15-percent of the total number of fish per boat landing. Third, all countries directly fishing for swordfish were to limit fishing mortality to 1988 catch levels or to an equivalent level of effort. Fourth, notwithstanding the first and third recommendations, countries with small catches were to keep annual catches at "reasonable levels" and abide by all conservation measures on small fish. (This provision applies to Canada, but not to the United States.) Fifth, countries not targeting swordfish were to limit incidental catch to not more than 10-percent by weight of the total catch. Sixth, ICCAT was to encourage cooperation by non-ICCAT members in achieving the conservation goals of the ICCAT recommendations.

The Report of the 1990 ICCAT meeting shows that there was considerable discussion of what would constitute "reasonable levels," as that term was used in the fourth recommendation, but that term was never specifically defined in the recommendation itself. Based upon that discussion, the United States understood the term to refer to an

allowed increase in total country catch of up to 45-percent from its 1988 catch levels. When the United States introduced the fourth recommendation dealing with countries with small catches, Portugal supported the proposed wording, since the total impact of allowing the countries with smaller catches to increase by 45-percent would be far less than the bycatch taken at that time and which would be permissible to countries that take swordfish as a bycatch. Canada supported the position of Portugal.

In 1992, ICCAT's swordfish panel recommended that all nations fishing for Atlantic swordfish restrict 1993-94 catch levels or fishing capacity to recent levels (i.e., 1990-91). The panel also recommended that the Standing Committee on Research and Statistics (SCRS) assess the impact of conservation measures on the stock at the 1994 meeting.

Fishing Records

No country filed an objection to either the 1990 or 1992 recommendations; thus, the recommendations have come into force. As a result of the U.S. regulations implementing the ICCAT recommendations, U.S. landings have dropped rapidly from an all-time high of 6,385 metric tons (mt) in 1989 to the following levels for 1990-93, respectively: 5,494 mt, 4,255 mt, 3,833 mt, and 2,584 mt. (The 1993 figure is preliminary.) This is a 60-percent reduction in catch in 4 years. In terms of the 1990 ICCAT recommendation setting the small fish tolerance level at 15-percent by number, the percentage and number of small fish landed also have decreased annually and, for the period 1989-92, were 37.7-percent (65,712 small fish from a total catch of 174,271), 32.5-percent (46,381 small fish from a total catch of 142,847), 21.8-percent (21,391 small fish from a total catch of 98,306), and 7-percent (5,417 small fish from a total catch of 77,487), respectively. Effort has decreased as well. The number of vessels that actually have fished has dropped 25-percent from 457 to 334.

Canadian landings have shown an opposite trend. From 1985-89, annual Canadian catches were 585 mt, 1,059 mt, 954 mt, 898 mt, and 1,247 mt, respectively—well below Canada's self-determined quota of 3,500 mt for those years. In response to the 1990 ICCAT recommendations for swordfish, Canada reduced its self-determined quota to 2,000 mt. Since then, Canadian harvests of swordfish have rapidly increased from 991 mt in 1990, 1,026 mt in 1991, 1,547 mt in 1992, to approximately 2,322 mt in 1993. This is a 134-percent

increase in landings. Prior to 1992, the last year that Canadian catches exceeded 1,500 mt was in 1980. The percentage and number of small fish landed have fluctuated annually, and, for the period 1989-92, were 16.4-percent (3,445 small fish from a total catch of 20,980), 10.7-percent (1,445 small fish from a total catch of 13,525), 11.4-percent (1,824 small fish from a total catch of 15,988), and 15.5-percent (4,092 small fish from a total catch of 26,465), respectively. (Canada's 1993 small catch data was not available at the time of printing.)

Since Canada harvested 898 mt in 1988, a 45-percent increase would have been to 1,302 mt. However, Canada's current quota of 2,000 mt is an increase of over 120-percent from 1988 levels. Additionally, Canada's swordfish harvest in 1993 exceeded this quota by approximately 322 mt. Canada's quota for 1994 again is set at 2,000 mt.

In a meeting with the United States on this issue, Canada contended that its 2,000 mt quota was within "reasonable levels" and disagreed with the U.S. view that Canada, a "minor" harvesting nation at the time the ICCAT recommendations came into force, should limit its harvest to a 45-percent increase over its 1988 catch level. Canada pointed out that, prior to the health alert of the 1970s that nearly closed the fishery, Canadian fishermen were harvesting well over 2,000 mt. Further, Canada maintained that, until recently, no country had objected to its self-determined 2,000 mt quota. Canada argued that its quota reduction from 3,500 mt to 2,000 mt was tantamount to compliance with the fourth ICCAT recommendation.

In addition to Canadian swordfish harvests, recent U.S. import statistics have raised a concern that certain other countries also may be harvesting swordfish in amounts inconsistent with the fourth ICCAT recommendation. For example, Grenada increased its exports to the United States more than 500-percent since 1990, to 3.29 mt; St. Vincent and the Grenadines increased its exports 25-percent since 1992, to 13.39 mt; and Venezuela, an ICCAT member, has increased its exports 150-percent since 1990, to 141.5 mt.

As part of its investigation into alleged noncompliance, NMFS is seeking additional information pertaining to the compliance by minor swordfish harvesting nations with relevant ICCAT recommendations. The texts of the relevant recommendations and U.S. domestic regulations can be obtained by contacting NMFS (see ADDRESSES).

Classification

This document is exempt from review under of E.O. 12866.

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

Dated: August 19, 1994.

Gary C. Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94-20972 Filed 8-24-94; 8:45 am]

BILLING CODE 3510-22-F

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

[Docket No. 940250-4224; I.D. 122893D]

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

ACTION: Notice of final List of Fisheries for 1994.

SUMMARY: NMFS issues this final List of Fisheries for 1994 pursuant to the interim exemption for the taking of marine mammals incidental to commercial fishing operations under section 114 of the Marine Mammal Protection Act of 1972 (MMPA). The 1994 final list revises the categories of certain U.S. commercial fisheries based on new information obtained since publication of the 1993 final List of Fisheries.

DATES: The final List of Fisheries for 1994 is effective August 25, 1994. Vessel owners who will operate in Category I or II for the first time have until October 24, 1994 to register.

FOR FURTHER INFORMATION CONTACT: Margot Bohan or Vicki Credle, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, 301-713-2322.

SUPPLEMENTARY INFORMATION: Section 114 of the MMPA establishes an interim exemption for the taking of marine mammals incidental to commercial fishing operations and requires NMFS to publish and annually update the List of Fisheries, along with the marine mammals and the number of vessels or persons involved in each fishery, arranging them according to categories, as follows:

1. A fishery that has a frequent incidental taking of marine mammals;
2. A fishery that has an occasional incidental taking of marine mammals; or
3. A fishery that has a remote likelihood, or no known incidental taking, of marine mammals.

The following criteria are used in classifying fisheries in the List of

Fisheries, pursuant to section 114 of the MMPA:

Category I. There is documented information indicating a "frequent" incidental taking of marine mammals in the fishery. "Frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Category II. (1) There is documented information indicating an "occasional" incidental taking of marine mammals in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental taking in the fishery. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period, but that there is little likelihood that more than one marine mammal will be incidentally taken.

Category III. (1) There is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is no more than a remote likelihood of an incidental take in the fishery. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

On March 4, 1994 (59 FR 10372), NMFS published the proposed List of Fisheries for 1994 and requested comments and information on the changes contained therein. After reviewing the comments received, NMFS has determined that all changes identified in the proposed list are warranted and will be incorporated into the final list. In addition, portions of the mid-Atlantic coastal gill net fishery (upper river and estuarine areas of the Chesapeake Bay, Delaware Bay and New York Bight, as well as Pamlico and Albemarle Sound in North Carolina) will be reclassified under Category III based on recently obtained information which suggests the rare occurrence of marine mammal takes in these areas.

Gillnetters operating outside of these areas in the mid-Atlantic coastal gillnet fishery must still register under Category II, regardless of whether or not they sometimes participate in the reclassified inshore fishery mentioned earlier (Category III).

This final list will remain in effect until the interim exemption established under section 114 of the MMPA becomes obsolete. The MMPA was amended on April 30, 1994, and section 118 was created to govern the taking of marine mammals incidental to commercial fishing operations. The provisions of section 118 will replace the current interim exemption system (section 114), when regulations are put into effect, no later than September 1, 1995. Included in the implementation will be a revised List of Fisheries, a revised set of classification criteria, and new implementing regulations, based on the provisions of section 118, to replace those provisions currently in effect.

Comments Received on the 1994 Proposed List of Fisheries

Ten comments were received in response to the request for comments on the proposed List of Fisheries for 1994. The comments were mixed in their support for and opposition to the changes proposed and are summarized below.

Washington, Oregon Lower Columbia River Salmon Drift Gill Net Fishery

Several comments were received in support of the proposed recategorization of the Columbia River commercial gill net fishery from a Category I to a Category III fishery, based on the relatively low level of incidental marine mammal mortality. NMFS has reclassified this fishery as proposed.

Alaska Copper River and Bering River Salmon Drift Gill Net Fishery

A number of the comments favored the proposed recategorization of the Alaska Copper River and Bering River (adjacent to Prince William Sound) salmon drift gill net fishery from a Category I to a Category II fishery. Until recently, take rates for this fishery were based on the total number of interactions, which included momentary interactions with the nets as well as serious injuries and mortalities. For this fishery, NMFS recognizes that many entanglements recorded by observers resulted in the animals freeing themselves from the net without assistance from fishermen. NMFS has reclassified the Alaska Copper River and Bering River (adjacent to Prince William Sound) drift gill net fishery to Category II as proposed.

Alaska Prince William Sound and Alaska Southern Bering Sea, Aleutian Islands and Western Gulf of Alaska Sablefish Longline Fisheries

One comment was received recommending reclassification of the Alaska Prince William Sound and Alaska Southern Bering Sea, Aleutian Islands and Western Gulf of Alaska sablefish longline fisheries from a Category II to a Category III fishery. The commenter stated that although fishermen chase away killer whales from sablefish caught on longline gear, this action does not meet the definition of incidental take under the MMPA interim exemption.

Under section 114 of the MMPA and based on congressional guidance, takes include the harassment, entanglement, injury or mortality of a marine mammal. NMFS believes that the deterring killer whales from catch and gear in sablefish longline fisheries constitutes harassment. Therefore, under section 114, these takes qualify the fishery for Category II classification.

Section 118 of the MMPA's recent amendments has directed NMFS to consider only incidental mortality and serious injury takes when categorizing fisheries under the new regime that is to replace the interim exemption by September 1995. The amendment also prohibits intentional lethal takes of marine mammals, except when necessary to save human life. Therefore, NMFS will reevaluate Alaska sablefish longline fisheries for possible reclassification to Category III when it prepares a List of Fisheries under the provisions of Section 118.

Gulf of Maine Atlantic Salmon Aquaculture Fishery

One comment was received in support of the proposal to reclassify the Gulf of Maine Atlantic salmon aquaculture fishery from a Category III to a Category II fishery. The commenter cited admissions by industry representatives of high kill rates and potential under-reporting of marine mammal mortalities in this fishery, and recommended recategorization as a Category I fishery, in lieu of the original proposal for change to Category II.

List of Fisheries criteria for a Category I classification require: (1) Documented information indicating a "frequent" incidental taking of marine mammals in the fishery or (2) the expressed intention of Congress to place the fishery in Category I (50 CFR 229.3).

Due to the limited documented evidence of incidental takings and the absence of definitive guidance from Congress regarding this fishery, only a

Category II classification is warranted at this time. NMFS will enhance efforts to obtain better information on current take levels and the degree to which marine mammals are deterred from aquaculture operations in this fishery.

All California Gill Net Fisheries (except the CA Klamath River gill net fishery)

A number of comments were received on the proposal to recategorize all California gill net fisheries based on the mesh size of the gear deployed. One commenter indicated that the State of California passed legislation banning the use of gill nets, thus making the Federal recategorization of California gill net fisheries unnecessary. Actually, the State of California has not banned the use of gill nets completely, but has only restricted their use in State waters.

In 1990, State of California passed the Marine Resources Protection Act (MRPA), which prohibits the use of gill and trammel nets in an area identified as the Marine Resources Protection Zone (MRPZ). The MRPZ includes ocean waters from 0-3 nautical miles from the California mainland coast, and any manmade breakwater, between a line extending due west from Point Arguello, Santa Barbara County, and a line extending due west from the U.S.-Mexico border. The MRPZ also includes waters less than 35 fathoms (64 m) deep, between Point Fermin, Los Angeles County, and the south jetty at Newport Beach, Orange County. Further, the MRPZ encompasses waters less than 70 fathoms deep, or within 1 mile, whichever is less, of the Channel Islands consisting of San Miguel, Santa Rosa, Anacapa, San Nicholas, Santa Barbara, Santa Catalina, and San Clemente Islands. The MRPA also established in perpetuity State legislation restricting the use of gill nets in the waters north of Point Arguello. Despite these prohibitions, there is still an active, but significantly reduced, set gill net fishery in California waters. For example, a set gill net fishery for Pacific herring sac-roe in San Francisco Bay is active during the months of December through March. In addition, there are approximately 20 set gill net vessels that are continuing to fish in the Southern California Bight, and in Central California, there are no water depth restrictions for set gill net fishing between Point Sal and Arguello. The MRPA does not affect the offshore drift gill net fishery for shark and swordfish.

Other comments were received that were in favor of the change in classification of California gill net fisheries based on mesh size. Although a correlation between mortality rates and mesh size has been observed in

California gill net fisheries, this relationship may not be applicable to other gill net fisheries outside California. Therefore, as the commenters noted, this change should not be applied to non-California gill net fisheries until there is information to support such a change.

Based on evidence presented in the notice of the proposed List of Fisheries for 1994 (59 FR 10372, March 4, 1994), reclassification of fisheries that use mesh sizes greater than 3.5 inches (8.9 cm) to Category I and reclassification of fisheries that use mesh sizes less than or equal to 3.5 inches (8.9 cm) to Category III is warranted.

Mid-Atlantic Coastal Gill Net Fishery

Although changes to this fishery were not proposed, many comments were received concerning the mid-Atlantic coastal gill net fishery. Commenters indicated that a lack of justification exists for the Category II designation within the inner bays, rivers, and tributaries along the mid-Atlantic coast, and these areas should be reclassified as Category III fisheries.

NMFS has evaluated existing information and agrees that the reclassification of certain areas is warranted. The category II classification of the mid-Atlantic coastal gill net fishery will continue to apply to all gill nets set in coastal waters from North Carolina to Nantucket, MA, excluding the segments described below.

Inshore Mid-Atlantic Gill Net Fisheries: Rhode Island and southern Massachusetts and New York Bight

All gill net fisheries operating landward of the first bridge of any embayment in Rhode Island, southern Massachusetts (to Monomoy Island), Raritan, and lower New York Bays in New York Bight are reclassified as Category III fisheries.

Long Island Sound

All gill net fisheries setting nets west of a line from the north fork of the eastern end of Long Island, NY (Orient Point to Plum Island to Fishers Island) to Watch Hill, RI are reclassified as Category III fisheries.

Delaware Bay

Harbor porpoise and bottlenose dolphin have stranded inside Delaware Bay as far as Fortescue, NJ. Therefore, only those gill net fisheries operating north of a line drawn from the southern point of Nantuxent Cove (mouth of Cedar Creek, NJ) to southern boundary of Bombay Hook National Wildlife Refuge at Kelly Island, DE (Port Mahon) are reclassified as Category III fisheries.

Chesapeake Bay

Seaward of the Chesapeake Bay/Bridge Tunnel, 42 bottlenose dolphin and 65 harbor porpoise stranded in Virginian waters during 1993-94. Landward of the Chesapeake Bay/Bridge Tunnel, approximately 14 bottlenose dolphin and 1 harbor porpoise were reported stranded in 1993-94, with little evidence of gill net interactions. Therefore, all gill net fisheries operating between the Chesapeake Bay/Bridge Tunnel and the mainland are reclassified as Category III fisheries.

North Carolina

After extensive monitoring of gill net effort monitoring in Pamlico and Albermarle Sound, the North Carolina Department of Environment, Health, and Natural Resources has reported no marine mammals incidentally taken in these areas. Therefore, all gill net fisheries operating between the Outer Banks and the mainland from Morehead City, NC to the North Carolina-Virginia border are reclassified as Category III fisheries.

Summary of Changes to the List of Fisheries

Table 1—Category I Commercial Fisheries in the Pacific Ocean

Reclassify the Alaska Copper River and Bering River (adjacent to Prince William Sound) salmon drift gill net fishery as a Category II fishery (Table 2).

Reclassify the Washington, Oregon Lower Columbia River salmon drift gill net fishery as a Category III fishery (Table 3).

Reclassify the Washington Willapa Bay salmon drift gill net fishery as a Category III fishery (Table 3).

Reclassify the Washington Grays Harbor salmon set and drift gill net fishery as a Category III fishery (Table 3).

Add California set and drift gill net fisheries (except the CA Klamath River gill net fishery, Table 2) that utilize a stretched mesh size of greater than 3.5 inches to Category I. This new classification supersedes the following Category I fishery classifications:

- California angel shark set gill net fishery;
- California halibut set gill net fishery;
- California thresher shark and swordfish drift gill net fishery;
- California soupfin shark, yellowtail, white sea bass set gill net fishery, and will incorporate future California set and drift gillnet fisheries that use a stretched mesh size of greater than 3.5 inches.

Table 2—Category II Commercial Fisheries in the Pacific Ocean.

Reclassify the Alaska Copper River and Bering River (adjacent to Prince William Sound) salmon drift gill net fishery from a Category I fishery to Category II.

Table 3—Category III Commercial Fisheries in the Pacific Ocean.

Reclassify the Washington, Oregon Lower Columbia River salmon drift gill net fishery from a Category I fishery to Category III.

Redefine the Washington, Oregon, California herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gill net fishery to include only Washington and Oregon. (This California fishery is redefined as a Category III California set and drift gill net fishery (defined below) that utilizes a stretched mesh size of 3.5 inches or less.)

Reclassify the Washington Willapa Bay salmon drift gill net fishery from a Category I fishery to Category III.

Reclassify the Washington Grays Harbor salmon set and drift gill net fishery from a Category I fishery to Category III.

Add California set and drift gill net fisheries (except the CA Klamath River gill net fishery) that utilize a stretched

mesh size of 3.5 inches or less to Category III (Table 3).

Table 4—Category I Commercial Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico.

No changes.

Table 5—Category II Commercial Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico.

Reclassify the Gulf of Maine Atlantic salmon aquaculture fishery from a Category III fishery to Category II.

Reclassify portions of the mid-Atlantic coastal gill net fishery (inner coastal, upper river and estuarine areas of Rhode Island, southern Massachusetts, and the New York Bight; as well as Long Island Sound, Delaware Bay, Chesapeake Bay and Albemarle and Pamlico Sounds in North Carolina waters) as Category III fisheries. (Table 6).

Table 6—Category III Commercial Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico.

Add the Rhode Island, southern Massachusetts (to Monomoy Island) and the New York Bight (Raritan and Lower New York Bays) gill net fishery, operating landward of the first bridge of any embayment, to Category III.

Add the Long Island Sound gill net fishery, operating west of a line from the north fork of the eastern end of Long Island, NY (Orient Point to Plum Island to Fishers Island) to Watch Hill, Rhode Island, to Category III.

Add the Delaware Bay gill net fishery, operating north of a line drawn from the southern point of Nantuxent Cove to southern boundary of Bombay Hook National Wildlife Refuge at Kelly Island, DE, to Category III.

Add the Chesapeake Bay gill net fishery, operating between the Chesapeake Bay/Bridge Tunnel and the mainland, to Category III.

Add the Albemarle and Pamlico Sounds gill net fishery, operating between the Outer Banks and the mainland from Morehead, NC to the Virginia-North Carolina border, to Category III.

Reclassify the Gulf of Maine Atlantic salmon aquaculture fishery as a Category II fishery (Table 5).

List of Fisheries

Interim Exemption for commercial Fisheries

TABLE 1.—CATEGORY I COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Gill net fisheries, salmonids: Northern WA coastal (area 4 and 4A) salmon set gill net	19	6, 13, 15, 30, 32
Gill net fisheries, other fish: CA set and drift gill net fisheries that use a stretched mesh size of greater than 3.5 inches	717	2, 3, 6, 11, 14, 15, 16, 17, 18, 22, 23, 27, 29, 30, 32, 33, 41

TABLE 2.—CATEGORY II COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Gill net fisheries, salmonids: AK Prince William Sound set gill net	30	2, 6, 13, 15.
AK Prince William Sound (Eshamy, Coghill, and Unakwik districts) drift gill net	547	2, 6, 13, 14, 15.
AK Copper River and Bering River districts (adjacent to Prince William Sound) salmon drift gill net	547	2, 6, 13, 14, 15.
AK South Unimak (False Pass and Unimak Pass) drift gill net	158	2, 6, 13, 14, 15, 30.
AK Peninsula (other than South Unimak) drift gill net	158	2, 6, 13, 15, 30.
AK Southeast Alaska drift gill net	468	2, 6, 13, 14, 15, 25, 30, 31.
AK Metlakatla/Annette Island drift gill net	56	2, 6, 13, 14, 15, 25, 30, 31.
AK Yakutat set gill net	164	2, 6, 13, 14, 30.
AK Cook Inlet drift gill net	560	2, 6, 13, 15, 26.
AK Cook Inlet set gill net	743	2, 6, 13, 15, 26.
AK Kodiak set gill net	187	2, 6, 13, 15.
AK Peninsula set gill net	113	2, 6, 13, 30.
AK Bristol Bay drift gill net	1,746	2, 6, 26, 30.
AK Bristol Bay set gill net	943	2, 6, 26, 30.
WA Puget Sound Region and inland waters south of the U.S.-Canada border, including the Strait of Juan de Fuca, Hood Canal and estuaries and lower river areas (subject to tidal action) set and drift gill net	3,900	1, 2, 3, 6, 14, 15, 25.
WA coastal river set gill net	325	2, 3, 6.

TABLE 2.—CATEGORY II COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery	Estimated number of vessels/persons	Marine mammal species involved
CA Klamath River gill net	504	3, 6.
Gill net fisheries, other finfish:		
AK gill net (except salmon, herring, and surken gill nets for groundfish)	295	2, 6, 15.
Sunken gill nets, groundfish:		
AK Prince William Sound sunken gill net	3	15.
AK Kodiak (south of Cape Douglas, east of 159°W) sunken gill net	5	15.
AK Central Gulf of Alaska (north and east of Cape Douglas) sunken gill net	2	15.
AK Aleutian Islands (south of 55°N, west of 170°W) sunken gill net	1	15.
Purse seine fisheries, salmonids:		
AK South Unimak (False Pass and Unimak Pass) salmon purse seine	115	1, 2, 13.
Troll fisheries:		
OR, CA south of 45°46'00" (Cape Falcon, OR) salmon troll	3,400	2, 3, 6.
Round haul (seine and lampara), beach seine, and throw net fisheries:		
CA herring purse seine	100	3, 6.
CA anchovy, mackerel, tuna purse seine	160	3, 27.
CA sardine purse seine	120	3, 27.
CA squid purse seine	145	3, 22, 23, 27.
Long line/set line fisheries, sablefish:		
AK Prince William Sound (NMFS Statistical Area 649) sablefish long line/set line	270	25, 28.
AK Southern Bering Sea, Aleutian Islands, (NMFS Statistical Reporting Areas 517, 518, 519, 540) and Western Gulf of Alaska (NMFS Statistical Reporting Area 610 West of 165°W) sablefish long line/set line.	226	25.
Pot, ring net, and trap fisheries:		
AK Metlakatla fish trap	4	2, 6.
Dip net fisheries:		
CA squid dip net	115	3, 23.
Aquaculture, ranch pen fisheries:		
WA, OR salmon net pens	21	2, 3, 6.
OR salmon ranch	8	3, 6.

TABLE 3.—CATEGORY III COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Gill net fisheries:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gill nets	2,023	15.
AK herring gill net	174	2, 6.
WA, OR Upper Columbia River Basin (above Bonneville Dam) salmon and other finfish gill net	100	3.
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gill net	918	3, 6.
WA, OR Lower Columbia River (includes tributaries) drift gill net	874	2, 3, 6, 30.
WA Willapa Bay (includes rivers, estuaries, etc.) drift gill net	362	2, 3, 6, 11.
WA Grays Harbor (includes rivers, estuaries, etc.) drift gill net	222	2, 3, 6.
CA set and drift gill net fisheries that use a stretched mesh size of 3.5 inches or less	341	2, 3, 6, 14, 15, 16, 27, 30, 41.
HI gill net	81	12, 27.
Troll fisheries:		
AK salmon troll	2,873	1, 2, 6, 28, 31.
WA, OR north of 45°46'00" (Cape Falcon, OR) salmon troll	900	3.
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmon troll fisheries.	1,354	4, 6.
HI trolling, rod and reel	903	20, 21, 24.
Guam tuna troll	<50	None Documented.
Commonwealth of the Northern Mariana Islands tuna troll	<50	None Documented.
American Samoa tuna troll	<50	None Documented.
Purse seine, beach seine, round haul (seine and lampara) and throw net fisheries:		
AK salmon/herring beach or purse seine	1,749	2, 13, 15.
AK other finfish beach or purse seine	9	None Documented.
WA salmon purse seine	440	6, 14.
WA salmon reef net	53	6.
WA, OR herring, smelt, squid purse seine	100	3, 6.
WA (all species) beach seine	199	None Documented.
HI purse seine	18	None Documented.
HI opelu/akule net	3	None Documented.
HI throw net, cast net	24	None Documented.
HI net unclassified	8	None Documented.
Western Pacific yellowfin tuna purse seine (South Pacific Tuna Treaty)	32	None Documented.

TABLE 3.—CATEGORY III COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Long line/set line fisheries:		
AK groundfish long line/set line (except sablefish in BSAI/GOA which are in Category II)	1,296	2, 31.
AK, WA, OR North Pacific halibut long line/set line	5,893	2, 4, 25, 28.
WA, OR, CA groundfish, bottomfish long line/set line	367	3, 4, 6, 17.
CA shark/bonito long line/set line	10	3.
HI tuna, billfish, mahi mahi, wahoo, oceanic sharks long line/set line	200	21, 24.
Trawl fisheries:		
AK Bering Sea and Aleutian Islands groundfish trawl	490	1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 25, 32.
AK Gulf of Alaska groundfish trawl	490	1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 25, 32.
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeastern Alaska groundfish trawl	8	14.
AK food/bait herring trawl	2	None Documented.
AK, WA, OR, CA shrimp trawl	382	None Documented.
WA, OR, CA groundfish, squid, smelt, bottomfish trawl	585	1, 2, 3, 6, 14, 17, 27, 33.
CA California halibut trawl	25	3.
CA sea cucumber trawl	6	None Documented.
Pot, ring net, and trap fisheries:		
AK shellfish pot	1,533	13.
AK finfish pot	226	None Documented.
WA, OR, CA sablefish pot	176	4,6.
WA, OR, CA dungeness crab pot	1,426	4, 6, 30, 32.
WA, OR shrimp pot	231	None Documented.
CA lobster, prawns, shrimp, rock crab, fish pot	608	None Documented.
OR, CA hagfish pot	7	None Documented.
HI lobster trap	21	12.
HI crab trap	5	None Documented.
HI fish trap	2	None Documented.
HI shrimp trap	2	None Documented.
HI other trap	6	None Documented.
Handline and jig fisheries:		
AK North Pacific halibut	69	None Documented.
AK other finfish	33	None Documented.
WA groundfish, bottomfish jig	679	4, 6.
HI aku boat, pole and line	17	None Documented.
HI inshore handline	76	20.
HI deep sea bottomfish	434	12, 20.
HI tuna	144	12, 20, 21.
Guam bottomfish	<50	None Documented.
Commonwealth of the Northern Mariana Islands bottomfish	<50	None Documented.
American Samoa bottomfish	<50	None Documented.
Dip net fisheries:		
WA, OR smelt, herring dip net	119	None Documented.
Harpoon fisheries:		
CA swordfish harpoon	228	None Documented.
Pound fisheries:		
AK Southeast Alaska herring food/bait	1	None Documented.
WA herring brush weir	1	None Documented.
Bait pens:		
WA, OR herring bait pen	12	6.
Dredge fishery:		
Coastwide scallop dredge	106	None Documented.
Dive, hand/mechanical collection fisheries:		
AK abalone	23	None Documented.
AK dungeness crab	3	None Documented.
AK, Prince William Sound herring spawn-on-kelp	81	2.
AK herring spawn-on-kelp	172	None Documented.
AK urchin and other fish/shellfish	19	None Documented.
AK clam hand shovel	64	None Documented.
AK clam mechanical/hydraulic fisheries	3	None Documented.
WA herring spawn-on-kelp	4	None Documented.
WA geoduck	37	4.
WA, OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop	647	2, 6.
CA abalone	129	None Documented.
CA sea urchin	800	None Documented.
HI squidding, spear	49	None Documented.
HI lobster diving	16	None Documented.
HI coral diving	2	None Documented.

TABLE 3.—CATEGORY III COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery	Estimated number of vessels/persons	Marine mammal species involved
HI handpick	86	None Documented.
Aquaculture, ranch, ponds:		
WA tribal salmon ranch	1	None Documented.
WA oyster farm	316	None Documented.
WA mussel/clam	224	None Documented.
WA, CA kelp	4	None Documented.
HI fish pond	3	None Documented.
Commercial passenger fishing vessel (charter boat) fisheries:		
AK, WA, OR, CA all species	1,243	3, 6.
Other fisheries:		
HI	17	None Documented.

TABLE 4.—CATEGORY I COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, CARIBBEAN, AND GULF OF MEXICO

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Trawl fisheries:		
MDA Foreign mackerel trawl	0	16, 20, 22, 23, 34.
Pair Trawl Fisheries:		
Atlantic Ocean, CB, GMX, swordfish, tuna, shark pair trawl	15	16, 20, 22, 23, 24.
Gill Net Fisheries:		
Atlantic Ocean, CB, GMX swordfish, tuna, shark gill net	85	16, 19, 20, 22, 23, 29.
New England Multispecies sink gill net (includes all species as defined in the Multispecies Fishery Management Plan and spiny dogfish) for all waters east of 71°40'W.	399	6, 15, 23, 31, 32, 34, 35, 38.
GME small pelagics (which includes mackerel, herring, menhaden) surface gill net	133	6, 15, 31, 32, 34, 35.

TABLE 5.—CATEGORY II COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, CARIBBEAN, AND GULF OF MEXICO

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Gill Net Fisheries:		
MDA coastal gill net (includes, but not limited to, Atlantic croaker, Atlantic mackerel, Atlantic sturgeon, black drum, bluefish, herring, menhaden, scup, shad, striped bass, weakfish, white perch, and yellow perch and excludes the inner coastal, upper river and estuarine areas of Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays); Long Island Sound, Delaware Bay, Chesapeake Bay and Albemarle and Pamlico Sounds in North Carolina waters).	655	15, 20, 31, 32.
SOA shark gill net	10	20.
Trawl Fisheries:		
MDA Atlantic mackerel trawl	203	16, 22, 23.
Longline fisheries:		
Atlantic Ocean, CB, GMX, tuna, shark, swordfish longline	820	16, 22, 23, 24, 27, 31, 32, 36.
Aquaculture, pens:		
GME Atlantic salmon	30	6, 35.

TABLE 6.—CATEGORY III COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, CARIBBEAN, AND GULF OF MEXICO

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Gill net fisheries:		
MDA Inshore Gill Net Fisheries:		
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays).	32	15, 20, 31, 32
Long Island Sound	20	
Delaware Bay	60	
Chesapeake Bay	45	
North Carolina (Albemarle and Pamlico Sounds)	94	

TABLE 6.—CATEGORY III COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, CARIBBEAN, AND GULF OF MEXICO—
Continued

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Trawl fisheries		
GME northern shrimp trawl	320	None Documented
GME mackerel trawl	30	None Documented
GME, MDA groundfish trawl	1,052	None Documented
GME, MDA sea scallop trawl	215	None Documented
GME, SOA, GMX coastal herring trawl	5	36
MDA squid trawl	250	16, 22, 23, 34
MDA mixed species trawl	>1,000	None Documented
SOA, GMX shrimp trawl	18,292	20, 40
GMX butterfish trawl	5	36
GA, SC whelk trawl	25	None Documented
Calico scallops trawl	200	None Documented
Bluefish, croaker, flounder trawl	550	None Documented
Crab trawl	400	None Documented
Purse seine fisheries:		
GME Atlantic herring purse seine	30	6, 15, 35
GME, MDA menhaden purse seine	10	20
GME, MDA Atlantic bluefin tuna purse seine	5	31
SOA, GMX menhaden purse seine	97	20
FL west coast sardine purse seine	16	20
Bottom longline/hook & line fisheries:		
GME tub trawl groundfish	46	6, 35
SOA, GMX snapper-grouper and other reef fish	1,300	None Documented
SOA, GMX shark	124	None Documented
Pelagic hook & line/harpoon fisheries:		
GME, MDA tuna, shark, swordfish	26,223	None Documented
SOA, GMX	1,446	None Documented
Gill net fisheries:		
GME, SOA coastal shad, sturgeon gill net	1,285	15, 20, 32
SOA, GMX coastal gill net	4,000	20
FL east coast, GMX pelagics king & spanish mackerel gill net	271	20
Fixed gear fisheries, trap/pot—fish:		
GME, MDA mixed species	100	6, 15, 31, 32, 35
MDA black sea bass	30	None Documented
MDA eel	500	None Documented
Fixed gear fisheries, trap/pot—lobster, crab		
GME, MDA inshore lobster	10,613	6, 31, 32, 38, 39
GME, MDA offshore lobster	2,902	None Documented
Atlantic Ocean, GMX blue crab	20,500	20, 40
SOA, GMX, CB spiny lobster	2,500	20, 40
SOA, GMX, CB reef fish	2,200	None Documented
FL east & west coast, GMX stone crab	500	20, 40
Stop seine, weirs (staked fish traps):		
GME herring and Atlantic mackerel	50	6, 15, 31, 32, 35, 38
MDA mixed species	500	None Documented
MDA crab	2,600	None Documented
Dredge fisheries:		
GME, MDA sea scallops	233	31
MDA offshore clam	159	None Documented
GME mussel	>50	None Documented
MDA oyster	7,000	None Documented
Haul seine fisheries:		
SOA, CB	150	None Documented
Beach seine fisheries:		
CB	15	40
Dive, hand/mechanical collection fisheries:		
GME urchins	>50	None Documented
Atlantic Ocean, GMX, CB shellfish	20,000	None Documented

List of State Abbreviations Used in Tables

- AK—Alaska
- CA—California
- FL—Florida
- GA—Georgia
- HI—Hawaii
- OR—Oregon
- SC—South Carolina
- TX—Texas
- WA—Washington

Acronyms and the Areas They Represent

BSAI—Bering Sea and Aleutian Islands

CB—Caribbean

GME—Gulf of Maine—Canadian Border to Nantucket Island, Massachusetts (includes Georges Bank)

GMX—Gulf of Mexico—All Gulf states

GOA—Gulf of Alaska

MDA—Mid Atlantic—Nantucket Island, Massachusetts, to Cape Hatteras, North Carolina

SOA—Southern Atlantic—South Carolina to Florida

Explanation of Columns

Fishery—Identified by gear, target species, and area.

Estimated # of Vessels/Persons—Contains the best and most recent available information on the number of vessels/persons licensed to participate in a fishery or, in the case of Alaska, the number of permits.

Marine Mammal Species Involved—Contains a list of all documented or reported instances (including rare and unique instances) of marine mammal interactions. The inclusion of a species does not address the magnitude of take and makes no statement regarding the significance of any interaction.

SPECIES CODES FOR MARINE MAMMALS TAKEN IN COMMERCIAL FISHERIES.

Species codes	Common name	Scientific name
1.	Northern fur seal	<i>Callorhinus ursinus.</i>
2.	Steller (northern) sea lion	<i>Eumetopias jubatus.</i>
3.	California sea lion	<i>Zalophus californianus.</i>
4.	Unidentified sea lion	
5.	Walrus	<i>Odobenus rosmarus.</i>
6.	Harbor seal	<i>Phoca vitulina.</i>
7.	Spotted seal	<i>Phoca larga.</i>
8.	Ringed seal	<i>Phoca hispida.</i>
9.	Ribbon seal	<i>Phoca fasciata.</i>
10.	Bearded seal	<i>Erignathus barbatus.</i>
11.	Northern elephant seal	<i>Mirounga angustirostris.</i>
12.	Hawaiian monk seal	<i>Monachus schauinslandi.</i>
13.	Alaska sea otter	<i>Enhydra lutris lutris.</i>
14.	Dall's porpoise	<i>Phocoenoides dalli.</i>
15.	Harbor porpoise	<i>Phocoena phocoena.</i>
16.	Common (saddleback) dolphin	<i>Delphinus delphis.</i>
17.	Pacific whitesided dolphin	<i>Lagenorhynchus obliquidens.</i>
18.	Northern right whale dolphin	<i>Lissodelphis borealis.</i>
19.	Striped dolphin	<i>Stenella coeruleoalba.</i>
20.	Bottlenose dolphin	<i>Tursiops truncatus.</i>
21.	Rough toothed dolphin	<i>Steno bredanensis.</i>
22.	Risso's dolphin	<i>Grampus griseus.</i>
23.	Pilot whale	<i>Globicephala spp.</i>
24.	False killer whale	<i>Pseudorca crassidens.</i>
25.	Killer whale	<i>Orcinus orca.</i>
26.	Beluga whale	<i>Delphinapterus leucas.</i>
27.	Unidentified small cetacean	
28.	Sperm whale	<i>Physeter catodon.</i>
29.	Beaked whales	<i>Ziphiidae.</i>
30.	Gray whale	<i>Eschrichtius robustus.</i>
31.	Humpback whale	<i>Megaptera novaeangliae.</i>
32.	Minke whale	<i>Balaenoptera acutorostrata.</i>
33.	Unidentified large cetacean	
34.	Atlantic whitesided dolphin	<i>Lagenorhynchus acutus.</i>
35.	Gray seal	<i>Halichoerus grypus.</i>
36.	Spotted dolphin	<i>Stenella spp.</i>
37.	Pygmy sperm whale	<i>Kogia breviceps.</i>
38.	Northern right whale	<i>Eubalaena glacialis.</i>
39.	Fin whale	<i>Balaenoptera physalus.</i>
40.	Manatee	<i>Trichechus manatus.</i>
41.	Southern (California) sea otter	<i>Enhydra lutris nereis.</i>

Dated: August 19, 1994.

Gary C. Matlock,

Program Management Officer, National
Marine Fisheries Service.

[FR Doc. 94-20912 Filed 8-22-94; 3:42 pm]

BILLING CODE 3510-22-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 19, 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 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 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 Categories 335/
635/835 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.

Edwin E. Maddrey,

Acting Chairman, Committee for the
Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 19, 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, among other things, imports of
cotton, man-made fiber, silk blend and other
vegetable fiber textile products in Categories
335/635/835, produced or manufactured in
the United Arab Emirates and exported
during the period which began on October
28, 1993 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 limit for the
Categories 335/635/835 to 162,340 dozen¹, 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,

Edwin E. Maddrey,

Acting Chairman, Committee for the
Implementation of Textile Agreements.

[FR Doc. 94-20902 Filed 8-24-94; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of a Finding of No Significant Impact (FONSI) for the Transfer of Wake to Other Federal Agencies

The U.S. Air Force is proposing the
transfer of Wake Island Airfield (WIA)
to other federal agencies in accordance
with the National Environmental Policy
Act (NEPA), the Council on
Environmental Quality regulations
implementing NEPA, the Department of
Defense Directive (DOD) 6050.1 and Air
Force Regulation (AFR) 19-2. These
directives require the U.S. Air Force
(USAF) to consider environmental
consequences when authorizing or
approving federal actions.

The USAF has prepared an
Environmental Assessment (EA)

¹ The limit has not been adjusted to account for
any imports exported after October 27, 1993.

analyzing the potential environmental
consequences of the proposed transfer
of civil administration authority for
WIA from the USAF to other federal
agencies, and the planned future uses of
WIA by the recipient agencies.

On the basis of the EA, we conclude
the implementation of the proposed
action or any of the alternatives will not
have a significant effect on the quality
of the environment at WIA and, as a
result, an Environmental Impact
Statement is not warranted.

Comments on this FONSI must be
received on or before September 15,
1994 and may be addressed to Capt
William Cronin, 15 CES/CEVP, 75 H
Street, Hickam AFB HI 96853-5328,
Telephone (808) 449-7514.

Documents are available for public
review at Hawaii State University, 478
South King, Honolulu, HI, 96813,
Telephone (808) 586-3500.

List of Subjects

Environmental Protection,
Environmental Impact Statement, US
Air Force, Wake Island, FONSI, Notice
of Availability, Environmental
Assessment, Environmental Impact
Statement.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94-20937 Filed 8-24-94; 8:45 am]

BILLING CODE 3910-01-P

Performance Review Boards; List of Members

Below is a list of additional
individuals who are eligible to serve on
the Performance Review Boards for the
Department of the Air Force in
accordance with the Air Force Senior
Executive Appraisal and Award System.

Secretariat

Maj. Gen. James E. McCarthy

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94-20938 Filed 8-24-94; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Nominations to the Inland Waterways Users Board

AGENCY: Office, Assistant Secretary of
the Army (Civil Works), DOD.

ACTION: Notice.

SUMMARY: Section 302 of Public Law 99-
662 established the Inland Waterways
Users Board. The Board is an
independent Federal advisory
committee. Its eleven members are

appointed by the Secretary of the Army. This notice replaces the notice with the same subject published in the Federal Register on 4 August 1994. That notice solicited nominations for five appointments or reappointments to two year terms that will begin January 1, 1995. Subsequent to the submission of the August 4, 1994 notice, a member of the Inland Waterways Users Board eligible for reappointment indicated he will decline reappointment. This notice modifies the solicitation of nominations to reflect this change and extends the date for submitting nominations until September 19, 1994.

DATES: The effective date of this notice is August 19, 1994.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310-0103.

FOR FURTHER INFORMATION CONTACT: Dr. John Zirschky, Acting Assistant Secretary of the Army (Civil Works), (703) 697-4671.

SUPPLEMENTARY INFORMATION: The selection, service and appointment of board members are covered by provisions of Section 302 of Public Law 99-662. The substance of these provisions is as follows:

Selection

Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions and to be representative of waterway commerce as determined by commodity ton-mile statistics.

Service

The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and the Congress.

Appointment

The operation of the Board and the appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92-463 as amended) and Departmental implementing regulations. Members serve without compensation but their expenses due to board activities are reimbursable.

The considerations specified in Section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

Carriers and Shippers

The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or a shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

Geographical Representation

The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 94-502, as amended, have been aggregated into six regions. These are: (1) The Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways east of New Orleans and associated fuel-taxed waterways including Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

Commodity Representation

Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in Waterborne Commerce of the United States. In rank order they are: (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Products; (5) Chemicals and Allied Products; and (6) All other.

A consideration in the selection of Board members will be, that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

Reflecting preceding selection criteria, the present representation by Board members is as follows:

The five members whose terms expire December 31, 1994, include one shipper

representative representing the Upper Mississippi River Region (Region 1) and farm and food products, ethanol and coal; one shipper representative representing the Lower Mississippi River Region (Region 2), and farm and food products; one carrier representative representing the Gulf Intracoastal Waterway in Louisiana and Texas (Region 4), and petroleum and petroleum products; one carrier representative representing the Ohio River Region (Region 3), and coal and coke, minerals, and metals, petroleum and petroleum products, farm and food products and chemicals; and one carrier representative representing the Columbia-Snake River System and Upper Willamette (Region 6), and farm and food products, petroleum products, chemicals, containers, and forest products. The members representing Regions 2, 3 and 6 area eligible for reappointment. However, the member representing Region 6 has indicated that he will decline reappointment to the Board.

The six members whose terms expire December 31, 1995, include three shipper representatives representing (1) the Lower Mississippi River (Region 2), and farm and food products, (2) the Ohio River (Region 3), and coal, and (3) the East Gulf region (Region 5), and coal; two carrier representatives representing the Ohio River Region (Region 3), and farm and food products, coal, petroleum, chemicals, minerals and metals; and one shipper/carrier representative representing the Ohio River Region (Region 3), and coal.

Nominations to replace members whose terms expire December 31, 1994, may be made by individuals, firms, or associations. Nominations should state the region to be represented and whether the nominee is to represent carriers or shippers. Information should be provided on the nominee's personal qualifications and the commercial operations of the carrier and/or shipper with whom the nominee associated. The latter information should show the actual or estimated ton-miles of commodities carried or shipped on inland waterways in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's Federal Register notice published on August 9, 1993, have been retained for consideration for reappointment along with nominations received in response to this Federal Register notice. Renomination is not required but may be desirable.

Deadline for Nominations

All nominations must be received at the address provided in this notice not later than September 19, 1994.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-21044 Filed 8-24-94; 8:45 am]

BILLING CODE 3710-62-M

DEPARTMENT OF EDUCATION**Notice of Proposed Information Collection Requests**

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 26, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Sherrill (202) 708-9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources

Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: August 19, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: New

Title: PEQIS Survey #4: Financial Aid at Postsecondary Education Institutions

Frequency: One Time

Affected Public: Non-profit institutions

Reporting Burden:

Responses: 1,020

Burden Hours: 510

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: The purpose of the survey is to evaluate the effects on institutional financial aid policies and practices in federal financial aid programs of the changes brought about by the 1992 Reauthorization of the Higher Education Act. The Department will use the information for program management and evaluation.

Office of Educational Research and Improvement

Type of Review: New

Title: Fast Response Survey System—Elementary and Secondary Schools Arts Education Survey

Frequency: One Time

Affected Public: Individuals or households

Reporting Burden:

Responses: 1,400

Burden Hours: 700

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: The purpose of this Arts Education survey is to provide data on the current status of Arts Education in the public schools as the nation moves toward Goals 2000, specifically as it relates to Goal 3. The Department will use the information as a basis for determining what changes are required.

Office of Educational Research and Improvement

Type of Review: Existing

Title: Application for Grants under the National Diffusion Network

Frequency: Annually

Affected Public: State or local governments; Non-profit institutions

Reporting Burden:

Responses: 117

Burden Hours: 1,404

Recordkeeping Burden:

Recordkeepers: 117

Burden Hours: 1,404

Abstract: This form will be used by State Educational agencies to apply for funding under the National Diffusion Network. The Department will use the information to make grant awards.

[FR Doc. 94-20891 Filed 8-24-94; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Projects Nos. 2404-017 & 2419-007—Michigan]

Thunder Bay Power Company; Notice of Intention to Prepare an Environmental Impact Statement, Conduct Project Site Visits, and Hold Public Scoping Meetings

August 18, 1994.

Thunder Bay Power Company (applicant) filed on December 30, 1991, a new license application to continue to operate and maintain its Thunder Bay and Hillman Hydro Projects located on the Thunder Bay River in Alpena, Alcona, and Montmorency Counties, Michigan. The applicant has requested that the Commission combine the two licensed projects into a new license.

The Thunder Bay and Hillman Hydro Project as presently licensed consists of the following:

A. *Thunder Bay Hydro Project Ferc No. 2404:*

This project consists of the following five developments:

The Ninth Street Development which includes: (1) An existing retaining wall, 6 feet high by 285 feet long; (2) an existing buttressed retaining wall, 145 feet long; (3) an existing abandoned fishway; (4) an existing concrete uncontrolled spillway section, 47 feet long; (5) an existing gated spillway section, 131 feet long, containing seven tainter gates, each 14 feet long by 12 feet high; (7) an existing concrete gravity non-overflow section, 47 feet long; (8)

an existing reinforced concrete non-overflow section (a retaining wall about 20 feet long); (9) an existing reservoir with a surface area of 700 acres and a total storage volume of 6,000 acre-feet at the normal maximum surface elevation of 598.5 feet NGVD; (10) an existing reinforced concrete and masonry powerhouse, 92 feet long by 84 feet wide, containing (a) three horizontal shaft Sampson runner turbines with a combined hydraulic capacity of 1620 cfs, manufactured by James Leffel Company and rated at 600 hp each, and (b) three General Electric generators, each rated at 400 kW, providing a total plant rating of 1,200 kW; and (11) existing appurtenant facilities.

The Four Mile Development which includes: (1) An existing concrete ogee spillway (constructed immediately downstream from the original rock filled timber dam), 445 feet long, topped by needle beams, containing (a) a log chute bay, and (b) an abandoned fishway bay; (2) an existing reservoir with a surface area of 90 acres and a total storage capacity of 900 acre-feet at the normal maximum surface elevation of 634.9 feet NGVD; (3) an existing concrete and masonry powerhouse, 72 feet by 72 feet, containing (a) a concrete forebay, (b) three existing horizontal shaft Sampson runner turbines with a combined hydraulic capacity of 1790 cfs, rated at 850 hp each, and (c) three existing General Electric generators, each rated at 600 kW, providing a total existing plant rating of 1,800 kW; and (4) existing appurtenant facilities.

Norway Point Development which includes: (1) Two existing earth dikes, 1,460 feet long and 500 feet long yielding a total length of 1,960 feet; (2) an existing abandoned fishway; (3) an existing beartrap gate section, 120 feet long, containing three beartrap gates, each 26 feet long by 27 feet high; (4) an existing mass concrete multiple barrel arch spillway section with removable needle beams, 320 feet long; (5) an existing reservoir with a surface area of 1,700 acres and a total storage volume of 27,550 acre-feet at the normal maximum surface elevation of 671.6 feet NGVD; (6) an existing reinforced concrete and masonry powerhouse, 86 feet long by 49 feet wide, containing (a) two vertical shaft Francis turbines with a combined hydraulic capacity of 1650 cfs, the first manufactured by Wellman-Seaver-Morgan Company and rated at 3,350 hp and the second rated at 1,400 hp, and (b) two General Electric generators, rated at 2,800 kW and 1,200 kW, providing a total plant rating of 4,000 kW; and (7) existing appurtenant facilities.

Hubbard Lake Development which includes: (1) An existing reinforced concrete spillway section, 20 feet long, containing two needle beam controlled bays; (2) two existing 45 foot long earth embankment sections, each overlapped on the upstream and downstream sides with concrete wing walls extending from both sides of the spillway; (3) an existing reservoir with a surface area of 9,280 acres and a total storage volume of 57,000 acre-feet at the normal maximum surface elevation of 710.5 feet NGVD; and (4) existing appurtenant facilities.

Upper South Development which includes: (1) Two existing earth embankment sections, 220 feet long and 40 feet long for a total length of 260 feet, (2) an existing reinforced concrete spillway section, 40 feet long, containing (a) four needle beam controlled bays, and (b) concrete wing walls on the upstream and downstream sides overlapping the earth embankments on both sides of the spillway; (3) an existing reservoir with a surface area of 7,000 acres and a total storage volume of 55,000 acre-feet at the normal maximum surface elevation of 731.0 feet NGVD; (4) two proposed submersible Flygt Corporation turbines with a combined hydraulic capacity of 170 cfs, each equipped with a siphon penstock and an elbow draft tube; and (5) existing appurtenant facilities.

B. Hillman Hydro Project Ferc No. 2419:

This project consists of: (1) An existing earth fill section, approximately 50 feet long; (2) an existing concrete gated spillway section, approximately 38 feet long, containing (a) three needle beam controlled bays, (b) a concrete training wall extending upstream of the spillway along the right side, and (c) a reinforced concrete apron, constructed along the downstream toe of the spillway; (3) an existing non-overflow section which includes part of the Hillman grist mill house, 26 feet long, constructed of upstream and downstream concrete gravity walls with pressure grouted earth and rock fill between the two walls; (4) an existing concrete uncontrolled spillway section, 27 feet long, (formerly the intake structure of the grist mill in the early 1900's); (5) an existing non-overflow section, 20 feet long, constructed of upstream and downstream concrete gravity walls with pressure grouted earth and rock fill between the two walls; (6) an existing reservoir with a surface area of 160 acres and a total storage volume of 500 acre-feet at the normal maximum surface elevation of 747.2 feet NGVD; (7) an existing reinforced concrete and masonry

powerhouse, 17 feet by 21 feet, containing (a) a vertical shaft Francis turbine with a hydraulic capacity of 270 cfs, manufactured by James Leffel Company, and (b) a vertical shaft generator, manufactured by Westinghouse and rated at 250 kW; and (8) existing appurtenant facilities.

The applicant proposes increasing capacity at the Upper South Development by 200 kW as well as increasing the capacity at the Four Mile Development by 600 kW, with the addition of three new generators, respectively. The applicant estimates that the proposed total installed project capacity would be 8.25 MW with a total average annual generation of 8.26 GWH. The dam and existing project facilities of each development are owned by the applicant. Project power would be utilized by the applicant for sale to its customers.

Notice of Intention to Prepare an Environmental Impact Statement

The Commission staff has determined that licensing the existing projects could constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) for Thunder Bay and Hillman Hydro Project in accordance with the National Environmental Policy Act.

The staff's EIS will consider both site specific and cumulative environmental impacts of the proposed project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the Commission staff and considered in a final EIS.

Project Site Visit

The applicant and Commission staff will conduct a project site visit of the Thunder Bay and Hillman Hydro Project. The site meeting will be held starting at 1:00 P.M. on September 6, 1994 at the entrance of the Best Western Motel, 1286 M32 West, Alpena, Michigan and continue the next day (on September 7, 1994), and if needed on September 8, 1994, as well. All interested individuals, organizations, and agencies are invited to attend. All participants are responsible for their own transportation to and from the project site. For more details, interested parties should contact Patrick Murphy, FERC, at (202) 219-2659, prior to the site visit date.

Scoping Meetings

The Commission staff will conduct one evening scoping meeting and one morning scoping meeting. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussions, a preliminary EIS scoping document outlining subject areas to be addressed at the scoping meetings will be distributed by mail to persons and entities on the FERC mailing list. Copies of the preliminary scoping document will also be made available at the meetings.

The evening meeting will be held on Wednesday, September 7, 1994, from 7:00 P.M. to 10:00 P.M. (or later) at the Natural Resources Center, Room 150 (NRC 150), Alpena Community College, 666 Johnson Street, Alpena, Michigan.

The morning meeting will be held on Wednesday, September 7, 1994, from 9:30 A.M. to 12:30 P.M. at the Conference Room, District 5 Office, Michigan Department of Natural Resources, 1732 West M32, Gaylord, Michigan.

Objectives

At the scoping meetings, the Commission staff will: (1) summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Meeting Procedures

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the Commission proceeding on this project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, until October 7, 1994. All filings should contain an original and 3 copies. Failure to file an original and 3 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should clearly show the following caption on the first page: Scoping Comments, Thunder Bay and Hillman Hydro Project, FERC Nos. 2404-017 and 2419-007, Michigan.

All those attending the meeting are urged to refrain from making any communications concerning the merits of the application to any member of the Commission staff outside of the established process for developing the record as stated into the record of the proceeding.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information, please contact Ed Lee at (202) 219-2809.

Lois D. Cashell,

Secretary.

[FR Doc. 94-20889 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-704-000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

August 18, 1994.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP94-704-000]

Take notice that on August 8, 1994, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94-704-000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to upgrade the existing Bell Ranch Tap in Maricopa County, Arizona to a meter station to permit El Paso to make additional firm deliveries of natural gas to Southwest Gas

Corporation (Southwest), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that it can presently deliver 1,080 Mcf of natural gas per day at the existing Bell Ranch Tap. El Paso indicates that pursuant to an agreement with Southwest dated February 18, 1994, El Paso agreed to upgrade the Bell Ranch Tap to accommodate Southwest's request for the delivery of up to 650 Mcf per day of additional volumes to a maximum of 1,730 Mcf per day. According to El Paso, Southwest will use the additional volumes of natural gas to be delivered at the upgraded tap to serve existing and new residential, commercial, and industrial requirements in the area. El Paso further states that the total estimated cost of the proposed facilities is \$73,000, and that Southwest has agreed to reimburse El Paso for the costs related to upgrading the Bell Ranch Tap to a meter station.

Comment date: October 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP94-717-000]

Take notice that on August 15, 1994, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP94-717-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a compressor station which was authorized in Docket No. CP64-18,¹ all as more fully set forth in the application on file with the Commission and open to public inspection.

Panhandle proposes to abandon its Bartonville Compressor Station (1,000 horsepower) in Peoria County, Illinois, which is located on the extreme northern portion of its Peoria lateral. Panhandle states that the station is no longer required to provide continued service to customers located downstream;² that the proposal would not result in abandonment of service nor deterioration of service to any of its existing customers.

Panhandle estimates the cost of retiring the facilities to be \$300,000 and the salvage value to be \$59,000.

Comment date: September 1, 1994, in accordance with Standard Paragraph F at the end of this notice.

¹ 32 FPC 349 (1964).

² Panhandle shows the customers as being (1) City of Bushnell, (2) Galesburg, IL, (3) Elmwood, ILCO, (4) Canton, ILPSCO, and (5) Hanna, ILCO.

3. Koch Gateway Pipeline Company

[Docket No. CP94-718-000]

Take notice that on August 16, 1994, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP94-718-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to install a two-inch tap and meter station in Warren County, Mississippi, under its blanket certificate issued in Docket No. CP82-430-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch states that the proposed delivery tap will serve the City of Vicksburg, Mississippi (Vicksburg). Koch estimates the cost of installing the proposed facilities to be \$6,278, and indicates that it will be reimbursed by Vicksburg for the actual cost of the construction. Koch further states that the volumes proposed to be delivered to Vicksburg will be within Vicksburg's currently effective entitlements, and that the proposed activities will not affect Koch's ability to serve its other existing customers.

Comment date: October 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Shell Offshore, Inc.

[Docket No. CP94-722-000]

Take notice that on August 17, 1994, Shell Offshore, Inc. (SOI), One Shell Square, New Orleans, Louisiana 70139, filed a petition for declaratory order in Docket No. CP94-722-000, requesting that the Commission declare that facilities to be constructed on the Outer Continental Shelf (OCS) would have the primary function of gathering natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

SOI states that it proposes to construct a seven-mile, 12-inch pipeline extending from the production platform in Mississippi Canyon Block 194 (MC-194), offshore Louisiana to a sub-sea interconnect with the 20-inch jurisdictional transmission line jointly owned by Tennessee Gas Pipeline Company and Columbia Gulf Transmission Company in Mississippi Canyon Block 148. SOI further states that the line would be owned by the working interest owners in MC-194 and would be used to gather their production. SOI indicates that the line would be operated at a pressure of 1250 psig and that compression, dehydration

and separation facilities are located on the production platform in MC-194, but that any processing for the extraction and removal of liquids and liquefiable hydrocarbons would occur at onshore processing plants.

SOI seeks a declaratory order holding that the proposed facilities would have the primary function of gathering natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act. In support of its claim that the primary function of the proposed facility is gathering, SOI points out the following: (1) the length (seven miles) and diameter (12 inches) are comparable to other OCS facilities previously determined to be gathering, (2) the geographic configuration of the facility (a small diameter gathering line feeding production into a larger diameter interstate pipeline) is consistent with other OCS gathering facilities, (3) the facility will be located entirely behind onshore processing plants, and (4) the facility will be owned by the working owners in MC-194 to gather their production to a point where it can be received for transportation onshore. SOI indicates that 20,000 Mcf per day of production from MC-194 is currently curtailed due to inadequate pipeline capacity, and SOI requests that an expedited decision be issued permitting the facilities to be placed into service during the 1994 offshore Louisiana window.

Comment date: September 2, 1994, in accordance with first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the

Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. 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 Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-20890 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. RP94-265-001]

Algonquin LNG, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 18, 1994.

Take notice that on August 15, 1994, Algonquin LNG, Inc. (Algonquin LNG) submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets effective September 14, 1994:

First Revised Sheet No. 29
Second Revised Sheet No. 34
Second Revised Sheet No. 36
First Revised Sheet No. 37
Second Revised Sheet No. 51
Second Revised Sheet No. 54
Second Revised Sheet No. 57
Second Revised Sheet No. 57A
Second Revised Sheet No. 58

Second Revised Sheet No. 60
 Second Revised Sheet No. 64A
 Second Revised Sheet No. 66
 Second Revised Sheet No. 67
 Second Revised Sheet No. 67A
 First Revised Sheet No. 82
 Second Revised Sheet No. 89
 Sheet Nos. 106-111

Algonquin LNG states that the purpose of this filing is to comply with Ordering Paragraph C of the Commission's July 29, 1994, order in this docket. The Commission directed Algonquin LNG to file tariff sheets that implement the change from an electronic bulletin board to a telephone bulletin board. Algonquin LNG has also revised its service request form to remove certain categories of required information, pursuant to the Commission's clarification in Order No. 566.

Algonquin also states that copies of this filing were mailed to all parties to the above captioned docket, all authorized holders of Algonquin's tariff, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
 Secretary.

[FR Doc. 94-20888 Filed 8-24-94; 8:45 am]
 BILLING CODE 6717-01-M

[Docket No. ER94-1246-000]

Ashton Energy Corp.; Notice of Issuance of Order

August 19, 1994.

On May 11, 1994 and June 28, 1994, Ashton Energy Corporation (Ashton) submitted for filing a rate schedule under which Ashton will engage in wholesale electric power and energy transactions as a marketer. Ashton also requested waiver of various Commission regulations. In particular, Ashton requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Ashton.

On August 10, 1994, pursuant to delegated authority, the Director,

Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Ashton 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 385.214).

Absent a request for hearing within this period, Ashton is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Ashton's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 9, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,
 Secretary.

[FR Doc. 94-20877 Filed 8-24-94; 8:45 am]
 BILLING CODE 6717-01-M

[Docket No. ER94-1550-000]

Boston Edison Co.; Notice of Filing

August 19, 1994.

Take notice that on August 11, 1994, Boston Edison Company (Edison) filed a letter agreement between itself and thirteen Massachusetts municipal electric systems further extending the deadline for the Municipals' submission of objections to Edison's 1992 bills for services rendered under each municipal system's Pilgrim power purchase contract in 1992. On July 28, 1994, Boston Edison filed a letter agreement in Docket No. ER94-1497-000 extending that deadline from July 31, 1994, until August 15, 1994. The new letter agreement extends that deadline from

August 15, 1994, until September 7, 1994. The letter agreement makes no other changes to the rates, terms and conditions of the affected Pilgrim contracts.

Edison states that it has served copies of this filing upon each of the affected customers and upon the three other Pilgrim purchasers: Reading Municipal Light Department, Montaup Electric Company and Commonwealth Electric Company; as well as the Massachusetts Department of Public Utilities.

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 September 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
 Secretary.

[FR Doc. 94-20880 Filed 8-24-94; 8:45 am]
 BILLING CODE 6717-01-M

[Docket Nos. ER94-108-000, ER94-475-000]

Heartland Energy Services, Inc. and Wisconsin Power & Light Co.; Notice of Issuance of Order

August 19, 1994.

On October 29, 1993, as completed on June 10, 1994, Heartland Energy Services, Inc. (Heartland), an electric power marketer, submitted for filing in Docket No. ER94-108-000 a proposed rate schedule, a request for certain blanket approvals, including the authority to sell electricity at market-based rates, and a request for certain waivers and authorizations received by other power marketers. On August 9, 1994, the Commission issued an Order Accepting Market-Based Rate Schedule For Filing, Accepting For Filing And Suspending Transmission Tariff Revisions, Granting And Denying Waivers, And Establishing Hearing Procedures (Order), in the above-docketed proceedings.

The Commission's August 9, 1994 Order granted the request for blanket approval under 18 CFR part 34, subject

to the following conditions found in Ordering Paragraphs (G), (H), and (I):

(G) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Heartland 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 385.214.

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, Heartland is authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order and to require a further showing that neither public nor private interests will be adversely affected by continued approval of Heartland's issuance of securities or assumption of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 8, 1994. Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 20876 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-363-000]

Koch Gateway Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

August 19, 1994.

Take notice that on August 17, 1994, Koch Gateway Pipeline Company (KGPC) tendered for filing as part of its FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheets to be effective September 17, 1994:

First Revised Sheet No. 4001
Original Sheet No. 4010
Original Sheet No. 4011

KGPC states that the above referenced tariff sheets implement a tariff provision that will allow KGPC to sell excess storage inventory that is either unnecessary for system operations or

has accumulated through KGPC's imbalance resolution procedures. KGPC states further that in order to manage its system KGPC needs the ability to dispose of excess gas that has accumulated in storage above operational needs. In addition, Koch states that amounts realized from the sale of excess gas accumulated through the Imbalance Resolution Procedures will be credited in accordance with Section 20.1 (F) of KGPC's General Terms and Conditions.

KGPC also states that the tariff sheets are being mailed to all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before August 26, 1994. Protests will be considered by the Commission in determining 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. 94-20886 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-120-007]

Koch Gateway Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

August 19, 1994.

Take notice that on August 17, 1994, Koch Gateway Pipeline Company (KGPC) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Substitute Second Revised Sheet No. 20
Substitute Second Revised Sheet No. 21
Substitute Second Revised Sheet No. 22
Substitute Second Revised Sheet No. 23
Substitute Second Revised Sheet No. 24

KGPC states that the above referenced tariff sheets reflect KGPC's compliance with the Commission's August 2, 1994, order on compliance filing. KGPC states that these tariff sheets reflect modifications to remove the amortization of the SunCoast project costs.

KGPC also states that the tariff sheets are being mailed to all customers and interested state commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's regulations. All such protests should be filed on or before August 26, 1994. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing is on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-20883 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1329-000]

MidCon Power Services Corp.; Notice of Issuance of Order

August 19, 1994.

On June 3, 1994 and July 11, 1994, MidCon Power Services Corp. (MidCon) submitted for filing a rate schedule under which MidCon will engage in wholesale electric power and energy transactions as a marketer. MidCon also requested waiver of various Commission regulations. In particular, MidCon requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by MidCon.

On August 11, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MidCon should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within the period, MidCon is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MidCon's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 12, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 94-20878 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT94-18-000]

National Fuel Gas Supply Corp.; Notice of Tariff Change

August 19, 1994.

Take notice that on August 17, 1994, National Fuel Gas Supply Corporation (National) submitted for filing, pursuant to §§ 284.286, 250.16 and 161.3 of the Commission's Regulations, certain tariff sheets to revise Paragraph 22 to the General Terms and Conditions of National's FERC Gas Tariff, Third Revised Volume No. 1, in order to establish the provisions required by Order No. 497 to govern the sales of gas that may be made from time to time, under National's blanket sales certificate.

In the alternative, National requests a limited waiver of the requirements of Order No. 497 with respect to such sales in order to dispose of gas that is in excess of National's operational requirements.

National requests that the Commission act expeditiously on this filing and make the revised tariff sheets effective on August 18, 1994. National states that waiver of the 30-day notice period is necessary because National will offer the gas for sale on August 18, 1994, in order to maintain the integrity of its system.

National states that a copy of this filing has been served on National's jurisdictional customers an interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to

intervene or protest should be filed on or before August 26, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94-20881 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP94-228-002 and RP94-251-002]

National Fuel Gas Supply Corp.; Notice of Compliance Filing

August 19, 1994.

Take notice that on August 17, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sheet No. 225 and Sub. Third Revised Sheet Nos. 237A and 237B.

National states that these tariff sheets are submitted in compliance with the May 27, 1994, and August 2, 1994, orders of the Commission in the above-captioned proceeding, which required that National file tariffs to return the credit balance in its Account Nos. 186 and 191 as of April 30, 1994, to its customers, within 15 days of the August 2 Order.

National states that a copy of this filing was posted pursuant to § 154.16 of the Commission's Regulations and that copies of this filing were served upon the company's jurisdictional customers and upon the Regulatory Commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.211). All such protest should be filed on or before August 26, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are

on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94-20884 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-364-000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

August 19, 1994

Take notice that on August 17, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Eighth Revised Sheet No. 14 and Seventh Revised Sheet No. 25, to be effective September 1, 1994.

Natural states that the filing is submitted to commence recovering effective September 1, 1994, approximately \$37.7 million in gas supply realignment (GSR) costs, including the net premium paid for coal gasification supplies. Natural states that, for settling customers, the filing reflects the rates agreed upon in the GSR settlements approved by the Commission on May 12, 1994, in Docket No. RP94-346. Natural's compliance filing of July 19, 1994, in that docket is pending Commission action. Natural states that settling customers may preserve their rights by filing an abbreviated protest which may be supplemented if the compliance filing is not accepted.

Natural requests whatever waivers may be necessary to permit the tariff sheets submitted to become effective September 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 26, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available

for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-20887 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR94-19-000]

Northern Illinois Gas Co.; Notice of Petition For Rate Approval

August 19, 1994.

Take notice that on August 11, 1994, Northern Illinois Gas Company (NI-Gas) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve a fair and equitable monthly deliverability charge of \$0.9500 per MMBtu and a monthly capacity charge of \$0.0209 per MMBtu, plus actual fuel used, for firm storage services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

NI-Gas states that it is an intrastate gas distribution public utility subject to the jurisdiction of the Illinois Commerce Commission under the Illinois Public Utilities Act and that it was issued a blanket certificate under § 284.224 in Docket No. CP92-481-000. NI-Gas proposes an effective date of August 11, 1994.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before September 6, 1994. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-20882 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1352-000]

R. J. Dahnke & Associates; Notice of Issuance of Order

August 19, 1994.

On June 13, 1994 and July 8, 1994, R. J. Dahnke & Associates (Dahnke) submitted for filing a rate schedule under which Dahnke as a marketer. Dahnke also requested waiver of various Commission regulations. In particular, Dahnke requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Dahnke.

On August 10, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 14, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Dahnke 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 385.214).

Absent a request for hearing within this period, Dahnke is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Dahnke's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 9, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-20879 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-365-000]

William Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 19, 1994.

Take notice that on August 17, 1994, Williams Natural Gas Company (Williams) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1: Second Revised Sheet Nos. 7 and 8

The proposed effective date of these tariff sheets is September 17, 1994.

Williams states that this filing is being made pursuant to Article II, Section 10 of the Stipulation and Agreement dated November 24, 1992 (November 24 S & A), approved by Commission Order dated March 12, 1993 (61 FERC ¶ 61,240), and Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Williams' filing contains a further report of take-or-pay buyout, buydown and contract reformation costs and pipeline supplier refunds, and the application or distribution of those costs and refunds.

Williams states that a copy of the filing was served on all participants listed on the service lists maintained by the Commission in the Docket No. RP89-183 dockets, and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 26, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-20927 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Federal Energy Regulatory
Commission

[Docket No. EG94-90-000]

WYGEN, Inc.; Notice of Application for
Commission Determination of Exempt
Wholesale Generator Status

August 19, 1994.

On August 16, 1994, WYGEN, Inc., a Wyoming corporation, the address of which is 625 Ninth Street, P.O. Box 1400, Rapid City, South Dakota 57709, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

WYGEN, Inc. is a Wyoming corporation, and the facility which WYGEN, Inc. plans to construct and operate as an eligible facility is an 80 MW coal-fired electric generator to be known as the Wygen Plant and is to be constructed next to Neil Simpson Unit #2 (an 80 MW coal-fired plant now under construction) in Campbell County, Wyoming approximately seven miles east of Gillette, Wyoming.

Any person desiring to be heard concerning the application should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the Application. All such motions and comments should be filed on or before September 12, 1994, and must be served on the Applicant. 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. 94-20875 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP94-267-002]

Wyoming Interstate Company, Ltd.;
Notice of Filing

August 19, 1994.

Take notice that on August 10, 1994, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 52. WIC states that this tariff sheet reflects the Commission directive pursuant to its order dated June 29, 1994.

WIC states that the filed tariff sheet was inadvertently excluded from its earlier filing filed July 29, 1994. WIC submits the filed tariff sheet as a supplement to its July 29, 1994, compliance filing. WIC states that the filed tariff sheet provides for full crediting of interruptible transportation revenues, as proposed in WIC's initial filing in this docket, to be effective December 1, 1994.

WIC states that copies of this filing are being served to all participants listed on the Commission's official service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 26, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-20885 Filed 8-24-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION
AGENCY

[FRL-5058-5]

Agency Information Collection
Activities Under OMB ReviewAGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the
Paperwork Reduction Act (PRA) (44

U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) response to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT:
Sandy Farmer (202) 260-2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA
Clearance Requests

OMB Approvals

EPA ICR No. 0010.06; Information Requirements for Importation of Nonconforming Vehicles; was approved 07/22/94; OMB No. 2060-0095; expires 07/31/97.

EPA ICR No. 0783.32, (new ICR No. is 1690.01; Refueling Emission Regulations for Light-Duty Vehicles and Light-Duty Trucks; was approved 07/28/94; OMB No. 2060-0288); expires 07/31/97.

EPA ICR No. 1679.01; Federal Standards for Marine Tank Vessel Loading and Unloading Operations and National Emission Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading and Unloading Operations; was approved 07/28/94; OMB No. 2060-0289; expires 07/31/97.

EPA ICR No. 1691.01; National Survey of the Financial and Operating Characteristics of Community Water Suppliers; was approved 07/28/94; OMB No. 2040-0173; expires 07/31/97.

EPA ICR No. 1674.01; Nonroad Spark-Ignition Engine Selective Enforcement Auditing Reporting and Recordkeeping Requirements; was approved 07/22/94; OMB No. 2060-0295; expires 07/31/97.

EPA ICR No. 1673.01; Importation of Nonconforming Nonroad Small Single Engines, Reporting and Recordkeeping Requirements; was approved 07/22/94; OMB No. 2060-0294; expires 07/31/97.

EPA ICR No. 1675.01; Small Non-road Engines, In-Use Testing Reporting Requirements; was approved 07/22/94; OMB No. 2060-0290; expires 07/31/97.

EPA ICR No. 1681.01; National Emissions Standards for Hazardous Air Pollutants for Epoxy Resin Production and Non-nylon Polyamide Resin Production; was approved 07/27/94; OMB No. 2060-0290; expires 07/31/97.

EPA ICR No. 1669.01; Fuels and Fuel Additives Registration Regulations; was approved 07/22/94; OMB No. 2060-0297; expires 07/31/97.

EPA ICR No. 1684.01; Control of Air Pollution, Emissions of Oxides of Nitrogen, Carbon Monoxide, Hydrocarbon, Particulate Matter, and Smoke from New Nonroad Compression-Ignition Engines at or above 37 Killowatts; was approved 07/22/94; OMB No. 2060-0298; expires 07/31/97.

EPA ICR No. 0095.06; Precertification and Testing Exemption Reporting and Recordkeeping Requirements; was approved 07/23/94; OMB No. 2060-0007; expires 03/31/96.

EPA ICR No. 0282.06; Emission Defect Reports and Records, Small Nonroad Engines (Proposed Rule); was approved 07/23/94; OMB No. 2060-0048; expires 05/31/96.

EPA ICR No. 1702.01; Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; was approved 07/22/94; OMB No. 2060-0302; expires 07/31/97.

EPA ICR No. 0012.07; Information Collection for Motor Vehicle Exclusion Determination, Nonroad Spark-Ignition Engine Exclusion Determination (Proposed Rule); was approved 07/23/94; OMB No. 2060-0124; expires 04/30/95.

EPA ICR No. 1198.04; Toxic Substances Control Act (TSCA), Section 8(A), Chemical Specific Rules; was approved 08/08/94; OMB No. 2070-0067; expires 08/31/97.

EPA ICR No. 1519.03; Notification of Stored Pesticides with Cancelled or Suspended Registrations under Section 6(G) of the Federal Insecticide, Fungicide and Rodenticide Act; was approved 8/08/94; OMB No. 2070-0190; expires 08/31/97.

EPA ICR No. 1689.01; Worker Characterization and Blood-Lead Study; was approved 08/09/94; OMB No. 2070-0136; expires 06/31/97.

OMB Extensions of Expiration Dates

EPA ICR No. 1487; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; expiration date extended to 03/31/95.

Dated August 19, 1994.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 94-20952 Filed 8-24-94; 8:45 am]

BILLING CODE 6560-60-M

[FRL-5058-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The

ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 26, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202-260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Magnetic Tape Coating Facilities (Subpart SSS)—Reporting and Recordkeeping Requirements (EPA ICR No. 1135.05; OMB No. 2060-0171). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of magnetic tape coating facilities must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this subpart must install a continuous monitoring system (CMS) to record continuously the concentration level of organic compounds in the outlet gas streams, and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS performance commences. Owners or operators must submit to EPA or the delegated authority quarterly excess emission reports or semiannual compliance reports. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 30 hours per response for reporting, and 160 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Owners or operators of magnetic tape manufacturing facilities.

Estimated Number of Respondents: 14.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 4,000 hours.

Frequency of Collection: One-time notifications and reports for new

facilities; quarterly or semiannually reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW, Washington, DC 20460.

and Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: August 19, 1994.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 94-20955 Filed 8-24-94; 8:45 am]

BILLING CODE 6560-60-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2027]

Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings

August 24, 1994.

Petition for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to these petitions must be filed on or before September 9, 1994. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Amendment of Section 73.202(b), Table of Allotments, Television Broadcast Stations. (Bend, Oregon)

Number of Petitions Filed: 1.

SUBJECT: Implementation of Section 309(j) of the Communications Act—Competitive Bidding. (PP Docket 93-253)

Number of Petitions Filed: 26.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94-21151 Filed 8-24-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOUSING FINANCE BOARD

(No. 94-NO4)

Information Collection Submitted to the Office of Management and Budget For Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice of submission to the Office of Management and Budget (OMB) of existing information collection for purposes of renewal of OMB approval.

DATES: Interested persons are invited to submit comments on or before October 24, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention Don Arbuckle: Desk Officer, Federal Housing Finance Board, 726 Jackson Place, N.W., room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the information collection and supporting documentation should be addressed to Brandon B. Straus, Federal Housing Finance Board, 1777 F Street, N.W. Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT:

Patricia L. Sweeney, Program Analyst, District Banks Directorate, (202) 408-2872; Brandon B. Straus, Attorney-Advisor, (202) 408-2589, Federal Housing Finance Board, 1777 F Street, N.W. Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: The information collection described below has been submitted to OMB for review in order to obtain a renewal of OMB approval prior to expiration of the currently assigned OMB control number (3069-0002) on October 31, 1994.

Title of Information Collection: Personal Certification and Disclosure Forms.

Need For and Use of Information Collection: The Federal Home Loan Bank Act (Bank Act) establishes certain eligibility requirements for Federal Home Loan Bank (Bank) appointive and elective directors and authorizes the Federal Housing Finance Board (Board) to promulgate rules implementing these requirements. See 12 U.S.C. 1422b(a)(1), 1427(a), (b), (d).

Selected provisions of parts 931 and 932 of the Board's regulations (director eligibility provisions) implement the statutory eligibility requirements for Bank directors. See 12 CFR parts 931 and 932. The information collection is used by Board staff to determine whether prospective and seated Bank directors satisfy the statutory eligibility requirements and are carrying out their official responsibilities without conflicts of interest or the appearance of conflicts of interest.

The director eligibility provisions require appointive directors; candidates for appointive director; elective directors; and nominees for elective director to file forms with the Board certifying their compliance with the

applicable statutory and regulatory requirements and disclosing certain financial relationships.

Where the information collected indicates that an appointive director candidate or elective director nominee is not eligible to serve, the person is so notified, and his or her name is withdrawn from consideration for the directorship, unless the person intends to remedy the ineligibility. If the information collected reveals that a seated appointive director is ineligible to serve, the director is so notified and is either required to resign or given the opportunity, in the Board's discretion, to cure the ineligibility. If the information collected indicates that a seated elective director is ineligible, the person is so notified, and the directorship becomes vacant immediately, by operation of the statute. See 12 U.S.C. 1427(f)(3). The Board would promptly notify the affected Bank of any vacancies that have arisen on its board.

Description of Likely Respondents:

The respondents to this information collection will include all Bank appointive directors; candidates for appointive director; elective directors; and nominees for elective director.

Estimate of Burden: The total annual average number of respondents is estimated at 350, with one response required per respondent. The average hours per response is estimated at 0.9 hours.

ESTIMATED ANNUAL REPORTING BURDEN

Average no. respondents	×	Average no. responses per respondent	=	Total average responses	×	Average hrs. per response	=	Total average hours
350		1		350		0.9		315

Rita I. Fair,

Acting Managing Director.

[FR Doc. 94-20922 Filed 8-24-94; 8:45 am]

BILLING CODE 6725-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary,

Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200259-007.

Title: Jacksonville Port Authority/Crowley American Transport, Inc. Terminal Agreement.

Parties: Jacksonville Port Authority Crowley American Transport, Inc.

Synopsis: The proposed amendment extends the term of the Agreement.

Agreement No.: 224-200878.

Title: Port of Oakland/Evergreen Marine Corp. (Taiwan) Terminal Use Agreement.

Parties: Port of Oakland ("Port") Evergreen Marine Corp. (Taiwan) Ltd. ("Evergreen").

Synopsis: The proposed Agreement provides that Evergreen shall have non-exclusive rights to certain assigned premises at the Port's Seventh Street Marine Terminal. As a consideration for its regular use of the Port, Evergreen will pay 90 percent of dockage and 80 percent of wharfage tariff charges subject to certain agreed upon provisions. The Agreement has an initial term of five years.

Dated: August 19, 1994.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 94-20874 Filed 8-24-94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Cupertino National Bancorp; Notice of Application to Engage *de novo* in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, 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 14, 1994.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Cupertino National Bancorp*, Cupertino, California; to engage *de novo* in the purchase of loan participations from its subsidiary bank, Cupertino National Bank, Cupertino, California, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The purpose of the loan participation activity is to provide Cupertino National Bank with overline capabilities for its customers.

Board of Governors of the Federal Reserve System, August 19, 1994.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 94-20917 Filed 8-24-94; 8:45 am]

BILLING CODE 6210-01-F

Northeast Bancshares, Inc., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-20271) published on page 42596 of the issue for Thursday, August 18, 1994.

Under the Federal Reserve Bank of Dallas heading, the entry for Northeast Bancshares, Inc., is revised to read as follows:

1. *Northeast Bancshares, Inc.*, Mesquite, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Northeast Bancshares-Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Northeast National Bank, Mesquite, Texas. In connection with this application, Northeast Bancshares-Delaware, Inc., has applied to become a bank holding company by acquiring Northeast National Bank, Mesquite, Texas.

Comments on this application must be received by September 12, 1994.

Board of Governors of the Federal Reserve System, August 19, 1994.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 94-20919 Filed 8-24-94; 8:45 am]

BILLING CODE 6210-01-F

Maddox Financial, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than September 19, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Town Financial Corporation*, Hartford City, Indiana; to acquire 100 percent of the voting shares of Maddox Financial, Inc., Hartford City, Indiana, and thereby indirectly acquire City Savings Bank, Hartford City, Indiana.

In connection with this application Maddox Financial, Inc., Hartford City, Indiana, has applied to become a bank holding company by acquiring 82.0 percent of the voting shares of City Savings Bank, Hartford City, Indiana, a thrift institution converting into a state chartered bank.

Board of Governors of the Federal Reserve System, August 19, 1994.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 94-20918 Filed 8-24-94; 8:45 am]

BILLING CODE 6210-01-F

Union Planters Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or

control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 19, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares of Grenada Sunburst System Corporation, Grenada, Mississippi, and thereby indirectly acquire Sunburst Bank, Grenada, Mississippi and Sunburst Bank, Baton Rouge, Louisiana.

In connection with this application, Applicant also has applied to acquire Sunburst Financial Corporation, Inc., Grenada, Mississippi, a wholly-owned subsidiary of Grenada Sunburst System Corporation, and thereby engage in permissible securities brokerage activities, pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Security Richland Bancorporation*, Miles City, Montana; to acquire 100

percent of the voting shares of Hansen-Lawrence Agency, Inc., Worden, Montana, and thereby indirectly acquire Farmers State Bank of Worden, Worden, Montana.

In connection with this application, Applicant also has applied to retain the general insurance agency activity conducted by Hansen-Lawrence Agency, pursuant to Exemption D of the Board's Regulation Y (12 CFR 225.25(b)(8)(iv)). The geographic areas to be served are Montana and adjoining states.

Board of Governors of the Federal Reserve System, August 19, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-20920 Filed 8-24-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Cancellation of Medical Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the following construction of the below listed Standard Forms are canceled:

SF 88, Report of Medical Examination (22" cut sheet version) (identified by NSN 7540-00-753-4570). The 11" cut sheet version of this form is still available from FSS.

SF 519A, Radiographic Report (cut sheet version) (identified by NSN 7540-00-634-4161). The 3-part set version of this form is still available from FSS.

DATES: Effective August 25, 1994.

FOR FURTHER INFORMATION CONTACT:

Ms. Barbara Williams, General Services Administration, (202) 501-0581.

Dated: August 17, 1994.

Theodore D. Freed,

Chief, Forms Management Branch.

[FR Doc. 94-20851 Filed 8-24-94; 8:45 am]

BILLING CODE 6820-34-M

GOVERNMENT PRINTING OFFICE (GPO)

Public Meeting for Federal Agencies and Others Interested in a Demonstration of GPO Access (Pub. L. 103-40), the New Online Federal Register and Congressional Record

The Superintendent of Documents will hold three public meetings for Government agencies and others

interested in a demonstration of the Government Printing Office's Access system, provided under the GPO Electronic Information Enhancement Act of 1993 (Pub. L. 103-40), the GPO Access Act.

Three meetings will be held on Thursday, September 8, 1994, from 9 to 10 a.m., 10:30 a.m. to 11:30 a.m., 1 p.m. to 2 p.m., in the Carl Hayden Room at the U.S. Government Printing Office (GPO), 732 North Capitol St. NW, Washington, DC 20401. (Union Station metro stop on the red line).

Under Public Law 103-40, the Superintendent of Documents implemented on June 8, 1994 a system of online access to the Congressional Record, the Federal Register, and other appropriate information. The purpose of this meeting is to demonstrate the online services made available under the initial phase of the implementation of the Act and to solicit comments from users interested in the system.

The initial online services include access to a WAIS Server at GPO offering the following data bases: the Federal Register (including the Unified Agenda), Volume 59 (1994), the Congressional Record (including the History of Bills), Volume 140 (1994), the Congressional Record Index, Volumes 138-140 (1992-1994), and Enrolled Bills from the 103d Congress (1993-1994). The Federal Register and Congressional Record data bases provide ASCII text files, with all graphics included as individual files in TIFF format. Both data bases are updated daily. Brief ASCII text summaries of each Federal Register entry are also available. The Congressional Record Index provides ASCII text files with all graphics included as individual files in TIFF format. The Enrolled Bills are available as ASCII text files and in the Adobe Acrobat PDF file format. Users with Acrobat viewers can display and print page facsimiles of enrolled bills.

Seating is limited to 60 people per session. Individuals interested in attending should contact the GPO's Office of Electronic Information Dissemination Services by 3 p.m., Tuesday, September 6. The office can be reached by telephone on 202-512-1265, by FAX on 202-512-1262, or by e-mail at help@eids05.eids.gpo.gov. Limited parking is available if arrangements are made in advance.

Michael F. DiMario,

Public Printer.

[FR Doc. 94-20867 Filed 8-24-94; 8:45 am]

BILLING CODE 1505-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Public Health Service Activities and Research at the Hanford, Washington, Department of Energy (DOE) Site: Public Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Public Health Service Activities and Research at the Hanford, Washington, DOE Site: Public Meeting.

Time and Dates: 8 a.m.–5 p.m., September 28–29, 1994.

Place: Best Western-Tower Inn and Conference Center, 1515 George Washington Way, Richland, Washington 99352, telephone 509/946-4121.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities. ATSDR and CDC are currently taking steps to obtain authorization for a "Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites" to be chartered under the Federal Advisory Committee Act.

Purpose: The purpose of this public meeting is to update the public on the status of ATSDR's and CDC's community involvement plans, health research, and public health activities and to seek individual advice and recommendations

from interested parties concerning these plans.

Matters To Be Discussed: Items to be discussed will include:

(1) Discussion about the pending charter authorizing the "Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites."

(2) Hanford Environmental Dose Reconstruction Project findings and implications.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Greg Thomas, ATSDR Senior Regional Representative, Region X, 1200 6th Avenue, Seattle, Washington 98101, telephone 206/553-2113, FAX 206/553-2142.

Dated: August 19, 1994.

Joseph R. Carter,

Deputy Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-20910 Filed 8-24-94; 8:45 am]

BILLING CODE 4163-70-M

Public Health Service Activities and Research at the Hanford, Washington, Department of Energy (DOE) Site: Public Meeting of the Native American Working Group

The Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Public Health Service Activities and Research at the Hanford, Washington, DOE Site: Public Meeting of the Native American Working Group.

Time and Date: 1 p.m.–5 p.m., September 27, 1994.

Place: Best Western-Tower Inn and Conference Center, 1515 George Washington Way, Richland, Washington 99352, telephone 509/946-4121.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of

Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities. ATSDR and CDC are currently taking steps to obtain authorization for a "Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites" to be chartered under the Federal Advisory Committee Act.

Purpose: The purpose of this public meeting is to discuss Native American issues concerning health effects and issues related to site restoration and waste management options at the Hanford DOE site.

Matters to be Discussed: Items to be discussed will include: (1) The effects on public health—past, current, and future—of the release of radioactive and hazardous materials into the environment at Hanford, and (2) proposed actions based on the findings of health research and public health activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Greg Thomas, ATSDR Senior Regional Representative, Region X, 1200 6th Avenue, Seattle, Washington 98101, telephone 206/553-2113, FAX 206/553-2142.

Dated: August 19, 1994.

Joseph R. Carter,

Deputy Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-20911 Filed 8-24-94; 8:45 am]

BILLING CODE 4163-70-M

Centers for Disease Control and Prevention

[Announcement 405]

Grants for Injury Control Research Centers; Notice Availability Of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC) announces that grant applications are being accepted for Injury Control Research Centers (ICRC's). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. For ordering a copy of "Healthy People 2000," see the Section "Where to Obtain Additional Information."

Authority

This program is authorized under Sections 301 and 391–394 of the Public Health Service

Act (42 U.S.C. 241 and 280b-280b-3). Program regulations are set forth in 42 CFR, Part 52.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants include all nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments, and small, minority and/or women-owned businesses are eligible for these grants. Applicants from non-academic institutions should provide evidence of a collaborative relationship with an academic institution. Current recipients of CDC injury control research center grants and injury control research program project grants are eligible to apply.

Availability of Funds

Approximately \$1,500,000 is expected to be available in fiscal year (FY) 1995 to fund approximately one new or re-competing center award. (A portion of this amount may be allocated to support currently approved but unfunded phases of newly funded ICRCs.) New awards can be made for a project period not to exceed three years, and re-competing awards can be made for a project period not to exceed five years. The amount of funding available may vary and is subject to change. Beginning award dates for each submission are shown in the "Receipt and Review Schedule" section of this announcement. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

New center grant awards will not exceed \$500,000 per year (total of direct and indirect costs) with a project period not to exceed three years. Depending on availability of funds, re-competing existing center awards may range from \$750,000 to \$1,500,000 per year (total of direct and indirect costs) with a project period not to exceed five years. The range of support provided is dependent upon the degree of comprehensiveness of the center in addressing the phases of injury control (i.e., Prevention, Acute Care, and Rehabilitation) as determined by the Injury Research Grants Review Committee (IRGRC).

Incremental levels within this range for successfully re-competing ICRC's will be determined as follows:

Base funding (included in figures below): Up to \$750,000

One phase ICRC (addresses one of the three phases of injury control): Up to \$1,000,000

Two phase ICRC (addresses two of the three phases of injury control): Up to \$1,250,000

Comprehensive ICRC (addresses all three phases of injury control): Up to \$1,500,000

Subject to program needs and the availability of funds, supplemental awards to expand/enhance existing projects, to add a new phase(s) to an existing ICRC grant, or to add biomechanics project(s) that support phases may be made for up to \$250,000 per year.

Purpose

The purposes of this program are:

A. To support injury prevention and control research on priority issues as delineated in: Healthy People 2000; Injury Control in the 1990's: A National Plan for Action; Injury in America; Injury Prevention: Meeting the Challenge; and Cost of Injury: A Report to the Congress. Information on these reports may be obtained from the individuals listed in the section "WHERE TO OBTAIN ADDITIONAL INFORMATION";

B. To support ICRC's which represent CDC's largest national extramural investment in injury control research and training, intervention development, and evaluation;

C. To integrate collectively, in the context of a national program, the disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral and social sciences, in order to prevent and control injuries more effectively;

D. To identify and evaluate current and new interventions for the prevention and control of injuries;

E. To bring the knowledge and expertise of ICRC's to bear on the development and improvement of effective public and private sector programs for injury prevention and control; and

F. To facilitate injury control efforts supported by various governmental agencies within a geographic region.

Program Requirements

A. Applicants must demonstrate and apply expertise in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) as a core component of the center. The second and/or third phases do not have to be supported by core funding but may be achieved through collaborative arrangements. Comprehensive ICRC's must have all three phases supported by core funding.

B. Applicants must document ongoing injury-related research projects or control activities currently supported by other sources of funding.

C. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, e.g., dean of a school, vice president of a university, or commissioner of health. The director must have no less than 30 percent effort devoted solely to this project with an anticipated range of 30 to 50 percent.

D. Applicants must demonstrate experience in successfully conducting, evaluating, and publishing injury research and/or designing, implementing, and evaluating injury control programs.

E. Applicants must provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

F. Applicants must provide evidence of involvement of specialists or experts in medicine, engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and/or public health as needed to complete the plans of the center. These are considered the disciplines and fields for ICRC's. An ICRC is encouraged to involve biomechanicists in its research. This, again, may be achieved through collaborative relationships as it is no longer a requirement that all ICRC's have biomechanical engineering expertise.

G. Applicants must have an established curricula and graduate training programs in disciplines relevant to injury control (e.g., epidemiology, biomechanics, safety engineering, traffic safety, behavioral sciences, or economics).

H. Applicants must demonstrate the ability to disseminate injury control research findings, translate them into interventions, and evaluate their effectiveness.

I. Applicants must have an established relationship, demonstrated by letters of agreement, with injury prevention and control programs or injury surveillance programs being carried out in the State or region in which the ICRC is located. Cooperation with private-sector programs is encouraged.

Applicants should have an established or documented planned relationship with organizations or individual leaders in communities where injuries occur at high rates, e.g., minority health communities.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading "Program Requirements." (A listing of where these requirements are described and/or documented in the application will facilitate the review process.) Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation by reviewers from the Injury Research Grants Review Committee (IRGRC) to determine if the application is of sufficient technical and

scientific merit to warrant further review; the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization.

Those applications judged to be competitive will be further evaluated by a dual review process. The primary review will be a peer evaluation (IRGRC) of the scientific and technical merit of the application. The final review will be conducted by the CDC Advisory Committee for Injury Prevention and Control (ACIPC), which will consider the results of the peer review together with program need and relevance. Funding decisions will be made by the Director, National Center for Injury Prevention and Control (NCIPC), based on merit and priority score ranking by the IRGRC, program review by the ACIPC, and the availability of funds.

A. Review by the Injury Research Grants Review Committee (IRGRC)

Peer review of ICRC grant applications will be conducted by the IRGRC, which may recommend the application for further consideration or not for further consideration. Site visits will be a part of this process for re-competing ICRC's. Reverse site visits may be a part of this process for new applicants.

Factors to be considered by IRGRC include:

1. The specific aims of the application, e.g., the long-term objectives and intended accomplishments.
2. The scientific and technical merit of the overall application, including the significance and originality (e.g., new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.
3. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives.
4. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.
5. The soundness of the proposed budget in terms of adequacy of resources and their allocation.
6. The appropriateness (e.g., responsiveness, quality, and quantity) of consultation, technical assistance, and training in identifying, implementing, and/or evaluating intervention/control measures that will be provided to public and private agencies and institutions, with emphasis on State and local health

departments, as evidenced by letters detailing the nature and extent of this commitment and collaboration. Specific letters of support or understanding from appropriate governmental bodies must be provided.

7. Evidence of other public and private financial support.

8. Progress thus far made as detailed in the application if the applicant is submitting a competitive renewal application. Documented success examples include: development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; provision of consultation and technical assistance; integration of disciplines; translation of research into implementation; impact on injury control outcomes including legislation/regulation, treatment, and behavior modification interventions.

B. Review by CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Factors to be considered by ACIPC include:

1. The results of the peer review.
2. The significance of the proposed activities as they relate to national program priorities and the achievement of national objectives.
3. National and programmatic needs and geographic balance.
4. Overall distribution of the thematic focus of competing applications; the nationally comprehensive balance of the program in addressing; the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control (such as biomechanics and epidemiology).
5. Within budgetary considerations the ACIPC will establish annual funding levels as detailed under the heading "Availability of Funds."

C. Applications for Supplemental Funding

Supplemental grant awards may be made when funds are available to support research work or activities. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the ACIPC.

D. Continued Funding

Continuation awards within the project period will be made on the basis

of the availability of funds and the following criteria:

1. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly workplans are being met;
2. The objectives for the new budget period are realistic, specific, and measurable;
3. The methods described will clearly lead to achievement of these objectives;
4. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan;
5. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds; and
6. Progress has been made in developing cooperative and collaborative relationships with injury surveillance and control programs implemented by State and local governments and private sector organizations.

Award Priorities

Special consideration will be given to re-competing Injury Control Research Centers.

Executive Order 12372

Applications are not subject to the review requirements of Executive Order 12372, entitled Inter-Governmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Application Submission and Deadlines

A. Preapplication Letter of Intent

In order to schedule and conduct site visits as part of the formal review process, potential applicants are encouraged to submit a nonbinding letter of intent to apply to the Grants Management Officer (whose address is given in this section, Item B). It should be postmarked no later than one month prior to the submission deadline (September 24, 1994, for October 24, 1994, submission deadline). The letter should identify the relevant announcement number for the response, indicate the submission deadline which will be met, name the principal

investigator, and specify the injury control theme or emphasis of the proposed center (e.g., acute care, biomechanics, epidemiology, prevention, intentional injury, or rehabilitation). The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

B. Applications

Applicants should use Form PHS-398 (Rev. 9/91) and adhere to the ERRATA Instruction Sheet for PHS-398 contained in the Grant Application Kit. The narrative section for each project within an ICRC should not exceed 25 typewritten pages. Refer to section 4, page 10, of PHS-398 instructions for font type and size. Applications not adhering to these specifications may be

returned to applicant. Applicants should submit an original and five copies to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, Georgia 30305.

C. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or
2. Sent on or before the deadline date and received in time for submission to the peer review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a

legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria in C.1. or C.2. above are considered late applications and will be returned to the applicant. Supplemental materials received later than thirty days after the application receipt date are considered late and will be returned to the applicant.

D. Receipt and Review Schedule

This is a continuous announcement. Consequently, these receipt dates will be ongoing until further notice. The proposed timetables for receiving applications and awarding grants are as follows:

Receipt of new/revised/supplementary/competitive renewal applications	Initial review	Secondary review	Earliest award date
October 24, 1994	January	March	September 1, 1995.

Future receipt dates are as follows:

Receipt of new/revised/supplementary/competitive renewal applications	Initial review	Secondary review	Earliest award date
October	January	March	September.

Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 405. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Maggie Slay, Grants Management Specialist, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS-E13, Atlanta, Georgia 30305, telephone (404) 842-6797. Programmatic technical assistance may be obtained from Tom Voglesonger, Program Manager, Injury Control Research Centers, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, MS-K58, Atlanta, Georgia 30341-3724, telephone (404) 488-4265.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary

Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: August 17, 1994.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-20909 Filed 8-24-94; 8:45 am]

BILLING CODE 4163-18-P

[Announcement Number 470]

Cooperative Agreement for the National Coalition for Adult Immunization

Introduction

The Centers for Disease Control and Prevention (CDC), National Immunization Program (NIP), announces the availability of cooperative agreement funds to assist the National Coalition for Adult Immunization (NCAI) in giving guidance to and coordinating activities of the NCAI Action Groups. The NCAI consists of private, professional, and volunteer organizations and public health agencies. The goal of the NCAI is to reduce vaccine-preventable diseases

and deaths among adults in the United States by increasing the awareness of physicians, other health care providers, and the general public about the need for and the benefits of immunization. The NCAI supports the use of influenza, pneumococcal, hepatitis B, measles, mumps and rubella vaccines and tetanus and diphtheria toxoids in adults.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under the Public Service Act, Section 317k [42 U.S.C. 247b(k)], as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the

PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will only be provided to one of the member groups or professional organizations of the National Coalition for Adult Immunization. No other applications will be solicited.

The NCAI is a membership of 72 private, public, and voluntary organizations, whose goal is to improve the immunization levels in the adult population by the year 2000. Member organizations develop highly visible programs to educate the public about adult vaccine preventable diseases.

The NCAI is unique, in that there is collaboration among the Public Health Service, private, professional, and voluntary organizations with a history of combining resources and sharing information to improve immunization rates in adults.

NCAI member organizations have established and continue to maintain a network of contacts, who contribute to the development and distribution of information and educational materials and support of activities to improve adult immunization. Coalition members are more likely to receive support and cooperation from private, public and professional organizations to achieve its mission than non-coalition members.

The applicant organization should have an emphasis on research or education on adult health issues, including immunization. In addition, applicants must have demonstrated relevant leadership experience in building relationships with national organizations, private and public sector non-profit health care organizations, professional health associations, volunteer groups, advocacy groups, minority organizations, and government entities.

The applicant organization must have an established national network of State or local chapters and/or affiliates which devote a substantial proportion of their activities to adult health issues.

Further, the applicant organization must have a demonstrated history of regular written communications such as newsletters, or "Dear Colleague" letters. Applicants must sponsor or promote regularly scheduled local, regional, and national meetings of its chapters, affiliates, and individual members to share information, transfer skills, and promote initiatives in adult health. Applicants must be able to access major adult agencies and organizations across the country and have an established reputation to motivate other

organizations to participate with the coalition.

Availability of Funds

Approximately \$150,000 is available in fiscal year 1994 to fund one cooperative agreement award. It is expected to begin on or about September 30, 1994, for a 12-month budget period within a project period of up to five years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. The funding estimate may vary and is subject to change.

Purpose

The purpose of this cooperative agreement is:

A. To provide financial assistance to the NCAI—a group of private, professional, volunteer organizations, and public health agencies whose goal is to reduce vaccine preventable diseases and related deaths among adults in the United States by increasing the awareness of physicians, other health care providers, and the general public about the need for and the benefits of immunizations.

B. To enhance local demand for vaccination services through the development of information and education materials and promotional activities for consumers and health professionals.

C. To facilitate the development of State and local coalitions to increase community awareness of the need for resources for adult immunization.

Program Requirements

In conducting the activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under Item A, (Recipient Activities) and CDC will be responsible for the activities listed under Item B, (CDC Activities). The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

The NCAI will promote educational efforts for adult immunization through collaborative activities and sharing of information and resources with the NCAI members and Action Groups. The awardee will:

1. Serve as a facilitator for members and the Action Groups, which will develop State and local coalitions of informed advocates, organizations, and community leaders to promote the need for adequate resources for adult immunization.

2. Work with Action Groups to identify major immunization problems which require a broad base of community support and develop specific objectives to be achieved.

3. Convene meetings of the NCAI Steering Committee and Action Groups, at least quarterly, to discuss adult immunization issues and problems, to review reports of the Action Groups, and to solicit their unique contributions to the effort.

4. Establish mechanisms to promote vaccinations among adults against influenza, pneumococcal disease, measles, mumps, rubella, tetanus and diphtheria toxoids, and other diseases for which protection is recommended by the Advisory Committee on Immunization Practice (ACIP), American College of Physicians (ACP), and the American Academy of Family Physicians (AAFP).

5. Develop instructional materials or guidelines and manuals to assist in the training of individuals, organizations, and community leaders as advocates for adult immunization.

6. Collect, review and catalog information and education materials on adult immunization.

7. Develop strategies, action plans, and mechanisms to increase public and private collaboration on activities to improve the number of vaccinated adults.

8. Develop national and local networks for sharing information among groups concerned about improving the immunization status of adults.

9. Provide a mechanism for distributing information about membership, promotional literature and activities, and current adult immunization statistics.

10. Assist in the development and growth of State and local coalitions by providing training, technical assistance, and resource materials to them on an ongoing basis.

11. Establish working relationships with adult health care providers to enhance their interest and participation in the NCAI.

12. Work with targeted national organizations or with a specific institution's Immunization Committee, having staff qualified to facilitate operational research and studies related to adult vaccine preventable diseases.

13. Assist member organizations, State, and local coalitions in conducting information campaigns as needed to promote adult immunizations.

14. Provide an annual report to the Steering Committee, coalition members and the NIP—Adult Immunization Coordinator, summarizing activities and accomplishment of the NCAI.

B. Centers for Disease Control and Prevention (CDC) Activities

1. Provide technical assistance through telephone calls, correspondence, and site visits in the area of program and agenda development, implementation, and priority setting related to the cooperative agreement.
2. Provide scientific collaboration for appropriate aspects of the activities, including information on disease impact, vaccination coverage levels, and prevention strategies.
3. Provide speakers, when possible, on such topics as the impact of vaccine preventable diseases on adults, vaccination coverage levels among adults, and disease prevention strategies.
4. Review and comment on draft and final plan or agendas for proposed activities prior to the release of funds.
5. Assist in reporting and validating relevant adult immunization information made available to Federal, State, local health agencies, health care providers, and volunteer organizations.
6. Review and comment on information and educational materials developed and distributed by the NCAI Action Groups.
7. Provide representatives to attend NCAI Steering Committee and Action Group Meetings.

Review and Evaluation Criteria

The application will be evaluated according to the following criteria:

- A. The applicant must document an understanding of the importance of adult health issues, and the feasibility of accomplishing the desired outcome (15%).
- B. The extent to which the applicant has an established national network of state or local chapters and/or affiliates. This includes signed workplans, agreements, or other evidence of collaboration describing collaborative efforts (20%).
- C. The extent to which background information and other activities demonstrate that the applicant has the administrative support and accessibility to an adequate number of member organization representatives (15%).
- D. The extent to which the applicant's objectives are specific, realistic, measurable, time-phased, and related to activity requirements (15%).
- E. The quality and potential effectiveness of the applicant's plan for conducting program activities, methods for meeting the stated purpose, and adequacy of plans to evaluate progress in implementing methods and achieving goals (20%).

F. The extent to which qualified and experienced personnel are available to carry out the proposed activities (15%).

In addition, consideration will be given to the extent to which the budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Executive Order 12372

This program is not subject to Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this project grant is 93.185, Immunization Research, Demonstration, Public Information and Education, Training, and Clinical Skills Improvement Project.

Application and Submission Deadline

The program announcement and application kit were sent to all eligible applicants in July 1994.

Where to Obtain Additional Information

If you are interested in obtaining additional information about this project, please reference Announcement Number 470, entitled "Project Grant to the National Coalition for Adult Immunization." For business management technical assistance contact Eddie L. Wilder, Senior Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS E-16, Atlanta, GA 30305, telephone (404) 842-6805.

For programmatic technical assistance contact Joyce Goff, Adult Immunization Coordinator, National Immunization Program, Centers for Disease Control and Prevention (CDC), MS E-52, Atlanta, GA 30333, telephone (404) 639-8223.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: August 17, 1994.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-20868 Filed 8-24-94; 8:45 am]

BILLING CODE 4163-18-P

Food and Drug Administration

[Docket No. 94F-0290]

Eastman Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Eastman Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers that include 1 to 100 mole percent of repeat units derived from 1,4-cyclohexylene dimethylene terephthalate and to broaden the conditions of use and the product specifications.

DATES: Written comments on the petitioner's environmental assessment by September 26, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Diane E. Robertson, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4B4427) has been filed by Eastman Chemical Co., P.O. Box 1994, Kingsport, TN 37662. The petition proposes to amend § 177.1315 *Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers* (21 CFR 177.1315) of the food additive regulations to provide for the safe use of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers that include 1 to 100 mole percent of repeat units derived from 1,4-cyclohexylene dimethylene terephthalate and to broaden the conditions of use and the product specifications.

The potential environmental impact of this action is being reviewed. To

encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 26, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 18, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94-20986 Filed 8-24-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 94M-0269]

**Toray Industries (America), Inc.;
Premarket Approval of the Inoue
Balloon Catheter**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Toray Industries (America), Inc., New York, NY, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Inoue Balloon Catheter. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter on June 28, 1994, of the approval of the application.

DATES: Petitions for administrative review by September 28, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Judy J. Danielson, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-594-1346.

SUPPLEMENTARY INFORMATION: On October 23, 1991, Toray Industries (America), Inc., New York, NY 10016, submitted to CDRH an application for premarket approval of the Inoue Balloon Catheter. The device is a percutaneous valvuloplasty catheter and is indicated for percutaneous transvenous mitral commissurotomy in patients with hemodynamically significant mitral valvular stenosis resulting primarily from commissural fusion of the mitral valve cusps.

On August 3, 1993, the Circulatory System Devices Panel, an FDA Advisory panel, reviewed and recommended approval of the application. On June 28, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition

supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 26, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 10, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94-20983 Filed 8-24-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 94F-0289]

**Isomedix, Inc.; Filing of Food Additive
Petition**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Isomedix, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sources of ionizing radiation to treat the fresh or frozen raw edible tissue of domesticated mammalian human food sources for purposes of reduction of parasites and microbial pathogens, and extension of product shelf-life.

DATES: Written comments on the petitioner's environmental assessment by September 26, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug

Administration, rm. 1-23, 12420
Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Patricia A. Hansen, Center for Food
Safety and Applied Nutrition (HFS-
206), Food and Drug Administration,
200 C St. SW., Washington, DC 20204,
202-418-3090.

SUPPLEMENTARY INFORMATION: Under the
Federal Food, Drug, and Cosmetic Act
(sec. 409(b)(5) (21 U.S.C. 348(b)(5))),
notice is given that a food additive
petition (FAP 4M4428) has been filed by
Isomedix, Inc., 11 Apollo Dr.,
Whippany, NJ 07981. The petition
proposes that the food additive
regulations in part 179 *Irradiation in the
Production, Processing and Handling of
Food* (21 CFR part 179) be amended to
provide for the safe use of sources of
ionizing radiation to treat the fresh or
frozen raw edible tissue of domesticated
mammalian human food sources for
purposes of reduction of parasites and
microbial pathogens, and extension of
product shelf-life.

The potential environmental impact
of this action is being reviewed. To
encourage public participation
consistent with regulations promulgated
under the National Environmental
Policy Act (40 CFR 1501.4(b)), the
agency is placing the environmental
assessment submitted with the petition
that is the subject of this notice on
public display at the Dockets
Management Branch (address above) for
public review and comment. Interested
persons may, on or before September 26,
1994, submit to the Dockets
Management Branch (address above)
written comments. Two copies of any
comments are to be submitted, except
that individuals may submit one copy.
Comments are to be identified with the
docket number found in brackets in the
heading of this document. Received
comments may be seen in the office
above between 9 a.m. and 4 p.m.,
Monday through Friday. FDA will also
place on public display any
amendments to, or comments on, the
petitioner's environmental assessment
without further announcement in the
Federal Register. If, based on its review,
the agency finds that an environmental
impact statement is not required and
this petition results in a regulation, the
notice

of availability of the agency's finding of
no significant impact and the evidence
supporting that finding will be
published with the regulation in the
Federal Register in accordance with 21
CFR 25.40(c).

Dated: August 18, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied
Nutrition.

[FR Doc. 94-20985 Filed 8-24-94; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for
Community Planning and
Development

[Docket No. N-94-3783; FR-3710-N-02]

**UDAG Retention and Recapture
Programs; Extension of the Expiration
Date**

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Notice; Extension of the
expiration date.

SUMMARY: On May 26, 1994 (59 FR
27289), the Department published in the
Federal Register, a Notice that
announced the implementation of the
HUD Retention and Recapture Programs
(collectively the "Program") described
in section 119(t) of the Housing and
Community Development Act of 1974,
as amended (the "Act"). After careful
consideration, the Secretary has
determined that it is in the best interest
of the affected cities and HUD to extend
the expiration date of the Retention
Program in order to allow such cities
additional time to consider the options
available to them under the Program,
and the possible effect their election of
options may have upon their economic
development programs.

This Notice announces the extension
of the expiration date of the Retention
Program described in section 119(t) of
the Act to and including October 17,
1994. The Secretary will not recapture
any unexpended funds before the
expiration date, as extended.

DATES: The Retention Program is in
effect from May 26, 1994, and is
extended to and includes October 17,
1994.

FOR FURTHER INFORMATION CONTACT:
Roy O. Priest, Director, (202) 708-2290;
TDD for the hearing- or speech-
impaired, (202) 708-2565. Inquiries may
also be faxed to (202) 708-7543. (These
are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:
Accordingly, FR Doc. 94-12821, Notice
of UDAG Retention and Recapture
Programs, published in the **Federal
Register** on May 26, 1994 (59 FR 27289),
is amended by extending the expiration

date of the Retention Program described
in section 119(t) of the Housing and
Community Development Act, as
amended, to and to include October 17,
1994.

Andrew Cuomo,

Assistant Secretary for Community Planning
and Development.

[FR Doc. 94-20864 Filed 8-24-94; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-024-94-4333-01]

**Intent to Close to Public Entry, Public
Lands to Protect Endangered Bald
Eagle Nest Site**

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice of closure of public entry
to Public Lands.

SUMMARY: Notice is hereby given that
portions of the Public Lands along the
Gila River below Coolidge Dam in Gila
County, Arizona will be closed to all
forms of boating and rafting. The Gila
River in this area is jointly administered
by the Bureau and the San Carlos Indian
Reservation. This closure will not apply
to emergency response agencies
conducting official business. This use
restriction covers the Gila River as it
crosses Public Lands from T. 3 S.,
R. 18 E., Section 17, downstream to the
confluence of Mescal Creek and the Gila
River in T. 3 S., R. 17 E., Section 29,
G&SR Meridian, Arizona.

EFFECTIVE DATE: This order is effective
upon signature of the authorized officer,
December 15 through July 1 annually.

SUPPLEMENTARY INFORMATION: The
purpose of this use restriction is to
provide protection for nesting bald
eagles *Haliaeetus leucocephalus*. The
bald eagle nest is low to the ground and
immediately adjacent to the river
channel making it susceptible to human
disturbance.

Order

Notice is hereby given that effective
on the date of signature by the
authorized officer of this notice, the
following use restriction will be in effect
on the Gila River Public Lands below
Coolidge Dam.

1. No person may boat, raft or float on
the Gila River on Public Lands
described below between December 15
and July 1 annually. Emergency
response agencies on official business
will be exempt from this order.

Gila and Salt River Meridian, Arizona

T. 3 S., R. 18 E., Sections 17, 18, 19, 20
T. 3 S., R. 17 E., Sections 24, 25, 26, 27, 28, 29,
34

Authority for this use restriction may be found in 43 CFR 8364.1d. Violations of this closure are punishable by a fine not to exceed \$100,000 and/or 12 months in jail.

FOR FURTHER INFORMATION CONTACT:

Gail Acheson, Area Manager, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, AZ 85027, (602) 780-8090.

Dated: August 18, 1994.

David J. Miller,

Associate District Manager.

[FR Doc. 94-20942 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-32-M

[MT-070-06-433-05]

Motor Vehicle Use Restrictions, Garnet Resource Area, Butte District, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of restrictions on motor vehicle travel on certain lands in the Garnet Resource Area.

SUMMARY: The use of motor vehicles on public lands in the Garnet Resource Area is hereby restricted in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part

8340. The following described lands under the administration of the Bureau of Land Management are designated as open, limited, or closed to motorized vehicle use pursuant to the provisions of 43 CFR 8342.1.

Affected by the designation are 146,232 acres, which includes all public lands in the Garnet Resource Area. The lands are managed under the Garnet Resource Management Plan dated January 10, 1986. They are located in Missoula, Granite, and Powell counties.

These designations are revisions to Federal Register notice dated Tuesday, September 23, 1986, Vol. 51, No. 189, Wednesday, October 29, 1986, Vol. 51, No. 209, and Monday, September 16, 1991, Vol. 56, No. 179.

These revisions are necessary to more efficiently manage vehicle use on public lands, to implement decisions in the Garnet Resource Management Plan and to coordinate vehicle travel management with adjoining intermingled private and public lands. Comments received during public open houses and written responses as part of the Garnet Resource Management Plan process influenced these designations. This designation order supersedes all other off-road vehicle travel designations. These designations are published as final, effective immediately, and will remain in effect until rescinded or modified by the authorized officer. Under 43 CFR 4.21, an appeal may be filed with the

Interior Board of Land Appeals within 30 days of publication in the Federal Register.

A. Open Designation

No areas have been designated as open.

B. Limited Designation

Areas which are designated limited comprise approximately 85,775 acres. Limited designation was determined appropriate to protect the resources of the public lands, promote the safety of all users of the public lands, and to minimize conflicts among various users. The following tables identify the type of restriction on motorized vehicle travel, the specific area(s) where the restriction occurs, the affected acreage area, and a brief rationale for each affected area. The specific areas and roads on which motorized vehicles activities are limited are shown on the Garnet Resource Area Travel Plan Map. Copies of the updated Travel Plan Map will be available at the BLM offices in butte and Missoula about mid-August 1994.

Motor vehicle travel by wheeled vehicles on all other public land in the Garnet Resource Area not included in the following tables or designated as closed is limited to existing roads and trails. The acreage on which travel is permissible year-round but is limited to existing roads and trails totals about 60,457 acres.

TABLE 1.—AREAS IN THE GARNET RESOURCE AREA SUBJECT TO ROAD AND AREA CLOSURES

Name	Approximate size ¹	Road closure dates	Reason for closure*
Blackfoot Special Management Area (SMA)	42,000 ac. (9,500 ac. BLM)	Sep. 1–Dec. 1 year-long to wheeled vehicles; open only to snow vehicles Dec. 1–Apr. 30.	1, 2, 3, 7
Marcum Mtn. SMA	8,000 ac. (4,550 ac. BLM)	Sep. 1–Dec. 1 on private land; Sep. 1–Apr. 30 on winter range only.	1, 2, 3
Morrison Peak SMA	24,000 ac. (40 ac. BLM)	Sep. 1–Dec. 1	1, 2, 3
Nevada Lake	15,000 ac. (380 ac. BLM)	Sep. 1–Dec. 1	1, 2, 3, 7
Ram Mountain	11,000 ac. (4,800 ac. BLM)	Year-long (except administrative users).	1, 2, 3, 4, 6, 7
McElwain and Douglas Creeks	8,500 ac. (7,840 ac. BLM)	Murray Cr. Rd., Deer Gu., Spur and Trail Spring Spur closed Sep. 1–Nov. 30, McElwain Fire Rd., Biler connecting road and Snowcap Trail closed year-long except open to over snow vehicles Jan. 1–Apr. 30.	2, 3, 5, 7
Warm Springs Cr	30,000 ac. (14,750 ac. BLM)	Sep. 1–Dec. 1	1, 2, 3, 7
Cramer Cr	38,000 ac. (4,180 ac. BLM)	Year-long	1, 2, 3, 7
Horseshoe Hills	11,720 ac. (100 ac. BLM)	Sep. 1–Dec. 1	1, 2, 3, 7
Deer Cr	2,600 ac. (400 ac. BLM)	Year-long (except snowmobile Dec. 1–Apr. 30).	2, 3
Summit Cabin	900 ac. (870 ac. BLM)	Sep. 1–Nov. 30	2, 3, 7
Keno Cr. Spur	400 ac. BLM	Year-long (except snowmobile Dec. 1–Apr. 30).	2, 3, 7
Karshaw Mtn	4,100 ac. (1,675 ac. BLM)	Sep. 1–Apr. 30	2, 3, 7
West Fork Buttes	980 ac. BLM	Sep. 1–Apr. 30	4
Montgomery Gulch	120 ac. BLM	Sep. 1–Apr. 30	4
Hoodoo Gulch	200 ac. BLM	Sep. 1–Apr. 30	4
Wyman Gulch	1,000 ac. BLM	Sep. 1–Apr. 30	4
Mulkey Gulch	1,000 ac. BLM	Sep. 1–Apr. 30	4

TABLE 1.—AREAS IN THE GARNET RESOURCE AREA SUBJECT TO ROAD AND AREA CLOSURES—Continued

Name	Approximate size ¹	Road closure dates	Reason for closure*
Rattler Gulch	1,080 ac. BLM	Sep. 1–Apr. 30	4
Clark Fork	640 ac. BLM	Sep. 1–Apr. 30	4
Bearmouth	1,840 ac. BLM	Sep. 1–Apr. 30	4
Bear Gulch	200 ac. BLM	Sep. 1–Apr. 30	4
Murray Cr	1,000 ac. BLM	Sep. 1–Apr. 30	4
McElwain Cr	160 ac. BLM	Sep. 1–Apr. 30	4
Yourname Cr	240 ac. BLM	Sep. 1–Apr. 30	4
Marcum Mtn	2,240 ac. BLM	Sep. 1–Apr. 30	4

TABLE 2.—MOTORIZED TRAVEL ON THE FOLLOWING INDIVIDUAL ROADS/TRAILS IS RESTRICTED

Name	Location	Road closure dates	Reason for road closure*
Cayuse Gulch	T12N, R14W, S14	Oct. 15–Dec. 1	2, 3
Reynolds City	T12N, R13W, S2	Oct. 15–Dec. 1	2, 3, 7, 8
Keno TS Spur	T13N, R13W, S32	Oct. 15–Dec. 1	2, 3, 7, 8
Keno/Top O' Deep (2 gates)	T13N, R13W, S32	Oct. 15–Dec. 1	2, 3, 7
Chicken Run 1	T12N, R14W, S4	Year-long	2, 3
Chicken Run 2	T12N, R14W, S4	Year-long	2, 3
Union Cr. Jeep Trail	T12N, R15W, S12	Oct. 15–Dec. 1	2, 3, 4, 5
Kennedy Creek (3 gates)	T13N, R13W, S29 & 30	Oct. 15–Dec. 1	2, 3, 7

TABLE 3.—MOTORIZED TRAVEL ON THE FOLLOWING INDIVIDUAL ROADS/TRAILS REFLECT CHANGES IN CLOSURE DATES

Name	Location	Road closure dates	Reason for road closure*
Union Peak	T12N, R15W, S12	Oct. 15–Dec. 1	2, 7
Skimmerhorn #1	T13N, R14W, S35	Oct. 15–Dec. 1	2, 3, 7
Summit Cabin	T12N, R13W, S7	Oct. 15–Dec. 1	2, 3, 7
Washoe Creek (3 gates)	T13N, R14W, S32	Oct. 15–Dec. 1	2, 3, 7
West Fork Braziel	T12N, R10W, S22	Oct. 15–Dec. 1	2, 3, 7

¹ Cooperative management agreements with private landowners of lands intermingled with BLM lands result in additional acreage subject to the BLM restrictions.

* Purpose of Restriction (except for authorized use):

- 1—To gain hunting privileges on private land.
- 2—To improve the quality of hunting.
- 3—To prevent vehicular damage to soil and vegetation.
- 4—To reduce disturbance of wintering big game.
- 5—To reduce disturbance of elk on spring/summer/fall range.
- 6—To reduce pressure on big horn sheep herd.
- 7—To provide security for big game after logging.
- 8—To provide for user safety/resolve use conflict.

FOR FURTHER INFORMATION CONTACT:
Detailed maps showing the location of the above-described designations are available from the office listed below. For further information about these designations, contact the Bureau of Land Management: Area Manager, Garnet Resource Area, 3255 Fort Missoula Road, Missoula, Montana 59801, (406) 329-3914.

Dated: August 18, 1994.

James R. Owings,
District Manager.

[FR Doc. 94-20939 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-DN-M

[WY-920-41-5700; WYW120303]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

August 11, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW120303 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice. The lessee

has met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW120303 effective June 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94-20852 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW114574]

Proposed Reinstatement of Terminated Oil and Gas Lease

August 8, 1994.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW114574 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the costs of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW114574 effective February 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94-20941 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW114575]

Proposed Reinstatement of Terminated Oil and Gas Lease

August 8, 1994.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW114575 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW114575 effective February 1,

1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94-20940 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-22-M

[OR-093-6332-05: GP4-264]

Supplementary Rules—Camping Stay Limit; Benton, Douglas, Lane and Linn Counties, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of change in authority citation for supplementary rule.

SUMMARY: The supplementary rule establishing a camping stay limit for campgrounds and undeveloped public lands in the Eugene District was originally published in the Federal Register on May 5, 1983 (Vol. 48 No. 88). The authority for this supplementary rule was contained in 43 CFR 8363.1-3(b) and 8363.3. These regulations were subsequently amended and the authority for the subject supplementary rule was recodified (see 48 FR 36384, August 10, 1983) and is currently cited as 43 CFR 8365.1-2(a) and 8365.1-6.

FOR FURTHER INFORMATION CONTACT: Wes Seckler, Law Enforcement Ranger, Bureau of Land Management, Eugene District Office, P.O. Box 10226, Eugene, Oregon 97440-2226. Telephone (503) 683-6600.

SUPPLEMENTARY INFORMATION: There is no change in either the Eugene District's camping stay limit rule or the authority under which it was promulgated. The only purpose of this notice is to eliminate confusion resulting from the 1983 re-numbering of the applicable part of Title 43 CFR cited as authority for the camping stay limit rule.

Date of Issue: August 12, 1994.

Judy Ellen Nelson,

District Manager.

[FR Doc. 94-20944 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-33-P

[MT-070-04-4333-05]

Garnet Ghost Town—United States (US)/Garnet Preservation Association (GPA) Fee Area

AGENCY: Garnet Resource Area, Bureau of Land Management, Butte District Office, DOT.

ACTION: Designation of the cooperatively managed Garnet Ghost Town, located

within the Garnet Resource Area, as a US Fee Area. Authorized by the FLPMA, LWCF, and the R&PP Act.

This action is necessary:

1. To implement USDI and BLM policies of collecting user fees for recreational services.

2. To provide additional funds for the management and operation of Garnet Ghost Town.

3. To facilitate the implementation of the Garnet Management Plan.

4. To assist in fulfilling commitments in the cooperative management agreement with the Garnet Preservation Association (2A, 3H, 4A & 4D).

5. To improve public services through improved information disbursement by increasing base funding and staffing.

Comments from the public and the Garnet Preservation Association support this designation. This designation is effective immediately and will remain in effect until rescinded or modified by the authorized officer. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Appeals. Detailed maps showing the location of the area available from the offices listed below.

FOR FURTHER INFORMATION CONTACT: Either of the following Bureau of Land Management offices: District Manager, Butte District, PO Box 3388, Butte, Montana 59701, (406) 494-5059 or Area Manager, Garnet Resource Area, 3255 Fort Missoula Road, Missoula, Montana 59801-7293, (406) 329-3914.

Dated: August 17, 1994.

James R. Owings,

District Manager.

[FR Doc. 94-20943 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-DN-M

[CO-942-94-4730-02]

Colorado: Filing of Plats of Survey

August 12, 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 a.m., August 12, 1994.

The plat representing the dependent resurvey of the south half mile between sections 25 and 26, and portions of M.S. No. 418, Alpine Placer, M.S. No. 824, East Alpine Placer, and Alpine Townsite in sections 25 and 26, T. 15 S., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 977, was accepted July 1, 1994.

The plat representing the dependent resurvey of portions of the north, south, and east boundaries, the west boundary and a portion of the subdivisional lines,

and the subdivision of sections, T. 27 S., R. 55 W., Sixth Principal Meridian, Colorado, Group No. 1001, was accepted July 1, 1994.

The plat representing the dependent resurvey of portions of the south and west boundaries and subdivisional lines, and the subdivision of sections 29, 34, and 35, T. 27 S., R. 56 W., Sixth Principal Meridian, Colorado, Group No. 1001, was accepted July 1, 1994.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The supplemental plat, creating lot 88 in section 5 and lot 179 in section 8, T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted July 20, 1994.

The plat representing the dependent resurvey of portions of the subdivisional lines, the subdivision of certain sections, and the meander lines of the right bank of the Gunnison River, Fractional T. 2 S., R. 1 E., Ute Meridian, Colorado, Group No. 1069, was accepted July 20, 1994.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries 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. 94-20850 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-JB-M

[CA-940-4210-10; CAS 057456, CAS 059464, CAS 059766, CAS 064217, CAS 071209, CAS 3843, CACA 8049, CACA 8037, CACA 7836, CACA 7525, CAS 066798, CAS 047172]

Proposed Continuation of Withdrawals; California

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has proposed to continue withdrawals on 3040.10 acres for 20 years and 1851.27 acres for 50 years within the Tahoe, Eldorado, and San Bernardino National Forests. The segregative effect on these withdrawals remains unchanged.

DATES: Comments should be received on or before November 23, 1994.

ADDRESSES: Comments should be sent to the California State Director, BLM, 2800 Cottage Way, Room E-2845, Sacramento, California 95825

FOR FURTHER INFORMATION CONTACT:
Marcia Sieckman, BLM California State
Office, 916-978-4820.

SUPPLEMENTARY INFORMATION:

1. CAS 057456

The land is described as follows:

Mount Diablo Meridian, T. 11 N., R. 12 E.,
sec. 27, NW $\frac{1}{4}$ SW $\frac{1}{4}$; sec. 28, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,
E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 110 acres in El Dorado County.

The purpose of this withdrawal is to protect the Badger Hill Administrative Site.

2. CAS 059464

The land is described as follows:

Mount Diablo Meridian, T. 16 N., R. 14 E.,
sec. 2, lots 1-4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$,
S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$; sec. 12, lots 1-3,
inclusive, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$,
NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$. T. 17 N., R. 14 E.,
sec. 36, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$; T.
16 N., R. 15 E., sec. 5, lots 3, 4, 5, and 8,
SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
SE $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described contains 1508.79 acres in Placer County.

The purpose of this withdrawal is to protect the Onion Creek Experimental Forest.

3. CAS 059766

Mount Diablo Meridian, T. 14 N., R. 10 E.,
sec. 25, lots 11 and 12.

The area described contains 19.13 acres in Placer County.

The purpose of the withdrawal is to protect the Forehill Administrative Site.

4. CAS 064217

Mount Diablo Meridian, T. 13 N., R. 17 E.,
sec. 9, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$.

The area described contains 280.00 acres in El Dorado County.

The purpose of the withdrawal is to protect the D.L. Bliss Memorial California State Park Recreation Site (under permit from the Forest Service to the State of California).

5. CAS 071209

Mount Diablo Meridian, T. 10 N., R. 10 E.,
sec. 22, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains 40.00 acres in El Dorado County.

The purpose of the withdrawal is to protect the Horned Toad Experimental Station.

6. CAS 3843

Mount Diablo Meridian, T. 14 N., R. 11 E.,
sec. 3, W $\frac{1}{2}$ of lot 3, lot 4, W $\frac{1}{2}$ SW $\frac{1}{4}$; sec.
4; E $\frac{1}{2}$ lot 1, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$,
W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$; sec. 9, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$; sec.
10, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$. T. 15 N., R. 11 E.,
sec. 34, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains approximately 302.48 acres in Placer County.

The purpose of the withdrawal is to protect the Forehill Divide Pine Seed Orchard.

7. CACA 8049

Mount Diablo Meridian, T. 21 N., R. 12 E.,
sec. 22, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described contains approximately 10.00 acres in Sierra County.

The purpose of the withdrawal is to protect the Gold Lake Administrative Site.

8. CACA 8037

Mount Diablo Meridian, T. 20 N., R. 12 E.,
sec. 26, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains approximately 60.00 acres in Sierra County.

The purpose of the withdrawal is to protect the Wild Plum Recreation Area.

9. CACA 7836

Mount Diablo Meridian, T. 15 N., R. 11 E.,
sec. 20, SW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains approximately 40.00 acres in Placer County.

The purpose of the withdrawal is to protect the Sugar Pine Administrative Site and Recreation Area.

10. CACA 7525

Mount Diablo Meridian, T. 12 N., R. 11 E.,
sec. 6, lot 2.

The area described contains approximately 40.65 acres in Eldorado County.

The purpose of the withdrawal is to protect the Georgetown Administrative Site.

San Bernardino Meridian, T. 1 N., R. 1 W.,
sec. 6, lots 4 to 7, inclusive; T. 1 N., R. 2
W., sec. 1, lots 1 to 6, inclusive, S $\frac{1}{2}$ NW $\frac{1}{4}$,
SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$. T. 2 N., R.
1 W., sec. 30, lots 1 to 12, inclusive; sec.
31, lots 1 to 3, inclusive; T. 2 N., R. 2 W.,
sec., 25, S $\frac{1}{2}$; sec. 35, NE $\frac{1}{4}$; sec. 36.

The area described contains approximately 2371.41 acres in San Bernardino County.

11. CAS 066798

Mount Diablo Meridian, T. 19 N., R. 9 E., sec.
16, W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains approximately 2.5 acres in Sierra County.

The purpose of the withdrawal is to protect the Indian Valley Campground Annex.

Mount Diablo Meridian, T. 15 N., R. 16 E.,
sec. 25, patented portion of lot 4.

The area described contains approximately 26.52 acres in Placer County.

The purpose of the withdrawal is to protect the Kaspian Recreation Area.

12. CAS 047172

Mount Diablo Meridian, T. 19 N., R. 9 E., sec.
8, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$; sec. 17, NE $\frac{1}{4}$ NW $\frac{1}{4}$
(excluding .29 acres previously revoked by
Public Land Order No. 7008 dated
December 6, 1993), E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$,
SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described contains approximately 79.71 acres in Sierra County.

The purpose of the withdrawal is to protect the Indian Valley Recreation Area and Administrative Site.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The

existing withdrawals will continue until such final determination is made.

Dated: August 15, 1994.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94-20848 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-40-P

Bureau of Mines

Santa Cruz In Situ Copper Mining Research Project; Draft Environmental Assessment; Public Meeting

AGENCY: Bureau of Mines, Interior.

ACTION: Notice of availability of draft environmental assessment (EA) prepared for the Santa Cruz In Situ Copper Mining Research Project and notice of public meeting.

SUMMARY: In accordance with section 102 (2) (C) of the National Environmental Policy Act (NEPA), a draft EA has been prepared for the Santa Cruz In Situ Copper Mining Research Project and is currently available for public review and comment. The proposed action is the in situ mining of copper from a copper oxide zone using a pattern of injection and recovery test wells, and fabrication and operation of a pilot-scale solvent extraction-electrowinning (SX-EW) facility to remove dissolved copper from solution. The project site is located approximately 7 miles west of the city of Casa Grande, Arizona. A public meeting to receive comments on the draft EA is scheduled. Individual copies of the draft EA may be requested directly from the Bureau or viewed at the Casa Grande city library.

DATES: The public meeting will be held on September 14, 1994, beginning at 7 p.m. MST. The meeting room will be open at 6:30 p.m. for review of displays and informal discussions with project personnel. Comments on the draft EA must be received no later than September 26, 1994.

ADDRESSES: The public meeting will be held at the Holiday Inn, 777 North Pinal Avenue, Casa Grande, AZ.

Comments on the draft EA should be sent to: Daniel J. Millenacker, U.S. Bureau of Mines, Twin Cities Research Center, 5629 Minnehaha Avenue South, Minneapolis, Minnesota 55417-3099.

FOR FURTHER INFORMATION CONTACT: For information or to obtain a copy of the draft EA, contact Daniel J. Millenacker at the address identified above or by phone at (612) 725-4588.

SUPPLEMENTARY INFORMATION: In situ copper mining involves the injection of a dilute sulfuric acid solution through a

well or wells completed into an otherwise undisturbed ore zone; selective dissolution of copper as the solution moves through and contacts copper oxide mineralization located along natural fractures; collection of copper-bearing solution by recovery wells; removal of the dissolved copper from collected solution using a conventional SX-EW plant located on the surface; rejuvenation of solution to its original strength; and solution reinjection back into the ore zone to repeat the cycle. The project well field will consist of one injection test well in the center of a square measuring 127 ft to a side, and a recovery test well located at each of the four corners of the square. This arrangement is referred to as a "five-spot" well pattern. Injection of solution will occur at a rate of about 10 to 50 gal/min. The total area to be occupied by the various components of the project (including injection and recovery test wells, ground water monitor wells, and SX-EW facility) is 8 1/2-acres.

The research project is a cooperative effort of the Bureau of Mines and the Santa Cruz Joint Venture (a joint venture formed between ASARCO Santa Cruz, Inc., and Freeport Copper Company). The goal of the research project is to determine the technical, economic, and environmental feasibility of in situ mining of copper oxide minerals. The research plan calls for in situ mining to continue until sufficient data are collected to evaluate the mining technique. This time period is presently estimated to require 18 months to complete, but it may extend for up to 4 years. In addition to an environmental review performed under NEPA, this project is subject to Federal, State, and local environmental permitting requirements.

Dated: August 18, 1994.

Lewis V. Wade,

Research Director, Twin Cities Research Center.

[FR Doc. 94-20858 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-53-P

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council Workshop

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, this notice announces a workshop which is designed to resolve growing conflicts over protected species

restoration. This workshop is sponsored by the Sport Fishing and Boating Partnership Council. The workshop is open to the public, pursuant to the provisions of the "Government in the Sunshine Act". Interested persons may make oral statements to the Council or may file written statements for consideration.

ADDRESSES: Summary minutes of the workshop will be maintained by the Coordinator for the Sport Fishing and Boating Partnership Council at 4401 North Fairfax Drive, Arlington, VA 22203, and will be available for public inspection during regular business hours (7:30-4:00) Monday through Friday within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

DATES: The Sport Fishing and Boating Partnership Council's workshop will be held on September 20 and 21, 1994, beginning each day at 9:00 a.m.

PLACE: The meeting will be held in the Wyoming Room of the Bureau of Land Management Training Center in Phoenix, Arizona. The Center is located at 9828 North 31st Avenue.

AGENDA: This will be the first workshop sponsored by the Sport Fishing and Boating Partnership Council. The workshop is designed to resolve growing conflicts over protected species restoration.

CONTACT PERSON FOR MORE INFORMATION: For further information individuals may contact the Council Coordinator, Chris Dlugokenski, at 703 358-2156.

Dated: August 15, 1994.

Jay L. Gerst,

Acting Director.

[FR Doc. 94-20935 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Independence National Historical Park General Management Plan/ Environmental Impact Statement

AGENCY: National Park Service; Interior.

ACTION: Notice of Meetings.

SUMMARY: The National Park Service announces a televised "Town Meeting" with Roger Kennedy, the Director of the National Park Service on September 9, 1994 and a public meeting, to be held at the Arch Street Meeting House on September 13 and 14, 1994.

DATES: The televised meeting will be broadcast live on WHYY Channel 12 (Philadelphia/Wilmington) on September 9 from 1:00 p.m. to 3:00 p.m. two public workshops will be held September 13, from 7:00 p.m. to 10:00

p.m. and on September 14, from 2:00 p.m. to 5:00 p.m.

SUPPLEMENTARY INFORMATION: The focus of these meetings will be to inform the public as to the progress made to date on the development of alternatives for the General Management Plan/Environmental Impact Statement. At the televised "town meeting" the topic to be considered will be the future of Independence Mall, as part of Independence National Historic Park. An 800 number will be available for viewers to call in questions and comments to be addressed on the air. The program will be rebroadcast on tape on September 11 from 4:00 p.m. to 6:00 p.m.

The two public workshops will cover the National Park Service's proposed alternative concepts for the future of the park. The workshops will present alternative concepts that have been generated to date. These alternatives are based on information that has been gathered as part of the initial data gathering, and scoping phases of the General Management Plan effort that began in the fall of 1993.

FOR FURTHER INFORMATION CONTACT: Superintendent Martha B. Aikens, Independence National Historical Park, 313 Walnut Street, Philadelphia, PA 19106, Telephone 215/597-8787.

Dated: August 16, 1994.

B.J. Griffin,

Regional Director, Mid-Atlantic Region.

[FR Doc. 94-20860 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan; Joshua Tree National Monument; Availability of Draft Environmental Impact Statement

SUMMARY: Pursuant to Section 102 (2) (C) of the National Environmental Policy Act of 1969 (Pub. L. 91-190 as amended), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement (DEIS) assessing the potential impacts of the proposed General Management Plan for Joshua Tree National Monument, which is in Riverside and San Bernardino Counties, California. Once approved, the plan will guide the management of the monument over the next 15 years.

The proposed action, *Alternative A*, would improve visitor contact facilities and services at each of the three main entrances, with a new visitor center developed at the west entrance. Interpretive programs and wayside exhibits would be updated and expanded. Facilities in existing

developed areas would be replaced or redesigned to improve aesthetics, efficiency, and resource protection. Campground capacities would remain basically unchanged, but campsites would be improved through redesign. Picnic facilities and day use parking would be expanded somewhat, primarily in already-disturbed areas. Resource management programs would be increased to ensure better resource protection.

Two alternatives are evaluated in the DEIS. *Alternative B—No Action* would continue current management strategies with no changes in visitor and park support facilities and no change in programs. *Alternative C—Minimum Requirements* would provide for the rehabilitation of deteriorated facilities in their current locations. Capacities of camp areas and day use parking areas would be unchanged, while the number of picnic sites would be slightly increased. The primary visitor center would remain at the Oasis of Mara.

The environmental consequences of the proposed action and the alternatives are fully documented, and mitigation provided as appropriate to minimize impacts. No significant impacts are anticipated as a result of implementing the proposed action.

SUPPLEMENTARY INFORMATION: Written comments on the draft General Management Plan (GMP) and DEIS should be directed to the Regional Director, Western Regional Office, National Park Service, 600 Harrison St., Ste. 600, San Francisco, CA 94107-1372.

Comments on the draft plan must be received by November 7, 1994.

Two public open house sessions will be held to facilitate public review of the draft plan and DEIS. Park Service officials will be available at these sessions to explain the alternatives, answer questions, and receive public comments. The first session will be held September 14, from noon until 8 p.m., at Copper Mountain College, Hi-Desert Campus, 6162 Rotary Way, Joshua Tree, California. The second open house will be held September 15, from noon until 8 p.m., at the College of the Desert, Regional Business Center, 43500 Monterey Ave., Palm Desert, California. The public is invited to stop by any time during the open house hours.

Inquiries on the draft GMP and DEIS and requests for copies of the draft plan should be directed to Joshua Tree National Monument, 74485 National Monument Drive, Twentynine Palms, CA 92277, or by telephone at (619) 367-7511. Copies of the draft GMP will be available for public inspection at the monument and at area libraries.

Dated: August 12, 1994.

Phil Ward,

Acting Regional Director, Western Region.

[FR Doc. 94-20862 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-70-P

Gauley River National Recreation Area Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Gauley River National Recreation Area Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463).

MEETING DATE AND TIME: September 21, 1994; 10:00 a.m.

ADDRESS: Comfort Inn, Summersville, WV (north of Summersville on US Rt. 19, just south of intersection with WV Rt. 41, adjacent to Shoney's Restaurant). The purpose of the meeting is to further discuss the draft general management plan.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Section 206(a) of the "WV National Interest Act of 1987," Public Law 100-534, to consult with the Secretary of the Interior, or his designee, " * * * on matters relating to development of a management plan for the recreation area and on implementation of such plan."

FOR FURTHER INFORMATION CONTACT: Superintendent Joe L. Kennedy, New River Gorge National River, 104 Main Street, P.O. Box 246, Glen Jean, West Virginia 25846, 304-465-0508.

Dated: August 16, 1994.

B.J. Griffin,

Regional Director, Mid-Atlantic Region.

[FR Doc. 94-20861 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-661-662 (Final)]

Color Negative Photographic Paper and Certain Chemical Components From Japan and the Netherlands

AGENCY: United States International Trade Commission.

ACTION: Suspension of investigations and cancellation of hearing.

SUMMARY: On August 19, 1994, the Department of Commerce suspended its antidumping investigations on color negative photographic paper (CNPP)

and certain chemical components from Japan and the Netherlands. The basis for the suspension is an agreement by Fuji Photo Film Co., Ltd., Konica Corp., and Fuji Photo Film B.V., exporters which account for substantially all of the imports of these products from Japan and the Netherlands, to revise their prices to eliminate completely any amount by which the foreign market value of their merchandise exceeds the United States price of the subject merchandise. Accordingly, the United States International Trade Commission gives notice of the suspension of its antidumping investigations involving imports from Japan and the Netherlands of CNPP and certain chemical components. CNPP is provided for in subheadings 3703.10.30 and 3703.20.30 of the Harmonized Tariff Schedule of the United States (HTS); emulsions are provided for in subheadings 3707.10.00 and 3707.90.30 of the HTS; couplers and coupler dispersions are provided for in HTS subheadings 3707.90.30, 3707.90.60, 2933.19.30, 2933.90.25, and 2934.90.20. The Commission also gives notice of the cancellation of the hearing scheduled in connection with these investigations for August 23, 1994.

EFFECTIVE DATE: August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-205-3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

Authority: These investigations are being suspended under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission.

Issued: August 19, 1994.

Donna R. Koehnke,
Secretary.

[FR Doc. 94-20934 Filed 8-24-94; 8:45 am]

BILLING CODE 7020-02-P

Iron Construction Castings From Canada; Dismissal of Request for Institution of A Section 751(b) Review Investigation

AGENCY: International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-263 (Final), *Iron Construction Castings from Canada*.

SUMMARY: On August 8, 1994, the Commission determined, pursuant to section 751(b) of the Tariff Act of 1930 (the "Act") (19 U.S.C. 1675(b)) and Commission rule 207.45 (19 CFR 207.45), that the subject request does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731-TA-263 (Final), regarding iron construction castings from Canada. Iron construction castings are provided for in subheading 7325.10.00 of the Harmonized Tariff Schedule of the United States.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202-205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

BACKGROUND INFORMATION: On March 5, 1986, the Commission issued an affirmative injury determination with respect to investigation No. 731-TA-263 (Final), *Iron Construction Castings from Canada*, 51 F.R. 7646 (March 5, 1986), following the U.S. Department of Commerce's final determination that imports of the subject merchandise were being sold at less than fair value (LTFV). 51 FR 2412 (Jan. 16, 1986). The Commission's determination was based on a cumulative assessment of subject imports from Canada with subject imports from Brazil, the People's Republic of China (China), and India, which Commerce also determined were being sold at LTFV. 51 FR 9477 (March 19, 1986). Commerce issued

antidumping orders covering subject imports from all four countries.

On May 20, 1994, the Commission received a petition, filed pursuant to section 751(b) of the Act, to review its final injury determination with respect to Canada in light of changed circumstances. The petition was filed by counsel on behalf of Associated Foundry, Ltd.; Laperle Foundry Division of Fonderies Bibby-Ste-Croix; Fonderies Bibby-Ste-Croix, Inc.; and Titan Foundry, Ltd.—producers of the subject products in Canada. The alleged changed circumstances include: (1) an exclusion of foreign producers from an estimated 60-75 percent of the U.S. market due to a 1991 extension of Buy America provisions to iron products used in highway construction; (2) an exclusion of foreign producers from an additional 2 percent of the market due to a 1992 extension of Buy America provisions to iron products used in airport and airway construction; and (3) an effective exclusion of foreign producers from an estimated 12 percent of the market for heavy iron castings due to Customs' 1986 enforcement of a 1984 statutory requirement governing the marking of manhole covers with regard to country of origin.

Pursuant to section 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission published a notice in the **Federal Register** requesting comments as to whether the alleged changed circumstances warranted the institution of a review investigation. 59 FR 29619 (June 8, 1994). Because the alleged changed circumstances related to the U.S. market and were not unique to Canadian imports, the Commission also sought comment on whether it should self-initiate a review regarding imports of iron construction castings from Brazil, India, and China. Comments were received both in opposition to and in favor of the petition. Summarizing the impact of the alleged changed circumstances in a supplemental comment to their petition, the petitioners estimated that only 18-38 percent of the total U.S. castings market is open to Canadian (and presumably other) import competition. Petitioners' Comments at 8. The petitioners maintain that with such a substantial portion of the United States market "closed" to Canadian producers, domestic producers are effectively protected from injury and would continue to be protected if the order for Canada were to be revoked. Id. at 9-10. Counsel on behalf of the Castings Panel of the Engineering Export Promotion Council of India and the exporters of castings from India urge the

Commission to review not only its determination with respect to Canada but also its determination with respect to India; however, they offer no arguments for changed circumstances other than those of the petitioners. Indian Parties' Comments at 2-3.

In opposition to the petition, comments were filed by counsel on behalf of the U.S. producers of the subject merchandise. The U.S. producers take issue with the petitioners regarding (1) the size of the market affected by these two Buy America provisions, claiming that there is no evidence of widespread implementation of these provisions at either the State or local level and that the share of the market so affected is on the order of 17 percent, rather than 62-82 percent; and (2) the enforcement of country-of-origin marking requirements, claiming that these were being fully enforced at least one year prior to 1986, the year Commerce's antidumping-duty order went into effect. U.S. Parties' Comments at 9-18. The domestic producers argue that section 751(b) and applicable Commission precedent preclude a review because the changed circumstances alleged by the Canadian producers are premised on inaccurate or incomplete factual assertions, exaggerated estimates of the effect of Buy America restrictions, and speculation regarding future action by states and municipalities. *Id.* at 18-21.

After consideration of the request and the comments submitted in response to the Commission's Federal Register notice, the Commission determines that the information of record does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in *Iron Construction Castings from Canada*, Inv. No. 731-TA-263 (Final), USITC Pub. 1811 (Feb. 1986) or its determination in *Iron Construction Castings from Brazil, India, and the People's Republic of China*, Inv. Nos. 701-TA-249; 731-TA-262, 264-265 (Final), USITC Pub. 1838 (April 1986).

DECISION OF THE COMMISSION: Section 751(b)(1) of the Act grants to the Commission the authority to conduct an investigation to determine whether to revoke or modify an outstanding antidumping order. The Commission is required to conduct a review of a prior affirmative injury determination whenever it receives a request for such a review that shows "changed circumstances sufficient to warrant a review." Congress, however, set forth "very strict controls" on the exercise of that authority, demonstrating that it did

not want prior Commission injury determinations "to remain in a state of flux." *Royal Business Machines, Inc. v. United States*, 507 F. Supp. 1007, 1014 n. 18 (Ct. Int'l Trade 1980), *aff'd*, 669 F.2d 692 (CCPA 1982). The statutory requirements for instituting Section 751 reviews clearly demonstrate the intent of Congress that the "underlying finding of injury . . . is entitled to deference and should not be disturbed lightly." *Avesta AB v. United States*, 689 F. Supp. 1173, 1180 (Ct. Int'l Trade 1988) (*Avesta I*); see also *Matsushita Elec. Indus. Co., Ltd. v. United States*, 750 F.2d 927, 932 (Fed. Cir. 1984). In order for a review investigation to be instituted, the information available to the Commission, after notice and comment from all interested parties, must be sufficient to persuade the Commission: (1) That there have been significant changed circumstances from those in existence at the time of the original investigation, (2) that those changed circumstances are not the natural and direct result of the imposition of the antidumping or countervailing duty order, and (3) that the changed circumstances indicate that the domestic industry would not be materially injured should the order be revoked thereby warranting a full investigation. See *A. Hirsh, Inc. v. United States*, 737 F. Supp. 1186 (CIT 1990) (*Hirsh I*); *Avesta AB v. United States*, 724 F. Supp. 974 (CIT 1989), *aff'd* 914 F.2d 232 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 1308 (1991) (*Avesta II*). Once instituted, the petitioner must persuade the Commission, after a full investigation and hearing, that the domestic industry would not be injured or threatened with injury if the order were revoked. See *Citizen Watch Co. v. United States*, 733 F. Supp. 383 (CIT 1990).

The CIT has observed that "Congress carefully limited the availability of § 1675(b) investigations" and that "the party seeking review bears the initial burden of showing the existence of changed circumstances sufficient to warrant a review." *Avesta I*, 689 F. Supp. at 1180, 1181; *Avesta II*, 724 F. Supp. at 978; *A. Hirsh, Inc. v. United States*, 729 F. Supp. 1360 (Ct. Int'l Trade 1990) (*Hirsh I*), *aff'd following remand*, 737 F. Supp. 1186 (Ct. Int'l Trade 1990) (*Hirsh II*). This burden is placed upon the party seeking review because the review investigation does not begin with a clean slate as though it were an original investigation. *Matsushita*, 750 F.2d at 932. Although a petition for institution of a review need not "prove" that changed circumstances exist such that injury would not recur upon

revocation, it must nevertheless contain credible evidence which, if uncontroverted by other evidence, would persuade the Commission that a full review is warranted. *Avesta I*, 689 F. Supp. at 1181.

In determining whether a full review is warranted, the Commission is permitted to weigh the evidence presented to it. The Commission analyzes the specific facts alleged in the petition and fully evaluates all the evidence submitted in support of, and in opposition to, the petition. Full reviews will not be instituted based upon mere allegations in a petition, allegations that are clearly contradicted by evidence submitted by others in response to the Commission's notice, or allegations that are contradicted or undermined by a petitioner's own data. Thus, the Commission decides whether to initiate a review, not based solely on the allegations contained in a petition, but also upon a critical evaluation of the entire record. *Avesta I*, 689 F. Supp. at 1181.

In this case, the request alleged three changed circumstances warranting review: (1) Changes in enforcement of country of origin marking requirements for manhole covers; (2) the extension of Buy America restrictions to procurement of iron construction castings in airport construction; and (3) the extension of Buy America restrictions to procurement of iron construction castings in all highway construction that receives federal financing. The information available on the record does not persuade us that a full investigation is warranted for any of the three allegations.

The changes in country of origin marking requirements for manhole covers significantly predate the Commission's original determination. The statutory change occurred in 1984, and there is documented evidence of its enforcement by Customs prior to 1986. Because those requirements were in effect prior to the Commission's injury determination, they are not "changed" circumstances. The two separate extensions of Buy America restrictions, however, occurred after the Commission's determination and do constitute "changed circumstances" that are not the natural and direct consequence of the imposition of the order. With respect to the extension of Buy America restrictions to airport construction, the Canadian industry admits that the change only affects 2 percent of total U.S. consumption. In the context of this market and the relative shares of the market reflected in the original record, such a marginal impact alone is not a changed

circumstance sufficient to warrant review.

The third "changed circumstance" concerns a 1991 amendment to the Buy America provisions (Section 165(a)) of the Surface Transportation Assistance Act of 1982. Section 1048 of the Intermodal Surface Transportation Efficiency Act of 1991 extended those Buy America restrictions to iron. Amended section 165(a) reads as follows:

Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by the Act * * * unless steel, iron, cement, and manufactured products used in such project are produced in the United States.

23 U.S.C. 101 note (emphasis added). The Canadian producers insist that this amendment has effectively precluded them from competing with the domestic industry in 60-75 percent of the U.S. market.

In this case, because "the vast bulk of construction castings are ultimately purchased and used by utilities, municipalities, and other such entities for civil construction purposes," government contracts comprise a substantial portion of total sales. *Iron Construction Castings from Canada*, USITC Pub. 1811 at A-9. It is not at all clear, however, what percentage of the total market is covered by Buy America restrictions and how the extension of Buy America restrictions has affected the U.S. market generally, or any segment of the market in particular.

The only available objective evidence of the impact of the Buy America restrictions on U.S. sales of Canadian castings—import trends—suggests that the restrictions have not had a significant impact on such sales. If the extension of Buy America restrictions had a significant impact on the ability of Canadian producers to compete in the U.S. market, then one would expect to see a decline in imports from Canada, and from all other sources as well, shortly after the extensions took effect. Data supplied by the Canadian producers regarding import trends, however, indicate that, after the extension of the Buy America restrictions, imports did not decline significantly. In 1986, when the order was first imposed, imports of iron construction castings from Canada reached 21,377 short tons. While imports declined subsequently, the significant decline in imports predates the extension of Buy America restrictions in 1991. Imports declined from 18,312 short tons in 1989 to 11,996 short tons in 1990. In 1991, such imports declined slightly to 10,233 short

tons. Although imports dropped further to 8,312 short tons in 1992, data available for the first three quarters of 1993 indicate that imports from Canada already exceeded 1992 full-year levels and were likely to exceed 12,000 short tons by the end of the year. See Petition at Appendix 22. Declines in imports followed by larger increases in recent periods do not support the claim that the 1991 amendments have significantly affected the ability of Canadian producers to compete in the U.S. market.

To support their assertion of the size of the Buy America market, the Canadian producers submitted only a conclusory and unsubstantiated declaration by a member of the Canadian Foundry Association. No methodology was identified and no source was cited for the estimates. Further, the Canadian producers acknowledge that their estimates are based on favorable assumptions regarding future actions by state and local authorities in extending their own Buy America restrictions to cover iron construction castings. They argue that such actions, while not mandatory, "are reasonable to expect." We find persuasive the domestic producers' objection that such expectations of future state and local administrative actions do not constitute changed circumstances. See *Avesta I*, 689 F. Supp. at 1185 ("A future intention does not show changed circumstances in the present.").

Moreover, the Canadian producers did not provide any evidence regarding their shipments to particular U.S. market segments and the effect of the extension of Buy America restrictions, if any, on shipments to each of those market segments. In sum, we believe that the Canadian estimates of the Buy America market are overstated.

Although Buy America restrictions have been expanded as the result of federal legislation, it is not clear how broad they are and how much of the iron construction casting market is now affected by them. Although the Canadian producers have arguably raised an issue of fact that may have merit, if true, they have not provided sufficient evidence to persuade us that the petition shows changed circumstances warranting review. While the petitioner need not prove its case at the institution stage, the petition, as filed, must contain more than the conclusory allegations submitted in this case. Because neither probative supporting evidence, an explanation of methodology, nor any concrete indication of the significance of the extension of Buy America restrictions

has been provided, there is insufficient evidence to warrant a full investigation. Absent such evidence, we determine that it is inappropriate to institute a review. Accordingly, the request for a review is denied. Finally, in the absence of a review of the Canadian order, a self-initiated review of the order covering iron construction castings from Brazil, India, and China is inappropriate.

By order of the Commission.

Issued: August 17, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-20931 Filed 8-24-94; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to The Clean Water Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed Consent Decree in *United States v. E.I. Du Pont de Nemours and Company, Inc.*, Civil Action No. 1:93CV519, was lodged on August 15, 1994 with the United States District Court for the Eastern District of Texas, Beaumont Division.

On October 15, 1993, the United States filed a Complaint pursuant to Section 309 of the Clean Water Act, 33 U.S.C. 1319, against E.I. Du Pont de Nemours and Company, Inc., for effluent limit and monitoring and reporting violations of its National Pollutant Discharge in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a) at the Defendant's Sabine River Works Facility in Orange, Texas. Subsequently, the United States and E.I. Du Pont de Nemours and Company, Inc., reached a settlement which resolves the issues set forth in the Complaint. The settlement includes the payment of \$514,430 in civil penalties and implementation of a \$3.2 million Supplemental Environmental Project by E.I. Du Pont de Nemours and Company, Inc., and is embodied in a Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. E.I. Du Pont de Nemours and Company, Inc.*, DOJ Ref. No. 90-5-1-3266.

The proposed Consent Decree may be examined at the office of the United

States Attorney, U.S. Courthouse, Room 3900, 333 West Fourth Street, Tulsa, Oklahoma 74103; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$6.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94-20855 Filed 8-24-94; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act of 1976

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Gulf States Steel, Inc.*, Civil Action No. CV 94-AR-1972-M was lodged on August 12, 1994, with the United States District Court for the Northern District of Alabama. Gulf States Steel, Inc. (Gulf States) owns and operates an integrated steel mill located in Gadsden, Alabama. This action for civil penalties and injunctive relief under Section 3008(a) and (g) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6928(a) and (g), was filed against Gulf States on August 12, 1994. The complaint alleged violations of RCRA Sections 3004 and 3005, 42 U.S.C. 6924 and 6925, and violations of regulations promulgated by EPA at 40 CFR part 265 pursuant to Sections 2002 and 3004 of RCRA, 42 U.S.C. 6912 and 6924. The company has agreed to a settlement of \$1.1 million in this action. Of that amount, \$800,000 will be initially paid as a civil penalty. The remaining \$300,000 will be used by Gulf States, subject to EPA approval, to undertake pollution abatement projects. In addition, Gulf States has agreed to develop a site specific groundwater monitoring plan for its wastewater ditch system at the facility; it has agreed to develop closure and post-closure plans for the entire wastewater ditch system; it has agreed to maintain two bonds in the amount of \$1.1 million for financial assurance for the wastewater ditch

system; and it has agreed to perform corrective action at the facility pursuant to Section 3008(h) of RCRA, 42 U.S.C. 6928(h).

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Gulf States Steel, Inc.* DOJ Ref. #90-7-1-725.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Alabama, Room 200, Robert S. Vance Federal Building, 1800 Fifth Avenue, North Birmingham, Alabama; Office of the U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, N.W., Washington, D.C. 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$11.50 (24 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94-20853 Filed 8-24-94; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. S.C. Johnson & Son, Inc. and Bayer A.G.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Illinois at Rockford in *United States v. S.C. Johnson & Son, Inc. and Bayer A.G.*, Civil No. 94 C 50249, as to both defendants.

The Complaint alleges that the defendants violated Section 1 of the Sherman Act by entering into an agreement by which Bayer licensed S.C. Johnson to use Cyfluthrin in household insecticides in the United States, refrained from licensing other firms to use Cyfluthrin, and ended its own plans

to compete with S.C. Johnson in the sale of household insecticides in the United States. S.C. Johnson is the country's largest maker of household insecticides with total sales between 45-60% of the market.

The proposed Final Judgment enjoins defendants from entering into any agreement to allocate markets for the sale of household insecticides, and it requires them to license others, on reasonable terms, to use or sell Cyfluthrin. The judgment also enjoins defendants from entering into any exclusive license for any active ingredient, if the license agreement has been disapproved by the United States, and it requires S.C. Johnson to provide the government prior notice of any such exclusive license with any person other than Bayer.

Household insecticides are chemical products sold in a wide variety of forms (e.g. aerosols, bait traps) for use by consumers to kill ants, roaches, and other insects that infest dwellings.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the *Federal Register* and filed with the Court. Comments should be directed to Gail Kursh, Chief Professions and Intellectual Property Section, Room 9903, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Washington, D.C. 20001 [(telephone: 202) 307-5799].

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

United States of America, Plaintiff, v. S.C. Johnson & Son, Inc. and Bayer A.G., Defendants. Civil No. 94C50249.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendants named herein, and complains and alleges as follows:

I

Jurisdiction, Venue, And Defendants

1. This complaint is filed under Section 4 of the Sherman Act, 15 U.S.C. 4, in order to prevent and restrain violations, as hereinafter alleged, by defendants of Section 1 of the Sherman Act, 15 U.S.C. 1.

2. Bayer A.G. ("Bayer"), a German corporation with its principal place of business at 5090 Leverkusen-Bayerwerk, Germany, is made a defendant. Bayer wholly owns and closely controls Miles, Inc., an Indiana corporation that

maintains an established place of business at 9801 West Higgins Road, Rosemont, Illinois, in the Northern District of Illinois. Bayer, through its subsidiary, Miles, Inc., is found and transacts business in the Northern District of Illinois. Venue as to Bayer is proper under 15 U.S.C. 22 and 28 U.S.C. 1391 (c).

3. S.C. Johnson & Son, Inc. ("Johnson"), a Wisconsin corporation with its principal place of business at 1525 Howe Street, Racine, Wisconsin, is made a defendant. Johnson is found and transacts business in the Northern District of Illinois. Venue as to Johnson is proper under 15 U.S.C. 22 and 28 U.S.C. 1391 (c).

II

Trade And Commerce

4. Defendant Bayer and its subsidiaries receive large amounts of money in the form of payments from manufacturers for the sale of active ingredients for use in household insecticides in the United States, and defendant Johnson and its subsidiaries receive large amounts of money from the sale of household insecticides to retailers and consumers throughout the United States. Defendants' business activities and operations, as hereinafter described, involve or affect the interstate and international flow of funds and are within the flow of, and have a substantial effect upon, interstate and foreign commerce.

III

Background

5. Household insecticides are chemical products that are sold in a wide variety of forms (e.g., aerosols, baits, powders, and traps) for use by consumers to trap or kill ants, roaches, crickets, and other undesirable insects that invade and infest houses, apartments and other dwellings. Because of their low cost, superior efficacy, and ease of use, there are no good substitutes for household insecticides, and thus they constitute a relevant product market.

6. The relevant geographic market for the sale of household insecticides is the United States. Annual retail sales of household insecticides in the United States exceeded \$450 million in 1993.

7. The United States market for household insecticides is highly concentrated. Johnson is the largest manufacturer of household insecticides in the United States, with total sales between 45-60% of the market. Johnson's two next-largest competitors in the sale of household insecticides each have sales of no more than 12% of

the market, and the shares of Johnson's three other major competitors range from 6 to 10% of the market.

8. Successful new entry into or expansion within the United States market for household insecticides is difficult. To be successful, a new entrant must demonstrate that its household insecticide has superior safety and efficacy, attributes that are solely dependent upon the active ingredient chosen for use in the product. Active ingredients must comply with state and federal government regulations for safety and efficacy prior to sale in the United States. Compliance with such laws and regulations is an expensive and time-consuming process that often takes more than three years and costs over \$10 million to complete.

9. Bayer is one of a small number of firms in the world that engage in research and development of active ingredients for household insecticides. Bayer has numerous patents in countries around the world, including United States patents, on such active ingredients. Bayer makes and sells, or licenses others to make and sell, such active ingredients in various countries, including the United States.

10. Bayer, which makes and sells household insecticides in many countries outside the United States, is one of the few significant potential entrants into the United States household insecticides market. Bayer earlier had planned and made preparations to enter the United States household insecticides market with a new product, called Laser. Laser's chief active ingredient was Cyfluthrin, developed and patented by Bayer and widely considered to be superior to other active ingredients because of its long-lasting killing power. Through Laser, Bayer could have become one of Johnson's major competitors in the household insecticides market in the United States.

IV

Violation Alleged

11. Beginning at least as early as March 1988 and continuing to the present, Johnson and Bayer entered into an agreement to unreasonably restrain trade and commerce and lessen competition in the manufacture and sale of household insecticides in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

12. For the purpose of forming and effectuating this agreement, defendants did the following things, among others:

(a) Bayer licensed Johnson to use Cyfluthrin in household insecticides in the United States, and granted Johnson

a right of first refusal for exclusive rights for the United States on future active ingredients developed by Bayer for household insecticides;

(b) Bayer refrained from licensing Johnson's competitors to use or sell Cyfluthrin; and

(c) Bayer ended its plans to market Laser and compete with Johnson in the United States household insecticides market.

V

Competitive Effects

13. Defendants agreement and activities have had the following direct, substantial, and reasonably foreseeable effects, among others:

(a) Incentives for Bayer to compete with Johnson in the manufacture and sale of household insecticides in the United States have been substantially reduced; and

(b) Competition generally in the market for the sale of household insecticides in the United States has been unnecessarily and unreasonably restrained.

VI

Prayer For Relief

Wherefore, plaintiff prays:

1. That Johnson and Bayer be enjoined and restrained from entering into any agreement or understanding the purpose or effect of which is to allocate or divide territories or markets for the sale of household insecticides;
2. That Johnson and Bayer be enjoined from entering into any exclusive license for an active ingredient patented by Bayer without plaintiff's prior approval;
3. That Johnson and Bayer be enjoined from entering into or carrying out an exclusive license to make, use or sell Cyfluthrin in the United States without plaintiff's prior approval;
4. That Johnson be enjoined and restrained from obtaining from anyone an exclusive license for any active ingredient for use in any household insecticide without prior notice (and if necessary, provision of additional information regarding the arrangement) to plaintiff;
5. That plaintiff have such other relief as may be just and proper; and
6. That plaintiff be awarded its costs in this action.

Dated: August 3, 1994.

Anne K. Bingaman, Assistant Attorney General; Robert E. Litan, Deputy Assistant Attorney General; Mark C. Schechter, Deputy Director, Office of Operations; Gail Kursh, Chief, Professions & Intellectual Property Section, Antitrust Division, U.S. Department of Justice

Anthony E. Harris, Bar No. 01133713; Kurt Shaffert, Attorneys, Antitrust Division, U.S. Dept. of Justice, 555 4th Street, N.W., Room 9903, JCB, Washington, D.C. 20001, (202) 307-0951

United States of America, Plaintiff, v. S.C. Johnson & Son, Inc. and Bayer A.G., Defendants Civil 94C50249 No. Filed:

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Northern District of Illinois, Western Division;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to the terms of the Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

For Plaintiff: Anne K. Bingaman, Assistant Attorney General; Robert E. Litan, Deputy Assistant Attorney General; Mark C. Schechter, Deputy Director, Office of Operations; Gail Kursh, Chief, Professions & Intellectual Property Section, Antitrust Division, U.S. Department of Justice.

Anthony E. Harris, Bar No. 01133713; Kurt Shaffert, Attorneys, Antitrust Division, U.S. Dept. of Justice, 555 4th Street, N.W., Room 9903, JCB, Washington, D.C. 20001, (202) 307-0951.

For Defendant S.C. Johnson & Son, Inc.: Maurice J. McSweeney, Esquire Foley & Lardner 777 East Wisconsin Avenue Milwaukee, Wisconsin 53202-5367

For Defendant Bayer A.G.: Tefft W. Smith, Esquire, Bar No. 2655314, Kirkland & Ellis, 50th Floor, 200 East Randolph Drive, Chicago, Illinois 60601, (312) 861-2000.

United States of America, Plaintiff, v. S.C. Johnson & Son, Inc. and Bayer A.G., Defendants. Civil No. 94C50249.

Final Judgment

Plaintiff, the United States of America, having filed its Complaint on August 4, 1994, and plaintiff and defendants, S.C. Johnson & Son, Inc. and Bayer A.G., by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting evidence against or admission by any party with respect to any issue of fact or law;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law, it is hereby Ordered, Adjudged and Decreed:

I

Jurisdiction

This Court has jurisdiction of the subject matter and each of the parties to this action. The Complaint states a claim upon which relief may be granted against S.C. Johnson & Son, Inc. and Bayer A.G. under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1.

II

Definitions

As used in this Final Judgment:

(A) "Active ingredient" means any chemical compound or substance used or contemplated for use in the United States as a knock-down, debilitating, or killing agent in a household insecticide, regardless of whether that compound or substance has been approved by federal or state regulatory authorities.

(B) "Exclusive license" means any agreement for the license or supply of an active ingredient that directly or indirectly, implicitly or explicitly, limits access to S.C. Johnson & Son, Inc. or to S.C. Johnson & Son, Inc. and the licensor.

III

Applicability

This Final Judgment applies to S.C. Johnson & Son, Inc.'s and to Bayer A.G.'s officers, directors, subsidiaries, agents, employees, successors, and assigns, and to all other persons in active concert of participation with any of them who receive actual notice of this Final Judgment pursuant to F.R.C.P. 65(d).

IV

Injunctive Relief

(A) S.C. Johnson & Son, Inc. and Bayer A.G. are each enjoined and restrained from entering into or carrying out any agreement or understanding, the purpose or effect of which would be to

allocate or divide territories or markets for the distribution or sale of household insecticides, unless any such agreement or understanding relates exclusively to markets other than the United States and has no effect on United States commerce.

(B) S.C. Johnson & Son, Inc. and Bayer A.G. are each enjoined and restrained from entering into any exclusive license between them for any active ingredient, the patent rights to which are beneficially owned by Bayer A.G., if such license has been disapproved by the U.S. Department of Justice as provided herein.

S.C. Johnson & Son, Inc. and Bayer A.G. each must provide the U.S. Department of Justice at least 90 days' written notice of their intent to enter into any exclusive license between them. If requested by the Department of Justice within 30 days after its receipt of such notice, S.C. Johnson & Son, Inc. and Bayer A.G. must supply, within 30 days of such request, all information in their possession reasonably necessary to enable the Department to determine the competitive effect of their exclusive license. The Department must exercise its unconditional right to disapprove an exclusive license between S.C. Johnson & Co., Inc. and Bayer A.G. by so notifying them, in writing within 90 days after receiving defendants' notice of intent.

(C) S.C. Johnson & Son, Inc. and Bayer A.G. are each enjoined and restrained from entering into, carrying out, or operating under any exclusive license to make, use or sell Cyfluthrin in the United States. Bayer A.G. must offer, to any person who requests it, a license to use or sell Cyfluthrin in the United States, upon reasonable and mutually agreeable terms and conditions, but no minimum royalty payment shall be required under such license. Nothing herein, however, shall prohibit Bayer A.G. from reserving exclusively for itself Cyfluthrin or any other active ingredient, or from discontinuing the manufacture, sale or use in the United States of Cyfluthrin or any other active ingredient.

(D) No more than 180 days and not less than 90 days before entering into any exclusive license with any person other than Bayer A.G., for any active ingredient other than Cyfluthrin, S.C. Johnson & Son, Inc. must provide the U.S. Department of Justice written notice of such license agreement. If requested by the Department of Justice within 30 days after its receipt of such notice, S.C. Johnson & Son, Inc. must supply within 30 days after such request, all information in its possession reasonably necessary to determine the

competitive effect of such license agreement.

V

Compliance Program: S.C. Johnson & Son, Inc.

S.C. Johnson & Son, Inc. shall maintain an antitrust compliance program, which shall include:

(A) distributing within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all officers with responsibility for research and development, manufacturing, sales or marketing of household insecticides in the United States;

(B) distributing in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph V(A);

(C) briefing annually those persons designated in Paragraph V(A) and (B) on the meaning and requirements of this Final Judgment and the antitrust laws, including potential antitrust concerns raised by patent licensing agreement;

(D) obtaining from each person designated in Paragraph V(A) and (B) an annual written certification that he or she: (1) Has read, understands and agrees to abide by this Final Judgment; (2) has been advised and understands that noncompliance with this Final Judgment may result in his or her conviction for criminal contempt of court and/or fine; and (3) is not aware of any violation of this Final Judgment; and

(E) maintaining for inspection by plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom the certification required by Paragraph V(D) has been obtained.

VI

Compliance Program: Bayer A.G.

Bayer A.G. shall maintain an antitrust compliance program, which shall include:

(A) distributing within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all officers, directors, and employees of Bayer A.G.'s household insecticide unit having signing authority on behalf of Bayer A.G.;

(B) distributing in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph VI(A);

(C) briefing those persons designated in Paragraph VI(A) and (B) on the

meaning and requirements of this Final Judgment and the antitrust laws, including potential antitrust concerns raised by patent licensing agreements;

(D) obtaining from each person designated in Paragraph VI(A) and (B) an annual written certification that he or she: (1) has read, understands and agrees to abide by this Final Judgment; (2) has been advised and understands that noncompliance with this Final Judgment may result in his or her conviction for criminal contempt of court and/or fine; and (3) is not aware of any violation of this Final Judgment; and

(E) maintaining for inspection by plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom the certification required by Paragraph VI(D) has been obtained.

VII

Certifications

(A) Within 75 days after the entry of this Final Judgment, S.C. Johnson & Son, Inc. and Bayer A.G. each shall certify to plaintiff whether it has made the distribution of this Final Judgment in accordance with Paragraphs V(A) and VI(A), respectively.

(B) For ten years after the entry of this Final Judgment, on or before its anniversary date, S.C. Johnson & Son, Inc. and Bayer A.G. shall each certify annually to plaintiff whether it has complied with the provisions of Paragraphs V and VI, respectively.

VIII

Plaintiff's Access

For the sole purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, authorized representatives of the U.S. Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division shall on reasonable notice be permitted;

(A) access during regular business hours of S.C. Johnson & Son, Inc. and Bayer A.G. to inspect and copy all records and documents relating to any matters contained in this Final Judgment;

(B) to interview S.C. Johnson & Son, Inc. and Bayer A.G. officers, directors, and employees, who may have counsel present, concerning such matters; and

(C) to obtain written reports from S.C. Johnson & Son, Inc. and Bayer A.G. relating to any of the matters contained in the Final Judgment.

Information provided to the Department of Justice pursuant to this

provision or pursuant to Paragraph IV (B) or (D) of the Final Judgment must be kept confidential to the full extent permitted by law.

IX

Jurisdiction Retained

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

X

Expiration of Final Judgment

This Final Judgment shall expire 10 years from the date of its entry. Paragraph IV(D) of this Final Judgment, however, shall expire six years from the date of its entry.

XI

Public Interest Determination

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

United States of America, Plaintiff, v. S.C. Johnson & Son, Inc. and Bayer A.G., Defendants, Civil No. 94C50249.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment (or "the Judgment") submitted for entry against S.C. Johnson & Son, Inc. ("Johnson") and Bayer A.G. ("Bayer") in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

The United States of America, acting under the direction of its Attorney General, filed this civil antitrust suit on August 4, 1994, alleging that defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by entering into an agreement and understanding that unreasonably restrained interstate trade in the manufacture and sale of household insecticides. The agreement featured an exclusive license arrangement and the transfer by Bayer to Johnson of the assets assembled by a Bayer subsidiary, Miles, Inc., to compete in the sale of household insecticides in the United States with a new product, called Laser. Laser's chief active ingredient was Cyfluthrin, which Bayer

developed and patented. Specifically, the Complaint alleges that defendants engaged in the following activities:

(a) Bayer licensed Johnson to use Cyfluthrin in household insecticides in the United States, and granted Johnson a right of first refusal for exclusive rights for the United States on future active ingredients developed by Bayer for household insecticides;

(b) Bayer refrained from licensing Johnson's competitors to use or sell Cyfluthrin; and

(c) Bayer ended its plans to market Laser and compete with Johnson in the United States household insecticides market.

The Complaint alleges that the appropriate product market in which to access the competitive effect of the Cyfluthrin license and transfer of assets is the market for the manufacture and sale of household insecticides. This is the appropriate market because other types of insect killers, such as agricultural pesticides, are not good substitutes for household insecticides used to kill ants, roaches, and other insects that typically infest dwellings. The Complaint alleges that the entire United States is the relevant geographic market. In this market, the Complaint alleges, Johnson is the largest firm, and the licensing arrangement helped it to maintain its commanding position.

The Judgment enjoins Johnson and Bayer from entering into any agreement to allocate territories or markets for the distribution or sale of household insecticides, unless such an agreement relates exclusively to markets other than the United States and has no effect on United States commerce, and requires that Bayer license Cyfluthrin to any person on reasonable terms and conditions.¹ Further, the Final Judgment provides the Department with the opportunity to review any future exclusive licenses for new active ingredients that Johnson might seek to obtain from Bayer or any other person.²

The Judgment requires the defendants to file annual reports with the Government that certify that each has distributed the Final Judgment to

responsible executives and explained the terms of the Judgment to them. Entry of the Final Judgment will terminate the Government's action against the defendants,³ except that the Court will retain jurisdiction over the matter for further proceedings that may be required to interpret, enforce or modify the Judgment, or to punish violations of any of its provisions.

II

Description of the Activities Involved in the Alleged Violations

During a three-year period between 1985 and March 1988, Miles, Inc., a U.S. subsidiary of Bayer, developed a new line of household insecticides to be marketed under the brand name "Laser." The Laser products were to have contained a potent new active ingredient, Cyfluthrin, a chemical compound developed and patented by Bayer. Cyfluthrin promised to provide Laser a significant competitive advantage over existing U.S. household insecticides because it extended the insecticide's killing power up to three months after initial application.

By early 1988, Miles had substantially completed its preparations to enter the U.S. household insecticides market. Evidence indicates that its entry would have been successful. According to Miles' projections, first-year sales of Laser products would have made Miles one of the nation's leading makers of household insecticides.

In March 1988, however, Bayer canceled the Laser project. It instead agreed to sell Miles' Laser-related product research and packaging design to Johnson, and to license Johnson to use Cyfluthrin in its household insecticide products.⁴

Under the terms of that ten-year license agreement, Johnson agreed to pay Bayer a minimum of \$5.2 million annually in addition to a specified per pound fee for the use of Cyfluthrin. In addition, Johnson acquired a right of first refusal to any other active ingredient Bayer later developed.

Through this agreement, the United States alleges, Bayer effectively chose not to compete in the U.S. household insecticides market, instead, licensing to Johnson the right to use those assets Bayer had assembled and would require to compete in the United States.

¹ Bayer and Johnson have cooperated with the Department of Justice in this matter.

² Although the patent license states that it is nonexclusive, the United States believes that the license was actually exclusive. Bayer was subsequently approached by several Johnson competitors for Cyfluthrin licenses; it declined to license them to use the compound.

The agreement helped ensure Johnson's continued dominance of the highly concentrated U.S. household insecticides market. Johnson is the leading maker of household insecticides with somewhere between 45-60 percent of total market sales. It is significantly larger than any of its six major competitors, whose market shares range from 6 to 12 percent of overall sales. By purchasing some of the assets Bayer would have used in entering the market, and entering into what was in effect an exclusive license for Cyfluthrin, Johnson effectively eliminated competition that could have helped drive down prices or improve the quality of household insecticides. Because new entry or expansion in this market is difficult in light of the high cost and significant time it takes to comply with federal and state governmental regulations, new entry into or expansion within this market is unlikely to militate against the anti-competitive effects of the defendants' agreement.

III

Explanation of the Proposed Final Judgment

The United States, Johnson and Bayer have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The Judgment provides that its entry does not constitute any evidence or admission by any party with respect to any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the Judgment may not be entered unless the Court finds entry is in the public interest. Section XI of the proposed Final Judgment set forth such a finding.

A. Terms

The Judgment provides that:

(1) Johnson and Bayer are each enjoined and restrained from entering into any agreement or understanding, the purpose or effect of which would be to allocate or divide, territories or markets for the distribution or sale of household insecticides, unless any such agreement or understanding relates exclusively to markets other than the United States and has no effect on United States commerce.

(2) Johnson and Bayer are each enjoined and restrained from entering into any exclusive license between them for any active ingredient, the patent rights to which are beneficially owned by Bayer, that the U.S. Department of Justice disapproves in writing. To

¹ In this respect, the Judgment provides relief somewhat similar to the terms of a settlement of private litigation to which the defendants were also parties, *Koerber v. S.C. Johnson & Son, Inc. and Bayer A.G.*, Civil No. 93C 20267, N.D. Ill. 1993. However, the Judgment, unlike the private settlement, leaves Bayer free to decide whether to license Cyfluthrin to others on terms more favorable than its license with Johnson.

² The Judgment would prevent Bayer and Johnson from entering into any exclusive license for any active ingredient if the Department of Justice has disapproved such license within 90 days after receiving notice of defendants' intent to enter into the agreement.

ensure the Department of Justice has adequate notice of such agreements, Johnson and Bayer each must provide the Department at least 90 days' written notice of their intent to enter into such an exclusive license agreement, and if requested by the Department of Justice within 30 days after its receipt of such notice, Johnson and Bayer must supply within 30 days of such request, all information in their possession reasonably necessary to enable the Department of Justice to determine the competitive effect of such license agreement.

(3) Johnson and Bayer are each enjoined and restrained from entering into, carrying out, or operating under any exclusive license to make, use or sell Cyfluthrin in the United States. Bayer must offer to any person who requests, a license to use or sell Cyfluthrin in the United States, upon reasonable and mutually agreeable terms and conditions, but no minimum royalty payment shall be required under such license; and

(4) No more than 180 days nor less than 90 days before entering into any exclusive license with any person other than Bayer, for any active ingredient other than Cyfluthrin, Johnson must provide the Department of Justice written notice of such license and, if requested by the Department of Justice within 30 days after its receipt of such notice, Johnson must supply within 30 days after such request, all information in its possession reasonably necessary to determine the competitive effect of such license agreement.

B. Effect on Competition

The proposed Final Judgment will ensure that Johnson's competitors will have access to Cyfluthrin and thus likely promote competition in the household insecticide market. Nonexclusive licenses will be made available to Johnson's competitors on reasonable terms and conditions that are at least as favorable as the terms and conditions Bayer accorded Johnson, except that there will be no minimum royalty payments under such licenses. In addition, by prohibiting any market allocation agreements between the defendants, the Final Judgment ensures that the defendants will not be able to restrict potential competition in the U.S. household insecticides market.

In addition, the proposed Final Judgment ensures that any exclusive or co-exclusive license agreement between Johnson, which is dominant in the household insecticides market, and Bayer for new active ingredients will not restrict competition in the household insecticides market. The

proposed relief also ensures that the United States receives prior notice of any exclusive or co-exclusive license agreement between Johnson and any active ingredient manufacturer other than Bayer, and thus an opportunity to challenge any such agreement that the United States believes may substantially lessen competition in the household insecticides market. At the same time, Department of Justice review of any exclusive or co-exclusive license agreement for active ingredients contemplated by Johnson should not unreasonably restrict Johnson's ability to obtain the necessary active ingredients to formulate its household insecticide products and remain competitive in the household insecticides market.

IV

Remedies Available To Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against Johnson and Bayer in this matter.

V

Procedures Available For Modification Of The Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Gail Kursh, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 9903, Washington, DC 20001, within the 60-day period set forth in the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to a stipulation signed by the United States and Bayer and Johnson, to withdraw its consent to the Judgment at any time prior to entry. Section IX of the Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification,

interpretation, or enforcement of the Judgment.

VI

Determinative Materials/Documents

Materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

VII

Alternative To The Proposed Final Judgment

The alternative to the proposed Judgment is a full trial on the merits. While the Department is confident of its ability to succeed in such a trial, the litigation involves difficult issues of law and fact. A favorable outcome is not a certainty. The Final Judgment agreed to by the parties provides all the relief that the United States sought in its complaint.

Dated: August 3, 1994.

Respectfully submitted,

Anthony E. Harris,

Bar No. 01133713.

Kurt Shaffert

Attorneys, Antitrust Division, U.S. Department of Justice, 555 4th Street, NW., Room 9901, Washington, DC 20001. 202/307-0951.

United States of America, Plaintiff, v. S.C. Johnson & Son, Inc. and Bayer A. G., Defendants. Civil No. 94C50249.

United States' Explanation of Consent Decree Procedures

The United States submits this short memorandum summarizing the procedures regarding the Court's entry of the proposed Final Judgment. The Judgment would settle this case pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) (the "APPA"), which applies to civil antitrust cases brought and settled by the United States.

1. Today, the United States has filed a proposed Final Judgment and a Stipulation between the parties by which they agreed to the Court's entry of the proposed Final Judgment following compliance with the APPA.

2. The United States has also filed a Competitive Impact Statement relating to the proposed Judgment [15 U.S.C. 16(b)].

3. The APPA requires that the United States publish the proposed Final Judgment and Competitive Impact Statement in the **Federal Register** and in certain newspapers at least 60 days prior to entry of the Final Judgment. The notice will inform members of the public that they may submit comments

about the Final Judgment to the United States Department of Justice, Antitrust Division [15 U.S.C. 16(b)-(c)].

4. During the 60-day period, the United States will consider and respond to any comments it receives, and it will publish the comments and responses in the Federal Register.

5. After the expiration of the 60-day period, the United States will file with the Court the comments, the government's responses, and a Motion For Entry of the Final Judgment (unless the United States decide to withdraw its consent to entry of the Final Judgment, as permitted by Paragraph 2 of the Stipulation) [see 15 U.S.C. § 16(d)].

6. At that time, pursuant to the APPA, 15 U.S.C. § 16(e)-(f), the Court may enter the Final Judgment without a hearing, if the Court determines that the Final Judgment is in the public interest.

Dated: August 4, 1994.

Respectfully submitted,

Anthony E. Harris,

Bar No. 011333753.

Kurt Shaffert

Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Rm. 9901, Washington, DC 20001, 202/307-0951. United States of America, Plaintiff, v. S.C. Johnson & Son, Inc. and Defendants. Civil No. 94C50249.

Certificate of Service

I hereby certify that on or before August 3, 1994, I hand-delivered a copy of the following set of pleadings to counsel for S.C. Johnson & Son, Inc. and Bayer A. G., respectively, Maurice J. McSweeney, Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367; and Tefft W. Smith, Kirkland & Ellis, 200 East Randolph Drive, Chicago, Illinois 60601:

1. Complaint;
2. Stipulation;
3. Proposed Final Judgment;
4. Competitive Impact Statement; and
5. United States' Explanation of Consent Decree Procedures.

Dated: August 3, 1994.

Anthony E. Harris,

Bar No. 011333753.

[FR Doc. 94-20354 Filed 8-24-94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities

under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10102, Washington, DC 20503 ((202) 395-7316).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Employment and Training Administration
Worker Profiling and Reemployment Services Activity

ETA 9048

Quarterly

State or local governments

28 respondents; 1,000.25 average hours per response; 112,028 total hours; 1 form

The Unemployment Insurance profiling program provides early reemployment services to claimants likely to exhaust benefits (dislocated workers) to get them back to work sooner. The report is used to monitor the program and analyze State performance.

Extension

Employment and Training Administration

Fiscal Year 1994 Employment Service Automation Funds Employment Service Program Letter

1205-0311

Other (as needed)

40 respondents; 120 average hours per response; 4,800 total hours

This information collection provides procedures for the State Employment Service Agencies to use when applying for Employment Service automation funds and provides for appropriate review by Employment and Training Administration Regional Offices.

Reinstatement

Bureau of Labor Statistics
Mass Layoff Statistics Program
1220-0090

On occasion; monthly; quarterly
State or local governments; farms;

businesses or other for-profit;

Federal agencies or employees; non-profit institutions 81.120 responses; 1 hour average per response; 81,120 total hours; 1 form

Section 462(e) of the Job Training Partnership Act (Pub. L. 97-300) requires that the Secretary of Labor develop and maintain statistical data on permanent mass layoffs and plant closing, and publish a report annually.

Reinstatement

Occupational Safety and Health Administration

Safety Testing and Certification
1218-0147

On occasion

Businesses or other for-profit

8 respondents; 402.5 average hours per response; 3,220 total hours

The Occupational Safety and Health Administration (OSHA) needs to collect certain information for organizations so

that OSHA can make an evaluation and determine if the organization meets the criteria to be a recognized Nationally Recognized Laboratory Testing (NRTL).

Signed at Washington, D.C. this 19th day of August, 1994.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 94-20898 Filed 8-24-94; 8:45 am]

BILLING CODE 4510-30-M

Glass Ceiling Commission; Open Meeting

Summary: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102-166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92-462, 5 U.S.C. app. II) a Notice of establishment of the Glass Ceiling Commission was published in the *Federal Register* on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Sunday, September 25, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

Time and Place: The meeting will be held on Sunday, September 25, 1994 from 4 p.m. until 5:30 p.m. at the Paramount Hotel, 235 W. 46th St., New York, NY 10036.

Agenda: The agenda for the meeting is as follows: Review Hearing Agenda; Discussion of Final Report; Discussion of Perkins-Dole Award.

Public Participation: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Persons with disabilities should contact the Commission no later than September 12, 1994, if special accommodations are needed.

For Further Information Contact: Ms. René A. Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution

Ave. NW., room C-2313, Washington, DC 20210, (202) 219-7342.

Signed at Washington, D.C. this 19th day of August, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94-20899 Filed 8-24-94; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of August, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-30,037; Elf Atochem North American, Inc., Industrial Chemical Div., Tacoma, WA

TA-W-29,730; Hughes Aircraft Radar Systems Group, Los Angeles, CA

TA-W-29,921; Douglas & Lomason Co., Phenix City, AL

TA-W-29,830; Isoloc Manufacturing Co., Vancouver, WA

TA-W-29,942; Fuelco, Denver, CO

TA-W-29,867; Struthers-Dunn, Inc., Pitman, NJ

TA-W-29,632; Weldotron Corp., Piscataway, NJ

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-30,118; H & W Service Co., Crane, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,685; Frigidaire Co., Athens Range Products, Athens, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-30,051; Ford New Holland, Dallas, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,985; Farah Manufacturing Co., El Paso, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-30,005; Ford New Holland, Troy, MI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,061; Philips Lighting Co., Washington, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,872; Baxter Healthcare Corp., Bently Div., Irvine, CA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-29,970; New York Life Insurance Co., New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,768; Normandy Manufacturing Co., Inc., Paducah, KY

Predominate reason for the subject firm's closure in March 1994 was a decline in its sales staff in the first quarter of 1994. Fewer salesmen in 1994 led to a decline in sales at the subject firm in the first quarter of 1994 compared to the same period in 1993.

TA-W-29,743 & TA-W-29,832; IBM Corp., Poughkeepsie, NY & Kingston, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,111; Southland Corp., Willow Grove, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,774; Airfoil Forging Textron, Euclid, OH

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-29,928; True Temper Hardware Co., Anderson, SC

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA-W-29,887; Baxter Healthcare Corp., Kingstree, SC

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations For Worker Adjustment Assistance

TA-W-29,556 & TA-W-29,556A;

McDonnell Douglas, Helicopter Systems, Mesa, AZ and Culver City, CA

A certification was issued covering all workers separated on or after February 18, 1993.

TA-W-30,004; Freitex, Inc., Albany, GA

A certification was issued covering all workers separated on or after June 8, 1993.

TA-W-29,920; Goody Products, Inc., Kearny, NJ

A certification was issued covering all workers separated on or after May 18, 1993.

TA-W-29,978; Classic Lady Fashion, Hialeah Gardens, FL

A certification was issued covering all workers separated on or after April 26, 1993.

TA-W-30,003; Goodyear Tire & Rubber Co., Logan, OH

A certification was issued covering all workers separated on or after June 7, 1993.

TA-W-29,957; Southland Manufacturing, Lepanto, AR

A certification was issued covering all workers separated on or after May 15, 1993.

W-29,946; Philips Technologies, Airpax Mechatronics Group, Chesire, CT

A certification was issued covering all workers separated on or after May 25, 1993.

TA-W-30,057; McClure Manufacturing, Inc., Ellijay, GA

A certification was issued covering all workers separated on or after June 23, 1993.

TA-W-29,840; Dataproducts Corp., Norcross, GA

A certification was issued covering all workers separated on or after April 11, 1993.

TA-W-28,816; KTS Industries, Inc., Kalamazoo, MI

A certification was issued covering all workers separated on or after April 23, 1993.

TA-W-29,982; Joseph H. Hill Co., Richmond, IN

TA-W-29,983; Hill Floral Products, Inc., Richmond, IN

A certification was issued covering all workers separated on or after May 27, 1993.

TA-W-29,902; Arsynco, Inc., Carlstadt, NJ

A certification was issued covering all workers separated on or after May 2, 1993.

TA-W-29,752; IBM Corp., East Fishkill Facility, Hopewell, NY

A certification was issued covering all workers of IBM Corp., East Fishkill Facility, Hopewell, NY engaged in employment related to the production of chips separation on or after April 18, 1993, and before January 1, 1994. Also, all workers of IBM Corp, East Fishkill Facility, Hopewell, NY engaged in the production of thermal conduction modules and component parts other than chips are denied.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-

TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of August 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(c) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-000164; Lipe-Rollway Corp., Rollway Bearing Div., Liverpool, NY

The investigation revealed that criteria (3) and criteria (4) were not met. U.S. imports of cylindrical roller bearings from Canada and Mexico declined in the twelve month period of May 1993 through April 1994 compared to the same period one year earlier. A survey of major customers revealed that customers did not import roller bearings from Canada or Mexico in 1992, 1993 or during January-June 1994.

NAFTA-TAA-00166; Lockheed Fort Worth Co., Fort Worth, TX

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production workers' firm to Mexico or Canada. Production of electrical harnesses was shifted to Mexico prior to December 8, 1993, the earliest date for coverage of worker separations under NAFTA-TAA.

NAFTA-TAA-00173; Chock Full
O'Nuts, Greenwich Mills Div.,
Mebane, NC

The investigation revealed that criteria (3) and criteria (4) were not met. A survey of major customers of the subject plant revealed that customers did not import fruit drinks or iced tea mix from Mexico or Canada.

NAFTA-TAA-00116; Fisher-Price, Inc.,
Brownsville, TX (Matamoros, MX)

The investigation revealed that criteria (3) and criteria (4) were not met. Worker separations at the subject plant are a result of a company decision to move production from Matamoros to other locations in Mexico and to the Orient. A shift in production from one location in Mexico to another location in that country cannot be used as a basis for certification under the terms of Title V of the North American Free Trade Implementation Act.

NAFTA-TAA-00171; Coltec Industries,
Inc., Burbank, CA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services did not constitute production of an article as required by the Trade Act of 1974.

NAFTA-TAA-00172; American
Cyanamid Co., Pearl River, NC

The investigation revealed that criteria (3) and criteria (4) were not met. Although American Cyanamid is currently seeking the approval necessary to shift production of dyclomycin to Mexico, no shift has yet occurred. In addition, no worker separations attributable to the possible transfer have yet taken place.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00163; Sola Optical USA,
Inc., Colonial Heights, VA

A certification was issued covering all workers of the Colonial Heights, VA plant of Sola Optical USA, Inc., separated on or after December 8, 1993.

NAFTA-TAA-00165; Dana Corp.,
Pueblo, CO

A certification was issued covering all workers of Dana Corp., Pueblo, CO separated on or after December 8, 1993.

NAFTA-TAA-00167; Sara Lee Knit
Products, Midway, GA

A certification was issued covering all workers of the Midway, GA plant of Sara Lee Knit Products separated on or after December 8, 1993.

NAFTA-TAA-00170; GenCorp.
Reinforced Plastics Div., Ionia, MI

A certification was issued covering all workers engaged in employment related to the production of reinforced fiberglass grill openly panels for the Buick Century and the Oldsmobile Ciera lines at the Ionia, MI plant of the Reinforced Plastics Div., GenCorp separated on or after December 8, 1993.
NAFTA-TAA-00169; Parker Hannifin Corp., Berea, KY

A certification was issued covering all workers of Parker Hannifin Corp., Berea, KY separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of August, 1994. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 17, 1994.

Violet L. Thompson,
Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-20849 Filed 8-24-94; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Genwal Coal Company (Amendment)

[Docket No. M-94-116-C]

Genwal Coal Company, P.O. Box 1420, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Crandall Canyon Mine (I.D. No. 42-01715) located in Emery County, Utah. The petitioner proposes to use belt air to ventilate the face area; to install a low-level carbon monoxide detection system that would provide both visual and audible alarm signals as an early warning device in belt entries used as intake air courses; and to provide two separate and distinct intake air escapeways to the miners working in the development sections. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Three Way Coal Company

[Docket No. M-94-117-C]

Three Way Coal Company, P.O. Box 17, Brachdale, Pennsylvania 17923 has filed a petition to modify the

application of 30 CFR 75.1400 (hoisting equipment; general) to its Little Vein Slope (I.D. No. 36-08332) located in Schuylkill County, Pennsylvania. Because of the steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope, the petitioner proposes to use the gunboat without safety catches in transporting persons. As an alternative, when using the gunboat to transport persons, the petitioner proposes to use an increased rope strength safety factor and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connecting device.

3. Red Oak Mining Company

[Docket No. M-94-118-C]

Red Oak Mining Company, P.O. Box 210, Westover, Pennsylvania 16692 has filed to modify the application of 30 CFR 75.1103-4(a)(3) (automatic fire sensor and warning device systems) to its South Mine (I.D. No. 36-07810) located in Cambria County, Pennsylvania. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries where a monitoring system identifies a sensor location instead of having a detection system in each belt flight. The petitioner states that the carbon monoxide monitoring system would be capable of providing both a visual and audible alarm signal that would be activated when the carbon monoxide level at any sensor reaches 10 ppm above the ambient level of the mine, and that all miners would be withdrawn to a safe location unless the cause for the alarm is determined not to be hazardous to the miners. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Red Oak Mining Company

[Docket No. M-94-119-C]

Red Oak Mining Company, P.O. Box 210, Westover, Pennsylvania 16692 has filed to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its South Mine (I.D. No. 36-07810) located in Cambria County, Pennsylvania. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in conveyor belt entries used as intake air courses that would provide both visual and audible alarm signals when the carbon monoxide level at any sensor is 10 ppm above the ambient level for the mine, when an audible alarm signal is

different from the alert signal, and when the carbon monoxide level reaches 15 ppm above the ambient level for the mine. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Somerset Mining Company

[Docket No. M-94-120-C]

Somerset Mining Company, P.O. Box 535, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Sanborn Creek Mine (I.D. No. 05-04452) located in Gunnison County, Colorado. The petitioner proposes to use belt air to ventilate active working places in order to enhance the operator's ability to ventilate remote sections of the mine. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Arclar Company

[Docket No. M-94-121-C]

Arclar Company, 29 West Raymond, P.O. Box 444, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.360(b)(6) (preshift examination) to its Big Ridge Mine (I.D. No. 11-02879) located in Saline County, Illinois. The petitioner proposes to conduct preshift examinations of the intake air at specified locations to determine the quality and quantity of the air reporting to the operating unit and to examine the neck areas for any changes in roof conditions on a weekly basis. The petitioner states that a six month history of preshift examinations have shown no quantity of methane or oxygen deficiency. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Freeman United Coal Mining Company

[Docket No. M-94-122-C]

Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896-0100 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Orient No. 6 Mine (I.D. No. 11-00599) located in Jefferson County, Illinois. The petitioner

proposes to use 2400 volt cables to power longwall equipment in by the last open crosscut and within 150 feet of pillar workings (gob) areas. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. B&M Coal Company

[Docket No. M-94-123-C]

B&M Coal Company, Box 37, Dilliner, Pennsylvania 15327 has filed an amended petition for its B&M No. 2 Mine (I.D. No. 36-06126) located in Greene County, Pennsylvania. The petitioner requests that previous petition, docket number M-91-102-C, for 30 CFR 75.362 be amended. The petitioner requests that Item No. 15 of the previous petition be amended to include language requiring intake escapeways to be maintained in accordance with new mandatory standard 30 CFR 75.380 (f)(1) (Ventilation Final Rule of November 15, 1992). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Kennecott Utah Copper

[Docket No. M-94-36-M]

Kennecott Utah Copper, 8362 West 10200 South, P.O. Box 525, Bingham Canyon, Utah 84006-0525 has filed an amended petition to its previous petition 30 CFR 56.9022, docket number M-86-20-M for its Concentrator North (I.D. No. 42-00717) located in Salt Lake County, Utah. The petitioner requests that the previous petition be amended to reflect the new mandatory standard 30 CFR 56.9300 (d)(1) and (d)(3). The petitioner proposes to post warning signs that impoundment roadway is not bermed and caution must be used at each access point from the outer roadway because of the structure of the tailings impoundment; to post signs that limit speed at 15 MPH; to limit access to the impoundment roadway to only authorized personnel required to be in the area for inspecting and/or maintaining the pipeline in the area, in the tailings, and/or the roadway. In addition, the petitioner proposes to install a 24-inch diameter pipeline on the inside edge of the impoundment roadway that serves as a continuous delineator to vehicle drivers; to limit traffic on the roadway to one-way traffic; to limit access to personnel required to have access to conduct inspections or perform maintenance; to provide training to all authorized personnel concerning special hazard

recognition; and to issue a special license, that would be updated every four years, to authorized drivers in the area. The petitioner asserts that the proposed alternate method would provide at least same measure of protection as would the mandatory standard.

10. Rock of Ages Corporation, and Swenson Granite Company, Inc. (Subsidiary of Rock of Ages)

[Docket No. M-94-37-M]

Rock of Ages Corporation, P.O. Box 482, Barre, Vermont 05641 has filed a petition to modify the application of 30 CFR 56.19003 to its Rock of Ages Lite Side (I.D. No. 43-00024); its Rock of Ages Dark Side (I.D. No. 43-00023); and its Wells Lamson (I.D. No. 43-00063) all located in Washington County, Vermont, and its Gray Quarry (I.D. No. 27-00083) located in Merrimack County, New Hampshire. The petitioner requests relief from the mandatory standard as it applies to chain drives between the driving mechanism and the gear train of the hoists, allowing the use of chain drives for such application. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 26, 1994. Copies of these petitions are available for inspection at that address.

Dated: August 18, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94-20946 Filed 8-24-94; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94-66]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Wednesday, September 14, 1994, 8:30 a.m. to 5:30 p.m.; Thursday, September 15, 1994, 8:30 a.m. to 5:30 p.m.; and Friday, September 16, 1994, 8:30 a.m. to 3 p.m.

ADDRESSES: The National Council on The Aging, Inc., Conference Room A and B, 409 Third Street, SW., Suite 200, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence J. Caroff, Code SZF, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-0351.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

- Overview of Office of Space Science Status
- Review of FY95 Budget
- Discussion of Report of the Advisory Committee on the Future of the U.S. Space Program (Augustine Report)
- Strategic Planning
- Divisional Reports
- Subcommittee Reports
- Discussion and Writing Groups
- Briefing on the Education Programs

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 18, 1994.

Danalee Green,

Chief, Management Controls Office, National Aeronautics and Space Administration.

[FR Doc. 94-20859 Filed 8-24-94; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; 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 Astronomical Sciences.

DATE AND TIME: September 15, 1994, 9:00 a.m.—5:00 p.m.

PLACE: National Science Foundation, 4201 Wilson Boulevard, room 365, Arlington, VA 22230.

TYPE OF MEETING: Closed.

CONTACT PERSON: Benjamin B. Snavely, Program Director, National Science

Foundation, 4201 Wilson Boulevard, room 1045, Arlington, VA 22230. Telephone: (703) 306-1820.

MINUTES: May be obtained from contact person listed above.

PURPOSE OF MEETING: To review scientific and technical content of proposals received in response to NSF Small Business Innovation Research (SBIR) Program Solicitation. Panel will prepare summary recommendations and rate individual proposals.

AGENDA: Review proposals and prepare summary recommendations.

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 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 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20959 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Chemical and Transport Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following 6 meetings.

NAME: Special Emphasis Panel in Chemical and Transport Systems (#1190).

Date	Time	Place
Aug. 29, 1994	8:30 a.m.—5 p.m.	Rm. 530
Aug. 31, 1994	8:30 a.m.—5 p.m.	Rm. 530
Aug. 31, 1994	8:30 a.m.—5 p.m.	Rm. 360
Sept. 9, 1994	8:30 a.m.—5 p.m.	Rm. 530
Sept. 12, 1994	8:30 a.m.—5 p.m.	Rm. 530
Sept. 23, 1994	8:30 a.m.—5 p.m.	Rm. 360

LOCATION: All conference rooms are located at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

TYPE OF MEETINGS: Closed.

CONTACT PERSONS: Dr. Robert L. Powell, Dr. M.C. Roco, Dr. Farley Fisher, Dr. Maria Burka, Dr. Robert Welleck, Dr. Milton Linevsky, and Dr. Syed Qutubuddin, Program Directors, Division of Chemical and Transport Systems, room 525, (703) 306-1371, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

PURPOSE OF MEETING: To provide advice and recommendations concerning

proposals submitted to NSF for financial support.

AGENDA: To review and evaluate proposals for the Small Business Innovation Research Program (SBIR) 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.

REASON FOR LATE NOTICE: Short time-frame in receiving proposals and need to have reviewed by a specific date.

Dated: August 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20957 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Civil and Mechanical Systems; 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 and Mechanical Systems.

DATE AND TIME: September 15, 1994, 8:30 a.m. to 5:00 p.m.

PLACE: NSF, room 530, 4201 Wilson Boulevard, Arlington, VA 22230.

CONTACT: Drs. Ken Chong, Eleonora Sabadell, Mahendra Singh or Shih-Chi Liu, Program Directors, 703-306-1361.

TYPE OF MEETING: Closed.

PURPOSE OF MEETING: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial 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. 552b (c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20957 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Civil and Mechanical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

DATE AND TIME: September 14, 1994; 8:30 a.m. to 5:00 p.m.

PLACE: NSF, rm. 530, 4201 Wilson Blv., Arlington, VA.

CONTACT: Dr. Oscar W. Dillon / Dr. William A. Spitzig, Program Directors, room 545, NSF.

TYPE OF MEETING: Closed.

PURPOSE OF MEETING: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

AGENDA: To review and evaluate 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 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20960 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

Division of Computer and Computation Research Special Emphasis Panel; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92-463), as amended, the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of proprietary or

confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

NAME: Special Emphasis Panel in Division of Computer and Computation Research.

DATE: September 13, 1994.

TIME: 8:30 a.m.-5:00 p.m.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

TYPE OF MEETING: Closed.

AGENDA: Review and Evaluate Small Business Innovation Research Proposals.

CONTACT: Dr. Gerald L. Engel, Program Director, Special Projects, Computer and Computation Research National Science Foundation, room 1145, Arlington, VA 2230, (703) 306-1910.

Dated: August 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20965 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture and Industrial Innovation; Meetings

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

NAME: Special Emphasis Panel in Design, Manufacture and Industrial Innovation.

DATE AND TIME: September 12-13, 1994 8:30 a.m. to 5:00 p.m.

PLACE: 4201 Wilson Blvd., room 370, Arlington, VA 22230.

TYPE OF MEETING: Closed.

CONTACT PERSON: Ritchie Coryell, SBIR Program Director, Design, Manufacture and Industrial Innovation, National Science Foundation, 4201 Wilson Blvd., room 590, Arlington, VA 22230, (703) 306-1391.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: To review and evaluate SBIR Phase I proposals under the SBIR Program Solicitation (NSF 94-45).

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 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20958 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture and Industrial Innovation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announced the following meeting.

NAME AND COMMITTEE CODE: Special Emphasis Panel in Design, Manufacture and Industrial Innovation.

DATE AND TIME: September 13, 1994/8:30 a.m. to 4:00 p.m.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, room 360 and 360-2.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. F. Stan Settles, Program Director for Design and Integration Engineering and Dr. Pius J. Egbelu, Program Director for Operations Research and Production Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1330.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: To review and evaluate 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 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20961 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture and Industrial Innovation; 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 Design, Manufacture and Industrial Innovation.

DATE AND TIME: September 16, 1994-8:30 a.m. to 5:00 p.m.

PLACE: Rooms 340 and 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Warren De Vries, and Dr. Kesh Narayanan, Program Directors for Manufacturing Machines and Equipment, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, phone/(703)-306-1328.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

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 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20966 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92-463, as amended), the National Science Foundation announces the following meeting.

NAME: Earth Sciences Proposal Review Panel (1569).

DATE: September 14, 15 and 16, 1994.

TIME: 8:00 a.m. to 6:00 p.m. each day.

PLACE: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Alan M. Gaines, Section Head, Division of Earth Sciences, room 785, National Science Foundation, Arlington, VA, (703) 306-1553.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: To review and evaluate earth sciences 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 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20963 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Engineering, Committee of Visitors; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following two meetings.

NAME AND COMMITTEE CODE: Advisory Committee for Engineering, Committee of Visitors (#1170).

DATE AND TIME: September 12 and 13, 1994, 8:30 a.m. to 5:00 p.m.

PLACE: Rooms 340 and 470, 4201 Wilson Boulevard, Arlington, VA.

TYPE OF MEETINGS: Closed.

CONTACT PERSONS: Drs. M.C. Roco and Robert L. Powell and Drs. Maria Burka and Farley Fisher, Program Directors, Division of Chemical and Transport Systems, room 525, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1371.

PURPOSE OF MEETINGS: 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 Fluid, Particulate, and Hydraulic Systems Program and the Chemical Reaction Processes Program.

REASON FOR CLOSING: The meetings are 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 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20968 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Polar Programs; 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 Polar Programs.

DATE AND TIME: September 15 and 16, 1994; 8:30 a.m.-5 p.m.

PLACE: National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, room 360.

TYPE OF MEETING: Closed.

CONTACT PERSON: Julie Palais, Glaciology Program Manager, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230. Telephone: (703) 306-1033.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: To review and evaluate research proposals on Antarctic Research.

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 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20964 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Office of Systemic Reform; 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 CODE: Special Emphasis Panel in Office of Systemic Reform.

DATE AND TIME: September 18-22, 1994. 8 a.m.-9 p.m.

PLACE: NSF, 3rd floor, 4201 Wilson Boulevard, Arlington, VA.

TYPE OF MEETING: Closed.

CONTACT PERSON: Madeleine Long, Paula Duckett, or Daniel Burke, Program Directors, Urban Systemic Initiatives, room 875, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1684.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: To review and evaluate proposals for the Urban Systemic Initiatives Program 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)(3), (4) and (6) of the Government in the Sunshine Act.

Dated: August 22, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-20962 Filed 8-24-94; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-454, STN 50-455, STN 50-456, STN 50-457]

Commonwealth Edison Company; Correction to Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

On August 15, 1994, the Federal Register published an Individual Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing. On page 41804, under Commonwealth Edison Company, Docket Nos. STN 50-454, STN 50-455, STN 50-456, and STN 50-457, first column, last paragraph, the application date of March 11, 1994, should have read March 23, 1994, as supplemented on July 26, 1994.

Dated at Rockville, Maryland, this 18th day of August 1994.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Project Directorate III-2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94-20925 Filed 8-24-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Company; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Power Company (the licensee) to withdraw its May 13, 1993, application for proposed amendments to Facility Operating License Nos. NPF-9 and NPF-17 for the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would have reduced the maximum allowable power range neutron flux high setpoints with inoperable steam line safety valves during four-loop operation.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on August 4, 1993 (58 FR 41504). However, by letter dated August 1, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 13, 1993, and the licensee's letter dated August 1, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 18th day of August, 1994.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Acting Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-20926 Filed 8-24-94; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34549; File No. SR-Amex-93-46]

Self-Regulatory Organizations; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 6 to a Proposed Rule Change by the American Stock Exchange, Inc., Relating to Equity Linked Term Notes

August 18, 1994.

On December 29, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to Equity Linked Term Notes ("ELNs"). Notice of the proposal and Amendment No. 1³ appeared in the Federal Register on January 26, 1994.⁴ No comment letters were received on the proposed rule change. The Exchange filed Amendment No. 2 to the proposed rule change on January 31, 1994, Amendment No. 3 on March 9, 1994, Amendment No. 4 on April 28, 1994, Amendment No. 5 on June 27, 1994, and Amendment No. 6 on July 18, 1994.⁵ This order approved the Exchange's proposal, as amended.

The Amex proposes to amend Section 107B of the Guide with respect to the listing criteria for ELNs.⁶ ELNs are intermediate term (two to seven years), non-convertible, hybrid securities, the value of which is linked to the performance of a highly capitalized,

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1993).

³ The amended rule language contained in Amendment No. 1 to the proposal was subsequently withdrawn by the Amex. See Amendment No. 6, *infra* note 5.

⁴ See Securities Exchange Act Release No. 33483 (January 14, 1994), 59 FR 3745 (January 26, 1994).

⁵ Amendment No. 6 withdraws and supersedes the rule language originally proposed for section 107B of the Amex Company Guide ("Guide"), as subsequently amended by Amendment Nos. 1 through 5. The changes proposed in Amendment No. 6 are fully described herein. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office, Division, Commission, dated July 18, 1994 ("Amendment No. 6").

⁶ The Commission approved the listing and trading of ELNs on May 20, 1993. See Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 ("Exchange Act Release No. 32343"). The Commission subsequently approved an amendment to the listing standards for ELNs to provide for alternative capitalization and trading volume requirements for the underlying security. See Securities Exchange Act Release No. 33328 (December 13, 1993), 58 FR 66041 (December 17, 1993).

actively traded common stock. ELNs may provide for periodic interest payments to holders based on fixed or floating rates, or they may be structured as "zero coupon" instruments with no payments to holders prior to maturity.⁷ ELNs may be subject to a "cap" on the maximum principal amount to be repaid to holders upon maturity, and they may feature a "floor" on the minimum principal amount paid to holders upon maturity.

In addition to the general listing criteria contained in Section 107A of the Guide,⁸ ELNs must also conform to the special listing criteria of Section 107B of the Guide which provide that: (1) Each issuer must have a tangible net worth of at least \$150 million; (2) the total original issue price of the particular issue of ELNs combined with all of the issuer's other ELNs listed on a national securities exchange or traded through the National Association of Securities Dealers, Inc. Automated Quotation system ("NASDAQ") may not be greater than 25% of the issuer's tangible net worth at the time of issuance; (3) each underlying linked stock must have either (i) a market capitalization of at least \$3 billion and a trading volume in the 12-month period preceding listing (in all markets in which the underlying security is traded) of at least 2.5 million shares, or (ii) a market capitalization of at least \$1.5 billion and a trading volume in the 12-month period preceding listing (in all markets in which the underlying security is traded) of at least 20 million shares; (4) the issuer of the underlying linked stock must be a U.S. reporting company under the Act; (5) the issuance of ELNs relating to an underlying linked stock may not exceed 5% of the total outstanding shares of such stock; (6) the linked security must either be listed on

a national securities exchange or traded through NASDAQ; and (7) the linked security must be subject to last sale reporting.

The Exchange is now proposing to amend Section 107B in order to provide for the listing and trading of ELNs linked to a security, including a sponsored ADR,⁹ that is traded in the U.S. markets and is issued by a non-U.S. company¹⁰ that is subject to reporting requirements under the Act. Except for the requirement that the issuer of the underlying linked security must be a U.S. company, the listing requirements for ELNs linked to a security issued by a non-U.S. company will be the same as those set forth above with the following enhancements:¹¹ (1) Section 107B of the Guide is being amended to clarify that the trading volume requirement refers to U.S. trading volume;¹² (2) the term of such ELNs shall be limited to between two and three years; (3) either (i) the Exchange must have in place a comprehensive market information sharing agreement¹³ with the primary exchange on which the underlying security is primarily traded (in the case of ADRs, with the primary exchange where the security underlying the ADR is traded), or (ii) at least 50% of the market for the underlying security and all related securities¹⁴ for the six

months prior to issuance must occur in the U.S. market;¹⁵ (4) if linked to an ADR, the ADR must be sponsored; (5) there must be a minimum of 2,000 holders of the linked security; (6) the ELNs issuance may not exceed (i) 2% of the total shares of the underlying security outstanding provided at least 30% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, (ii) 3% of the total shares of the underlying security outstanding provided at least 50% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, or (iii) 5% of the total shares of the underlying security outstanding provided at least 70% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market; and (7) no ELN may be listed if the U.S. market for the underlying security accounted for less than 30% of the worldwide trading volume for the security and related securities during the prior six months.

The proposal defines the U.S. market¹⁶ as the U.S. self-regulatory organizations that are members of the Intermarket Surveillance Group ("ISG")¹⁷ and whose markets are linked together by the Intermarket Trading System ("ITS").¹⁸

⁹ Amendment No. 6, *supra* note 5. As opposed to an unsponsored ADR, a sponsored ADR is established jointly by the issuer of the underlying security and a depository. With a sponsored ADR, the depository is generally required to distribute notices of shareholder meetings and voting instructions to ADR holders, thereby ensuring the ADR holders will be able to exercise voting rights through the depository with respect to the underlying securities.

¹⁰ The exchange defines a non-U.S. company as any company formed or incorporated outside of the United States. Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, on July 19, 1994. See also, 17 CFR 240.3b-4(b) (1985) (definition of foreign issuer under the Act).

¹¹ See Amendment No. 6, *supra* note 5.

¹² See *infra* notes 16-18 and accompanying text. This will also apply to ELNs linked to securities issued by U.S. companies.

¹³ See Amendment No. 6, *supra* note 5; and Letter form Benjamin Krause, Senior Vice President, Capital Markets Group, Amex, to Sharon Lawson, Assistant director, Office, Division, Commission, dated March 8, 1994 ("March 8 Letter"). A comprehensive market information sharing agreement would provide for the exchange of market trading activity, clearing activity, and the identity of the ultimate purchaser or seller of the securities traded. See, e.g., Securities Exchange Act Release No. 33555 (January 31, 1994), 59 FR 5619 (February 7, 1994) (order approving File No. SR-Amex-93-28) ("ADR Approval Order").

¹⁴ Such related securities include all classes of common stock issued by the foreign issuer and ADRs that overlie any of these classes of common stock. See March 8 Letter, *supra* note 13.

¹⁵ The trading volume for any linked security trading on an exchange that is not part of the U.S. market will be included in the determination of world-wide trading volume, but not in the determination of U.S. market trading volume. The Exchange represents that it shall use its best efforts to discover all markets (foreign and U.S.) on which the underlying security and all related securities trade. *Id.*

¹⁶ *Id.*

¹⁷ ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG, (and accordingly, of the U.S. market) are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

¹⁸ ITS is a communications system designed to facilitate trading among competing markets by

⁷ The Exchange has agreed to notify the Commission if an issuer of ELNs intends to provide for periodic interest payments to holders based on a floating interest rate. See Exchange Act Release No. 32343, *supra* note 6, at note 6. The Commission, at that time, may require the Amex to submit a rule filing pursuant to Section 19(b) of the Act prior to permitting the Exchange to list an ELN with such terms.

⁸ Under Section 107A of the Guide, an issue of ELNs must have: (1) A minimum public distribution of one million trading units and a minimum of 400 unit holders; (2) an aggregate market value of at least \$20 million; (3) where cash settled, the settlement must be in U.S. dollars; and (4) where redeemable, a redemption price of at least three dollars. In addition, Section 107A provides that issuers of hybrid securities must have assets of at least \$100 million, stockholders' equity of at least \$10 million, and pre-tax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years. Issues not meeting these financial criteria must have assets in excess of \$200 million and stockholders' equity in excess of \$10 million, or alternatively, assets in excess of \$100 million and stockholders' equity of at least \$20 million.

The Exchange believes that the proposed rule change will benefit investors by expanding the number of securities that may be linked to ELNs, thereby providing investors with enhanced investment flexibility. The Exchange further believes that it is appropriate to now include within the existing regulatory framework for ELNs, securities that are traded in the U.S. and that are issued by non-U.S. companies subject to reporting requirements under the Act because of the significant level of U.S. investor interest in both U.S. and non-U.S. highly capitalized and actively traded reporting companies. Because an ELN and the underlying security traded in the U.S. to which it will be linked will continue to be subject to the criteria presently contained in Sections 107A and 107B of the Guide, as enhanced herein, and the Exchange will have in place either a comprehensive market information sharing agreement with the primary exchange where the underlying security trades (in the case of an ADR, with the primary exchange in the country where the security underlying the ADR primarily trades) or the linked security will meet the proposed trading volume criteria where no such agreement exists, the Exchange believes that it will have the ability to inquire into potential trading problems or irregularities with respect to any particular ELN and the underlying security to which it is linked.

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)¹⁹ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Specifically, in the Commission's order originally approving the listing and trading of ELNs, the Commission stated it would be willing to reexamine the issue of allowing ELNs linked to ADRs if such

providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiply trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price.

¹⁹ 15 U.S.C. 78f(b)(5) (1988).

a decision were justified by the subsequent trading experience of ELNs and if sufficient safeguards were put into place to ensure the pricing integrity of both the ELN and the underlying ADR.²⁰ The Commission is satisfied that these preconditions have been satisfied. As of July 1, 1994, the Amex had 11 series of ELNs listed for trading. The Exchange represents that no problems have arisen and no complaints have been received by the Exchange with respect to the trading of these series of ELNs.²¹ Accordingly, the trading history of ELNs overlying common stock issued by U.S. companies has not raised any regulatory concerns that would cause the Commission to be concerned about expanding the listing of ELNs to include ELNs linked to securities (including sponsored ADRs) that are traded in the U.S. on a national securities exchange or through NASDAQ and that are issued by non-U.S. companies subject to reporting requirements under the Act.

The Commission also believes that sufficient safeguards will be in place to ensure the pricing integrity of both the ELN and the underlying security. First, each of the requirements currently in place for the listing of ELNs (*i.e.*, market capitalization, trading volume, maximum size of issuance, and U.S. last sale reporting), as enhanced herein, will apply where the linked security is a security that is traded in the U.S. and is issued by a non-U.S. company. In addition, the only such securities that can be linked to ELNs are those for which either a comprehensive market information sharing agreement is in place with the primary market for the security underlying the ELN (in the case of an ADR, with the primary exchange in the country where the security underlying the ADR primarily trades) or where at least 50% of the worldwide trading volume in the underlying security and other related securities for the six months prior to issuance occurs in the U.S. market.²² These standards are more stringent than those the Commission recently found to be adequate with respect to the listing and trading of options on ADRs where no comprehensive surveillance sharing agreement exists between the Exchange

²⁰ See Exchange Act Release No. 32343, *supra* note 6, at note 13.

²¹ Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, on July 19, 1994.

²² In no event may an ELN be linked to a security issued by a non-U.S. company where less than 30% of the worldwide trading volume in the security and all related securities occurs in the U.S. market. See Amendment No. 6, *supra* note 5.

and the primary market in the country where the security underlying the ADR is primarily traded.²³ As the Commission stated in the ADR Approval Order, the existence of a comprehensive surveillance sharing agreement serves as a deterrent to manipulation and thus protects the integrity of the marketplace.²⁴ Additionally, the Commission stated that where the U.S. market is the primary market for the trading of an ADR, the U.S. market is the relevant pricing market for that ADR.²⁵ In those cases, the Commission stated that a comprehensive surveillance sharing agreement exists because the self-regulatory organizations which make up the U.S. market are members of ISG, through which the Exchange can investigate any potential manipulations.²⁶ As a result, by applying these same standards to ELNs linked to securities that are traded in the U.S. market and are issued by non-U.S. companies subject to U.S. reporting requirements, the Commission believes the Exchange will be able to detect and deter potential manipulations involving ELNs and the linked securities.

Moreover, the Commission believes that the proposed method described above for determining whether the six-month trading volume²⁷ of the underlying security and all related securities in the U.S. market is at least 50% of the worldwide trading volume of such securities is adequate to ensure that the U.S. market is and continues to be the price discovery market for the security underlying an ELN. The Commission notes that these procedures are substantively the same as those the Commission approved in the ADR Approval Order.²⁸ Furthermore, limiting the term of ELNs linked to

²³ The standards being approved here are more stringent in two respects. First, whereas options may be listed on both sponsored and unsponsored ADRs satisfying the approved requirements, ELNs may only be linked to sponsored ADRs. Secondly, in determining whether the U.S. market accounts for at least 50% of the market for the linked security and all related securities the Exchange must use the trading volume for the prior six months with respect to ELNs, but for only the prior three months for options on ADRs. See ADR Approval Order, *supra* note 13.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Amendment No. 6, *supra* note 7; and March 8 Letter, *supra* note 13.

²⁸ See ADR Approval Order, *supra* note 13. The ELN requirements, however, do not have a U.S. volume maintenance standard similar to that required for options on ADRs. Because a particular series of ELNs is issued at one time for a set term it would be difficult to apply such a standard. The Commission, however, believes that the other requirements discussed above will help ensure that the U.S. is the relevant market for the ELNs.

securities issued by non-U.S. companies to no more than three years will increase the likelihood that the U.S. market will remain the primary price discovery market for the underlying linked security during the term of the ELNs.

Finally, the Exchange will require for ELNs linked to securities issued by non-U.S. companies that there be at least 2,000 holders of the underlying security and that the size of such ELN issuances will be limited to (i) 2% of the total shares of the underlying security outstanding provided at least 30% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, (ii) 3% of the total shares of the underlying security outstanding provided at least 50% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, or (iii) 5% of the total shares of the underlying security outstanding provided at least 70% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market. The Commission believes that these restrictions will minimize the possibility that trading in an ELNs issuance will adversely impact the market for the security to which it is linked.²⁹

In summary, the Commission believes that the proposal is consistent with the Act because: (1) There is nothing in the trading history of ELNs which raises any regulatory concerns with respect to expanding the ELNs listing standards to include ELNs linked to securities (including sponsored ADRs) that are traded in the U.S. on a national securities exchange or through NASDAQ and that are issued by non-U.S. companies subject to U.S. reporting requirements; (2) the proposed rule change adequately safeguards the pricing integrity of both the ELN and the underlying security and ensures that there is sufficient surveillance to detect as well as deter manipulation; and (3) the existing regulatory structure and issuer requirements for ELNs, as enhanced herein, will be applied and will ensure that ELNs will continue to be linked to highly capitalized companies.

The Commission finds good cause for approving Amendment No. 6 to the proposed rule change prior to the thirtieth day after the date of

publication of notice of filing thereof in the *Federal Register* in order to allow the Exchange to list without delay ELNs linked to securities (including sponsored ADRs) that are traded in the U.S. securities markets and that are issued by non-U.S. companies subject to U.S. reporting requirements and that satisfy the proposed listing guidelines. Amendment No. 6 provides that ELNs may be linked to equity³⁰ securities issued by non-U.S. companies and traded in the U.S. as ADRs, ordinary shares, or otherwise, and significantly enhances the existing listing criteria in Sections 107A and 107B of the Guide for ELNs linked to securities issued by U.S. companies.

The Commission believes that broadening the universe of securities that can be linked to ELNs beyond ADRs, as originally proposed, to also include securities traded in the U.S. as ordinary shares or otherwise that are issued by non-U.S. companies subject to U.S. reporting requirements, does not raise any regulatory issues that the Exchange has not adequately addressed with respect to ELNs linked to ADRs. Furthermore, the Commission believes that the enhanced listing criteria proposed in Amendment No. 6 which will apply to ELNs linked to any security issued by a non-U.S. company, combined with the numerical listing standards currently contained in Sections 107A and 107B of the Guide, ensure that the Amex has the ability to detect and deter manipulation with respect to both the ELN and the underlying security. Finally, the Commission believes that Amendment No. 6 conforms the proposed rule change to the procedures approved by the Commission for the listing of options on ADRs.³¹ As stated in the ADR Approval Order, the Commission continues to believe that these standards will ensure that the U.S. market is the relevant pricing market for the ELN and the underlying security where there is no comprehensive market information sharing agreement with the primary market for such security (for ADRs, the primary exchange in the country where the security underlying the ADR primarily trades).³² Accordingly, the Commission believes that good cause exists for approving Amendment No. 6 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 6. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File Number SR-Amex-93-46 and should be submitted by September 15, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³³ that the proposed rule change (SR-Amex-93-46), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁴

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 94-20895 Filed 8-24-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34550; File No. SP-NSCC-94-13]

**Self Regulatory Organizations;
National Securities Clearing
Corporation; Notice of Filing of
Proposed Rule Change Modifying the
Automated Customer Account
Transfer Service**

August 18, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 20, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the

²⁹ Additionally, the Exchange has agreed to consult with the Commission prior to issuing an ELN overlying an Amex-traded security. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Wallnskas, Branch Chief, Office, Division, Commission, dated August 18, 1994.

³⁰ Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Attorney, Office, Division, Commission, on dated July 19, 1994.

³¹ See ADR Approval Order, *supra* note 13.

³² *Id.*

³³ 15 U.S.C. 78e(b)(2) (1988).

³⁴ 17 CFR 200.30-3(a)(12) (1993).

¹ 15 U.S.C. 78e(b)(1) (1988).

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change consists of modifications to NSCC's rules and procedures relating to the Automated Customer Account Transfer Service ("ACATS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC 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 proposed rule change will modify NSCC's ACATS to accelerate the time in which accounts are transferred. The proposed rule change is made in conjunction with the New York Stock Exchange's ("NYSE") recently filed proposed rule change to amend NYSE Rule 412 relating to transfers of customer accounts.²

Under NSCC's proposed rule change, NSCC Rule 50, Section 9, will be amended to allow a receiving member one business day after receipt from NSCC of the customer account asset data report to determine whether to accept, to reject, or to request adjustments to the account. Currently, receiving members have two business days to respond after receiving the customer account asset data report. Where Mutual Fund Services eligible book share mutual fund assets are to be transferred, a receiving member again will have one business day instead of two business days after receipt of the customer account asset data report to submit detailed transfer instructions to NSCC. Each business day that the delivering member causes an adjustment to be made to an account

will give the receiving member one additional business day to accept, reject, or request adjustments or in the case of mutual funds to submit transfer instructions. Currently, receiving members have two business days after an adjustment. Additionally, the proposed rule change will delete language that treats transfers of accounts containing option positions differently from transfers of accounts without option positions.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act because the changes will facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-94-13 and should be submitted by September 15, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-20894 Filed 8-24-94; 8:45 am]

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[Release No. 34-34545; File No. SR-NYSE-94-04]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Equity Linked Debt Securities

August 18, 1994.

On March 1, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to Equity Linked Debt Securities ("ELDS"). Notice and partial accelerated approval of the proposal appeared in the *Federal Register* on April 7, 1994.³ No comment letters were received on the proposed rule change. On July 15, 1994, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ This order approves the remainder of the Exchange's proposal, as amended.

¹ 17 CFR 200.30-3(a)(12) (1993).

² 15 U.S.C. 78s(b)(1) (1982).

³ 17 CFR 240.19b-4 (1993).

⁴ The Commission granted partial accelerated approval of that portion of the proposal providing for alternative minimum market capitalization and trading volume requirements for the security underlying an ELDS. See Securities Exchange Act Release No. 33841 (March 31, 1994), 59 FR 16671 (April 7, 1994) ("Exchange Act Release No. 33841").

The changes proposed in Amendment No. 1 are described herein. See Letter from Daniel Odell, Assistant Secretary, NYSE, to Sharon Lawson, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated July 14, 1994 ("Amendment No. 1").

² For a complete description of the NYSE proposed rule change, refer to Securities Exchange Act Release No. 34246 (June 22, 1994), 59 FR 33559 [File No. SR-NYSE-94-21] (notice of filing of a proposed rule change relating to NYSE's Customer Account Contract Rule and its related interpretations).

ELDS are intermediate-term (two to seven years), non-convertible, hybrid securities, the value of which is based, at least in part, on the value of another issuer's common stock or other equity security.⁵ ELDS may pay periodic interest or may be issued as zero-coupon instruments with no payments to holders prior to maturity.⁶ Furthermore, ELDS may be subject to a "cap" on the maximum principal amount to be repaid to holders upon maturity and, additionally, may feature a "floor" on the minimum principal amount to be repaid to holders upon maturity.

In addition to the Exchange's requirements with respect to a particular issuance of ELDS,⁷ ELDS must also conform to the special listing criteria set forth in Paragraph 703.21 of the Manual which provide that: (1) An issuer of ELDS must satisfy the Exchange's listing criteria;⁸ (2) each issuer must have a minimum tangible net worth of \$150 million; (3) the original issue price of the ELDS, combined with all of the issuer's other ELDS listed on a national securities exchange or otherwise publicly traded in the United States, may not be greater than 25% of the issuer's net worth at the time of issuance; (4) each underlying linked security must have either (i) a market capitalization of at least \$3.0 billion and a trading volume of at least 2.5 million shares in the one-year period preceding the listing of the ELDS, or (ii) a market capitalization of at least \$1.5 billion and a trading volume of at least 20 million shares in the one-year period preceding the listing of the ELDS;⁹ (5) the issuer of the underlying security

must be a U.S. reporting company under the Act; (6) the underlying security must be traded on a national securities exchange or traded through the facilities of a national securities association; (7) the underlying security must be subject to last sale reporting; and (8) except under limited circumstances, the issuance of ELDS relating to any underlying security may not exceed five percent of the total shares outstanding of such underlying security.¹⁰

The Exchange proposed two sets of changes to the ELDS listing standards. The first proposed change, which the Commission has already approved,¹¹ provides alternative market capitalization and trading volume criteria for the underlying security. Specifically, an underlying security may now have either: (1) A minimum market capitalization of at least \$3.0 billion and a trading volume of at least 2.5 million shares in the one-year period prior to the listing of the ELDS; or (2) a minimum market capitalization of \$1.5 billion and a trading volume of at least 20 million shares in the one-year period prior to the listing.

The second set of proposed changes would amend Paragraph 703.21 of the Manual to allow the issuer of the underlying security to be a non-U.S. company,¹² if certain criteria are met. Under the proposal, the issuer of the underlying security could be a non-U.S. company subject to reporting requirements under the Act, and whose securities are traded in the United States either as ordinary shares or as sponsored¹³ ADRs if one of the following conditions are met:

1. The Exchange has in place an effective surveillance sharing agreement¹⁴ with the primary market for the underlying security (in the case of an ADR, with the primary market in the country where the security underlying the ADR primarily trades) and at least 30% of the world-wide trading volume for the security and all related securities (as defined herein) occurs in the U.S. market;¹⁵

2. The United States is the primary market for the underlying security (determined in the manner discussed below).

In determining whether the U.S. is the primary market for the underlying security, the combined trading volume of the security (and in the case of ADRs, other classes of stock and ADRs related to the underlying security ("related securities")) in the United States for the six-month period preceding the date of listing¹⁶ must account for at least 50% of the combined worldwide trading in such securities. The U.S. trading in the security underlying the ELDS would include only those U.S. self-regulatory organizations included in the Intermarket Surveillance Group¹⁷ and linked through the Intermarket Trading System.¹⁸ Trading in the United States

⁵ The Commission approved the Exchange's ELDS listing standards on January 13, 1994. See Securities Exchange Act Release No. 33468 (January 13, 1994), 59 FR 3387 (January 21, 1994) ("Exchange Act Release No. 33468").

⁶ The Exchange has agreed to notify the Commission if an issuer of ELDS provides for periodic interest payments to holders based on a floating rate. *Id.* The Commission, at that time, may require the NYSE to submit a rule filing pursuant to Section 19(b) of the Act prior to permitting the Exchange to list an ELDS with such terms.

⁷ Under Section 703.21 of the Exchange's Listed Company Manual ("Manual"), an issue of ELDS must have: (1) A minimum public distribution of one million trading units and a minimum of 400 unit holders; (2) an aggregate market value of at least \$4 million; and (3) a term of 2-7 years.

⁸ If the issuer is an NYSE-listed company, the issuer must be a company in good standing (i.e., above the Exchange's continued listing criteria set forth in Section 802 of the Manual); if the issuer is an affiliate of an NYSE-listed company, the NYSE-listed company must be in good standing; and if otherwise, the issuer must satisfy the Exchange's initial listing criteria set forth in Sections 102.02-102.03 and 103.01-103.05 of the Manual. See Exchange Act Release No. 33468, *supra* note 5, at notes 10 and 11.

⁹ See Exchange Act Release No. 33841, *supra* note 3.

¹⁰ The only exceptions to this restriction are where either (1) the issuer of the ELDS and the issuer of the underlying security are affiliated; or (2) the issuer of the ELDS holds an amount of the underlying security at least equal to the amount of the underlying security represented by the ELDS. In either case, the maximum percentage of ELDS that may be issued will be evaluated by the Exchange on a case-by-case basis in consultation with, and with the approval of, the staff of the Commission. *Id.*

¹¹ See Exchange Act Release No. 22841, *supra* note 3.

¹² The Exchange defines a non-U.S. company as any company formed or incorporated outside of the United States. Telephone conversation between Vincent Patten, Assistant Vice President of New Products, NYSE, and Brad Ritter, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on July 19, 1994. See also, 17 CFR 240.3b-4(b) (1985) (definition of foreign issuer under the Act).

¹³ As opposed to an unsponsored ADR, a sponsored ADR is established jointly by the issuer of the underlying security and depository. With a sponsored ADR, the depository is generally required to distribute notices of shareholder meetings and voting instructions to ADR holders, thereby ensuring the ADR holders will be able to exercise voting rights through the depository with respect to the underlying securities.

¹⁴ An effective (i.e., comprehensive) surveillance sharing agreement would provide for the exchange of market trading activity, clearing activity, and the identity of the ultimate purchaser or seller of the securities traded. See, e.g., Securities Exchange Act Release No. 33552 (January 31, 1994), 59 FR 5626 (February 7, 1994) ("ADR Approval Order").

¹⁵ See Amendment No. 1, *supra* note 4.

¹⁶ *Id.*

¹⁷ ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG, (and accordingly, of the U.S. market) are: the American Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

¹⁸ ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to

in other market would be included in the world-wide trading volume for the security, but not the U.S. trading volume.

In addition to the listing requirements in Paragraph 703.21 of the Manual which are applicable to all ELDS, an ELDS issue linked to a security (including sponsored ADRs) that is traded in the U.S. and is issued by a non-U.S. company subject to U.S. reporting requirements must also satisfy the following criteria: (1) The term of the ELDS may not exceed three years; (2) the trading volume requirements in Paragraph 703.21(C) of the Manual shall be based on U.S. trading volume;¹⁹ (3) with respect to ADRs, an ELDS may only be linked to sponsored ADRs; (4) the Exchange shall use trading volume data for the six months prior to listing for purposes of determining U.S. Share Volume and Relative ADR volume (both as defined in the proposal); (5) there must be a minimum of 2,000 holders of the underlying security; (6) the ELDS issuance may not exceed (i) 2% of the total shares of the underlying security outstanding provided at least 30% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, (ii) 3% of the total shares of the underlying security outstanding provided at least 50% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, or (iii) 5% of the total shares of the underlying security outstanding provided at least 70% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market; and (7) an ELDS may not be listed if less than 30% of the worldwide trading volume in the underlying security (for ADRs, trading volume in the ADR and related securities) for the prior six months occurred in the U.S. market.²⁰

The Exchange believes that allowing ELDS to be issued based on the value of eligible securities (including sponsored ADRs) traded in the U.S. and issued by non-U.S. companies subject to U.S. reporting requirements, will provide significant benefits to investors and the

determine readily the best bid and offer available from any participant for multiply trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating market in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price.

¹⁹ See *supra* notes 16-18 and accompanying text. This will also apply to ELDS overlying U.S. securities.

²⁰ See Amendment No. 1, *supra* note 4.

capital markets by providing increased investment and corporate financing flexibility. The Exchange further believes that this flexibility will be achieved without compromising investor protection by ensuring that either the primary market for the linked security is in the United States or the Exchange has access to surveillance information from the primary exchange in the country where the security underlying the ELDS is primarily traded (in the case of an ADR, from the primary exchange in the country where the security underlying the ADR primarily trades).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of Section 6(b)(5)²¹ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Specifically, in the Commission's order originally approving the listing and trading of ELDS, the Commission stated it would reexamine the issue of allowing ELDS linked to ADRs if such a decision were justified by the subsequent trading experience of ELDS and if sufficient safeguards were put into place to ensure the pricing integrity of both the ELDS and the underlying ADR.²² The Commission is satisfied that these preconditions have been satisfied. As of July 1, 1994, the NYSE had two series of ELDS listed for trading. The Exchange represents that no problems have arisen and no complaints have been received by the Exchange with respect to the trading of these series of ELDS.²³ Accordingly, the trading history of ELDS to date has not raised any regulatory concerns that would cause the Commission to be concerned about expanding the listing of ELDS to include ELDS linked to securities (including sponsored ADRs) that are traded in the U.S. on a national securities exchange or through the facilities of a national securities association and are issued by non-U.S. companies subject to U.S. reporting requirements.

The Commission also believes that sufficient safeguards will be in place to ensure pricing integrity in both the ELDS and the underlying security. First,

²¹ 15 U.S.C. 78f(b)(5) (1988).

²² See Exchange Act Release No. 33468, *supra* note 5, at note 12.

²³ Telephone conversation between Vincent Patten, Assistant Vice President of New Products, NYSE, and Brad Ritter, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, on July 8, 1994.

each of the numerical requirements currently in place for the listing of ELDS (i.e., market capitalization, trading volume, and maximum size of issuance), as enhanced herein, will apply where the linked security is a security (including sponsored ADRs) that is traded in the U.S. and is issued by a non-U.S. company subject to U.S. reporting requirements. In addition, the only such securities that can be linked to ELDS are those for which either an effective surveillance sharing agreement²⁴ is in place with the primary market for the security underlying the ELDS (in the case of an ADR, with the primary exchange in the country where the security underlying the ADR primarily trades) or where at least 50% of the world-wide trading volume in the security and other related securities for the six months prior to issuance occurs in the U.S. market.²⁵ These standards for the underlying security are more stringent than those the Commission recently found to be adequate with respect to the listing and trading of options on ADRs where no effective surveillance sharing agreement exists between the Exchange and the primary market in the country where the security underlying the ADR is primarily traded.²⁶ As the Commission stated in the ADR Approval Order, the existence of an effective surveillance sharing agreement serves as a deterrent to manipulation and thus protects the integrity of the marketplace.²⁷ Additionally, the Commission stated that where the U.S. ADR market is the primary market for the trading of an ADR, the U.S. market is the relevant pricing market for that ADR.²⁸ In those cases, the Commission stated that an effective surveillance sharing agreement exists because the self-regulatory organizations which make up the U.S. market are members of ISG, through which the Exchange can investigate any

²⁴ See *supra* note 14.

²⁵ In no event may an ELDS be linked to a security issued by a non-U.S. reporting company where less than 30% of the worldwide trading volume in the underlying security and all related securities occurs in the U.S. market. See Amendment No. 1, *supra* note 4.

²⁶ The standards being approved here are more stringent in two respects. First, whereas options may be listed on both sponsored and unsponsored ADRs satisfying the approved requirements, ELDS may only be linked to sponsored ADRs. Secondly, in determining whether the U.S. market accounts for at least 50% of the market for the linked security and all related securities the Exchange must use the trading volume for the prior six months with respect to ELDS, but for only the prior three months for options on ADRs. See, e.g., ADR Approval Order, *supra* note 14.

²⁷ *Id.*

²⁸ *Id.*

potential manipulations.²⁹ As a result, by applying these same standards to ELDS linked to securities (including sponsored ADRs) issued by non-U.S. companies, the Commission believes the Exchange will be able to detect and deter potential manipulations involving ELDS and such linked securities.

Moreover, the Commission believes that the proposed method described above for determining whether the six-month trading volume³⁰ of the security underlying the ELDS and all related securities in the U.S. market is at least 50% of the world-wide trading volume for such securities is adequate to ensure that the U.S. market is and continues to be the price discovery market for a security underlying an ELDS. The Commission notes that these procedures are substantively the same as those the Commission approved in the ADR Approval Order.³¹ Furthermore, limiting the term of ELDS linked to securities issued by non-U.S. companies to no more than three years will increase the likelihood that the U.S. market will remain the primary price discovery market for the security during the term of the ELDS.

Finally, the Exchange will require that there be at least 2,000 holders of the underlying security and will limit ELDS linked to these securities to (i) 2% of the total shares of the underlying security outstanding provided at least 30% of the worldwide trading value for the security for the six-months prior to listing occurred in the U.S. market, (ii) 3% of the total shares of the underlying security outstanding provided at least 50% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, or (iii) 5% of the total shares of the underlying security outstanding provided at least 70% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market. The Commission believes that will minimize the possibility that trading in an ELDS issuance will adversely impact the market for the underlying security to which it is linked.

In summary, the Commission believes that the proposal is consistent with the Act because (1) there is nothing in the trading history of ELDS which raises

any regulatory concerns with respect to expanding the ELDS listing standards to include ELDS linked to securities (including sponsored ADRs) that are traded in the U.S. either on an exchange or through the facilities of a national securities exchange and are issued by non-U.S. companies subject to U.S. reporting requirements; (2) the proposed rule change adequately safeguards the pricing integrity of both the ELDS and the underlying security and ensures that there is sufficient surveillance to detect as well as deter manipulation; and (3) the existing regulatory structure and issuer requirements for ELDS, as enhanced herein, will be applied and will ensure that ELDS will continue to be linked to highly capitalized companies.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register* in order to allow the Exchange to list without delay ELDS linked to securities (including sponsored ADRs) that are traded in the U.S. securities markets and are issued by non-U.S. companies subject to reporting requirements under the Act and that satisfy the proposed listing guidelines. Specifically, Amendment No. 1 significantly enhances the existing listing criteria contained in Paragraph 703.21 of the Manual for the listing of ELDS overlying securities issued by U.S. companies. The Commission believes that the enhanced listing criteria proposed in Amendment No. 1 which will apply to ELDS linked to any security (including sponsored ADRs) issued by a non-U.S. company, combined with the numerical listing standards currently contained in Paragraph 703.21 of the Manual, ensure that the NYSE has the ability to detect and deter manipulation with respect to both the ELDS and the underlying security. Furthermore, the Commission believes that Amendment No. 1 conforms the proposed rule change to the procedures approved by the Commission for the listing of options on ADRs.³² As stated in the ADR Approval Order, the Commission continues to believe that these standards will ensure that the U.S. market is the relevant pricing market for the ELDS and the underlying security where no comprehensive market information sharing agreement exists with the primary market for such underlying security (for ADRs, the primary exchange in the country where the security underlying the ADR is

primarily traded).³³ Finally, allowing the Commission to approve, on a case-by-case basis, an issue of ELDS related to more than the specified percentages of the outstanding shares of the underlying security merely expands the flexibility currently provided in the rules with respect to ELDS linked to securities issued by U.S. companies.³⁴ Because the Exchange must obtain Commission approval prior listing an ELDS linked to a security (including a sponsored ADR) issued by a non-U.S. company which exceeds those percentages, the Commission believes that this amendment does not raise any new regulatory concerns. Accordingly, the Commission believes that good cause exists for approving Amendment No. 1 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the Exchange's proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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 No. SR-NYSE-94-04 and should be submitted by September 15, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁵ that the portion of the proposed rule change (SR-NYSE-94-04), as amended, relating to the listing and trading of ELDS linked to either sponsored ADRs or securities issued by non-U.S. companies is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁶

²⁹ *Id.*

³⁰ See Amendment No. 1, *supra* note 4.

³¹ See ADR Approval Order, *supra* note 14. The ELDS requirements, however, do not have a U.S. volume maintenance standard similar to that required for options on ADRs. Because a particular series of ELDS is issued at one time for a set term it would be difficult to apply such a standard. The Commission, however, believes that the other requirements discussed above will help ensure that the U.S. is the relevant market for the ELDS.

³² *Id.*

³³ *Id.*

³⁴ See *supra* note 10.

³⁵ 15 U.S.C. 78s(b)(2) (1988).

³⁶ 17 CFR 200.30-3 (1993).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-20897 Filed 8-24-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34546; File No. SR-Phlx-94-02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of Options and Long-Term Options on the Phlx Semiconductor Index

August 18, 1994.

I. Introduction

On January 5, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to provide for the listing and trading of index options on the Phlx Semiconductor Index ("Semiconductor Index" or "Index"). The Exchange filed Amendment No. 1 to the proposed rule change on January 14, 1994,³ Amendment No. 2 on April 26, 1994,⁴ and Amendment No. 3 on May 20,

1994.⁵ Notice of the proposal, as amended, appeared in the **Federal Register** on July 12, 1994.⁶ This order approves the Exchange's proposal, as amended.

II. Description of Proposal

A. General

The Phlx proposes to list for trading options on the Phlx Semiconductor Index, a new securities index developed by the Phlx and based on U.S. stocks representing the semiconductor industry that are traded on the NYSE or the AMEX, or are NM securities traded through the facilities of NASDAQ. The Phlx also proposes to list LEAPS on the full-value Index ("Index LEAPS"). Semiconductor Index LEAPS will trade independent of and in addition to regular Semiconductor Index options traded on the Exchange; however, as discussed below, position and exercise limits of Index LEAPS and regular Index options will be aggregated. The Phlx will use a price-weighted methodology to calculate the value of the Index.⁷

B. Composition of the Index

The Index was designed by the Exchange and is presently composed of 16 highly capitalized and widely held common stocks of U.S. companies that are primarily involved in the design, manufacture, sale, and distribution of semiconductors used in computer and other electronic device manufacturing. Six of these securities currently trade through NASDAQ as NM securities, and ten trade on the NYSE. All component stocks are "reported securities," as that term is defined in Rule 11a3-1 of the Act.⁸ The Index is price-weighted and

will be calculated on a real-time basis using last sale prices.

As of the close of trading on July 21, 1994, the Index was valued at 237.19. As of July 8, 1994, the market capitalizations of the individual securities in the Index ranged from a high of \$25.0 billion to a low of \$317.8 million, with the mean being \$4.8 billion. The market capitalization of all the securities in the Index was \$76.8 billion. The total number of shares outstanding on that date for the stocks in the Index ranged from a high of 557.2 million shares to a low of 15.7 million shares. Also on that date, the price per share in the U.S. of the securities in the Index ranged from a high of \$83.88 to a low of \$14.50. In addition, the average daily trading volume in the U.S. of the stocks in the Index, for the six-month period from January 1, 1994, through June 30, 1994, ranged from a high of 2.7 million shares per day to a low of 107,000 shares per day. Lastly, no one component accounted for more than 15.79% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 51.01% of the Index's value. The percentage weighting of the lowest weighted component was 2.73% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 17.41% of the Index's value.

C. Maintenance

The Index will be maintained by the Phlx. The Phlx may change the composition of the Index at any time, subject to compliance with the maintenance criteria discussed herein, to reflect the conditions in the semiconductor industry. In accordance with Phlx rule 1009A, if it becomes necessary to replace a security in the Index, the Exchange represents that it will be replaced with a stock which the Exchange, in its discretion, believes would be compatible with the intended market character of the Index.⁹ In making replacement determinations, the Exchange will also take into account a security's capitalization, liquidity, volatility, and name recognition of the proposed replacement. Further, securities may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. If, however, the Exchange determines to increase the number of Index component securities to greater than 21 or reduce the number

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1992).

³ In Amendment No. 1, the Phlx proposes: (1) To correct the description of the formula for calculating the value of the Index; (2) to set the exercise prices at 5 point intervals instead of 2½ point intervals; (3) to provide that if the number of components in the Index increases to more than 21 components or decreases to less than 11 components, the Exchange shall submit a rule filing to the Commission pursuant to Section 19(b)(4) of the Act; (4) to require that the components of the Index will be required to be listed for trading on the New York Exchange ("NYSE") or the American Stock Exchange ("Amex") (non-ECM), or traded as National Market ("NM") securities through the facilities of the National Association of Securities Dealers, Inc. ("NASD") Automated Quotation system ("NASDAQ"); and (5) to list long-term options on the Index that expire 12 to 36 months from the date of issuance ("LEAPS"). See Letter from William Uchimoto, General Counsel, Phlx, to Richard Zack, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), SEC, dated January 14, 1994.

⁴ In Amendment No. 2, the Phlx proposes to: (1) Provide that the index will be updated during the trading day at least once every 15 seconds, rather than once every minute; (2) specify that the expiration cycle applicable to options of the index will be three expiration months from the March, June, September, December cycle plus two additional near-term months; (3) provide that additional exercise prices will be added pursuant to Rule 1101A rather than Rule 1012; and (4) clarify the Exchange's obligations with respect to delisting and replacing components of the components of the Index. See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Branch Chief, OMS, Division, SEC, dated April 26, 1994.

⁵ In Amendment No. 3 to the proposal, the Exchange provides that the Index will be maintained so that if any time, less than 90% of the component issues by weight are eligible for exchange options trading, the Exchange will submit a Rule 19b-4 filing to the Commission before opening any new series of options on the Index for trading. See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Attorney, OMS, Division, SEC, dated May 20, 1994.

⁶ See Securities Exchange Act Release No. 34307 (July 5, 1994), 59 FR 35549 (July 12, 1994).

⁷ See *infra* Section I.E, entitled "Calculation of the Index," for a description of this calculation method.

⁸ See 17 CFR 240.11a3-1. A "reported security" is defined in paragraph (a)(4) of this rule as "any listed equity security or NASDAQ security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan." A "transaction reporting plan" is defined in paragraph (a)(2) of this rule as "any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of, this section."

⁹ The Exchange represents that any future replacement or added component securities will be listed and traded on either the NYSE or the Amex, or quoted on and traded through NASDAQ as NM securities.

of index component securities to fewer than 11, the proposal provides that the Phlx will submit a rule filing with the Commission pursuant to Section 19(b) of the Act. In addition, in choosing replacement securities for the Index, the Phlx will be required to ensure that at least 90% of the weight of the Index continues to be made up of stocks that are eligible for standardized options trading.¹⁰

D. Applicability of Phlx Rules Regarding Index Options

Except as modified by this order, Phlx Rules 1000A through 1103A, in particular, and Phlx Rules 1000 through 1070, in general, will be applicable to Semiconductor Index options and Index LEAPS. Those rules address, among other things, the applicable position and exercise limits, policies regarding trading halts and suspensions, and margin treatment for narrow-based index options.

E. Calculation of the Index

The Phlx Semiconductor Index is a price-weighted index and reflects changes in the prices of the Index component securities relative to the Index's base date of December 1, 1993. Specifically, the Index value is calculated by adding the prices of the component stocks, dividing this summation by a divisor that is equal to the number of the components of the Index to get the average price, and multiplying the resulting number by 100. To maintain the continuity of the Index, the divisor will be adjusted to

¹⁰ The Phlx's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the preceding twelve months; and (4) the U.S. market price must have been at least \$7.50 for a majority of the business days during the preceding three calendar months. See Phlx Rule 1009, Commentary .01. With respect to ADRs, in addition to the above standards: (1) the Exchange must have in place of a comprehensive surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded; or (2) the trading volume for the three month period preceding the date of listing in the U.S. markets for ADRs overlying any class of the foreign issuer's common stock (on a share-equivalent basis) is at least 50% of the sum of the (i) combined world wide trading volume for all classes of the foreign issuer's common stock, and (ii) combined trading volume for all ADRs overlying any of these classes of stock; or (3) the SEC must otherwise authorize the listing. In addition, the percentage of the world-wide trading volume for the security underlying an ADR that occurs in the U.S. ADR market must meet a maintenance standard of 30% or more in order for options on that particular ADR to continue to be traded on the Phlx. See, e.g., Securities Exchange Act Release No. 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes that may result in divisor adjustments include, but are not limited to, stock splits and dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

The Index value will be updated dynamically at least once every 15 seconds during the trading day. The Phlx has retained Bridge Data, Inc. to compute the value of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority ("OPRA"). The Index value will also be available on broker/dealer interrogation devices to subscribers of the option information.

The Index value for purposes of settling outstanding regular Index options and Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component securities in their primary market on the last trading day prior to expiration. In the case of securities traded on and through NASDAQ, the first reported sale price will be used. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options and Index LEAPS contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, normally Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component security for purposes of determining the settlement value of the Index, the Phlx will wait until the end of the day on the last trading day before expiration.

F. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.¹¹ Standard options trading hours (9:30 a.m. to 4:10 p.m. Eastern Standard time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be \$5.00 for Index options with a duration of one year or less to expiration. In addition, pursuant to Phlx Rule 1012(a), there may be up to six expiration months outstanding at any given time. Specifically, there may be up to three

¹¹ A European-style option can be exercised only during a specified period before the option expires.

expiration months from the March, June, September, and December cycle plus up to three additional near-term months so that the two nearest term months will always be available. The Exchange also intends to list several Index LEAPS series that expire from 12 to 36 months from the date of issuance pursuant to Phlx Rule 1101A(b)(iii).

G. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is classified as an "industry index" under Phlx rules,¹² Exchange rules that are applicable to the trading of options on narrow-based indexes will apply to the trading of Semiconductor Index options and Index LEAPS. Specifically, Exchange rules governing margin requirements,¹³ position and exercise limits,¹⁴ and trading halt procedures¹⁵ that are applicable to the trading of narrow-based index options will apply to options traded on the Index. Positions in Index LEAPS will be aggregated with positions in regular Index options on a one-for-one basis for purposes of position and exercise limits.

H. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in Index options and Index LEAPS. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.¹⁶

¹² See Phlx Rule 1000A(11).

¹³ Pursuant to Phlx Rule 722, the margin requirements for the Index options will be: (1) for short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

¹⁴ Pursuant to Phlx Rules 1001A and 1002A, respectively, the position and exercise limits for the Index options will be 7,500 contracts, unless the Exchange determines, pursuant to those rules that a higher or lower limit is warranted.

¹⁵ Pursuant to Phlx Rule 1047A, the trading on the Phlx of Index options may be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index value are halted or suspended.

¹⁶ The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).¹⁷ Specifically, the Commission finds that the trading of Semiconductor Index options, including Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with securities representing the semiconductor industry.¹⁸

The trading of options of LEAPS on the Semiconductor Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, however, for the reasons discussed below, that the Phlx adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Semiconductor Index is a narrow-based index. The Index is composed of only sixteen securities, all of which represent the semiconductor industry. Accordingly, in light of the limited number of stocks in the Index and that the Index represents one industry sector, the Commission believes it is proper to classify the Semiconductor Index as narrow-based and apply Phlx's rules governing narrow-based index

members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD"); the NYSE; the Pacific Stock Exchange, Inc.; and the Phlx. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

¹⁷ 15 U.S.C. § 78f(b)(5) (1988).
¹⁸ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options and Index LEAPS will provide investors with a hedging vehicle that should reflect the overall movement of stocks representing the semiconductor industry.

options to trading in the Index options and Index LEAPS.¹⁹

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component securities significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the components that comprise the Index are actively traded, with an average daily trading volume for the period from January 1, 1994 through June 30, 1994, ranging from a high of 2.7 million shares per day to a low of 107,000 shares per day. Second, the market capitalizations of the securities in the Index are very large, ranging from a high of \$25.0 billion to a low of \$317.8 million as of July 8, 1994, with the mean being \$4.86 billion. Third, although the Index is only comprised of sixteen component securities, no one particular security or group of securities dominates the Index. Specifically, as of July 8, 1994, no one stock accounted for more than 15.79% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 51.01% of the Index's value. Fourth, at least 90% of the securities in the Index, by weight, must be eligible for standardized options trading. This proposed maintenance requirement will ensure that the Index is substantially comprised of options eligible securities. Fifth, if the Phlx increases the number of component securities to more than 21 or decreases that number to less than 11, the Phlx will be required to seek Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price or expiration month series of Semiconductor Index options or Index LEAPS. This will help protect against material changes in the composition and design of the Index that might adversely affect the Phlx's obligations to protect investors and to maintain fair and orderly markets in Semiconductor Index options and Index LEAPS. This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that the expense of attempting to manipulate the value of the Semiconductor Index in any significant way through trading in component stocks (or options on those stocks) coupled with, as discussed below, existing mechanisms to monitor trading activity in those securities, will help deter such illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect

¹⁹ See *supra* notes 12 through 15, and accompanying text.

public customers must be in place before the trading of sophisticated financial instruments, such as Semiconductor Index options and 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 Phlx, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Semiconductor Index options and LEAPS.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the exchange(s) trading to securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation.²⁰ In this regard, the Phlx, NYSE, Amex, and NASD are all members of the ISG, which provides for the exchange of all necessary surveillance information.²¹

²⁰ Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

²¹ See note 16, *supra*. If the composition of the Index should change so that greater than 10% of the weight of the Index would be represented by ADRs ineligible for standardized options trading in the U.S. either because the securities underlying the ADRs are not the subject of a comprehensive surveillance sharing agreement with the Phlx or because the U.S. market is not the primary market for the ADRs, then it would be difficult for the Commission to reach the conclusions reached in this order and the Commission would have to determine whether it would be suitable for the Exchange to continue to trade options on this Index. The Phlx should, accordingly, notify the Commission immediately if more than 10% of the numerical value of the Index is represented by ADRs not eligible for standardized options trading in the U.S. Such a change in the current relative weights of the Index or in the composition of the Index may warrant the submission of a rule filing pursuant to Section 19 of the Act. In determining whether a particular ADR is eligible for standardized options trading see, e.g., Securities

Continued

D. Market Impact

The Commission believes that the listing and trading of Semiconductor Index options and Index LEAPS on the Phlx will not adversely impact the underlying securities markets.²² First, as described above, for the most part, no one security or group of securities dominates the Index. Second, because (i) at least 90% of the numerical value of the Index must be accounted for by securities that meet the Exchange's options listing standards, (ii) each of the component securities must be traded on either the NYSE or the Amex, or as NM securities traded through NASDAQ, and (iii) the component securities must be subject to last sale reporting pursuant to Rule 11Aa3-1 of the Act,²³ the component securities generally will be actively-traded, highly-capitalized securities. Third, the 7,500 contract position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns.

Lastly, the Commission believes that settling expiring Semiconductor Index options and Index LEAPS based on the opening prices of component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.²⁴

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-Phlx-94-02), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-20896 Filed 8-24-94; 8:45 am]
BILLING CODE 8010-01-M

Exchange Act Release Nos. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992); and 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

²² In addition, the Phlx has represented that the Phlx and the OPRA have the necessary systems capacity to support those new series of options that would result from the introduction of Index options and Index LEAPS. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Thomas McManus, Attorney, OMS, Division, Commission, dated June 24, 1994; and Memorandum from Joe Corrigan, Executive Director, OPRA, to Richard Cangelosi, Assistant Vice President, New Product Development, Phlx, dated April 18, 1994.

²³ See *supra* note 8.

²⁴ See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

²⁵ 15 U.S.C. 78s(b)(2) (1988).

²⁶ 17 CFR 200.30-3(a)(12) (1993).

SMALL BUSINESS ADMINISTRATION**Honolulu District Advisory Council;
Public Meeting**

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public meeting at 9:30 a.m. on Thursday, September 15, 1994, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii 96850 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2314, Honolulu, Hawaii 96850, (808) 541-2965.

Dated: August 18, 1994.

Dorothy A. Overal,
Acting Assistant Administrator, Office of
Advisory Councils.
[FR Doc. 94-20904 Filed 8-24-94; 8:45 am]
BILLING CODE 8025-01-M

**Specialized Small Business Investment
Companies**

AGENCY: Small Business Administration.
ACTION: Notice.

SUMMARY: This Notice clarifies SBA's position on the permissible sources of funds for the repurchase of 3% preferred stock from the Agency by specialized small business investment companies. Under the narrow circumstances described in this Notice, the stock may be repurchased with "idle funds" of the company.

DATES: This Notice is effective on August 25, 1994.

FOR FURTHER INFORMATION CONTACT: Edward L. Cleveland, Special Assistant to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, S.W., Washington, DC 20416, (202) 205-7581.

SUPPLEMENTARY INFORMATION: On April 1, 1994, SBA published a Notice in the FEDERAL REGISTER setting forth the guidelines SBA would follow in its implementation of the 3% Preferred Stock Repurchase Program for Small Business Investment Companies licensed under section 301(d) of the Small Business Investment Act of 1958, as amended (SSBICs). See 59 FR 15491. SBA has determined that those guidelines require further clarification as they relate to the use of "idle funds" to finance a repurchase transaction.

SBA reiterates its position that the financing of a repurchase with cash already in an SSBIC is inconsistent with the policy of avoiding the transfer of cash flows from SSBICs into the Agency. Under certain unique circumstances, however, an SSBIC's idle funds may be a permissible temporary source of funds.

If an SSBIC (i) has retained earnings available for distribution which, when capitalized, would be insufficient to pay the full repurchase price, (ii) has no outstanding indebtedness to SBA or any other party, and (iii) holds unencumbered publicly traded and marketable securities with an unrealized gain (after deducting any allowances for prospective income taxes and other contingent liabilities such as incentive compensation) equal to at least 20 percent of the difference between the repurchase price and the capitalizable retained earnings, SBA will permit the SSBIC to use its idle funds in the financing of its repurchase transaction provided that, based on its most recent financials submitted with its application for repurchase, cash and idle funds remaining in the SSBIC after the repurchase would be more than the total loans and investments made by the SSBIC during the prior two fiscal years. SBA's permission would be conditioned upon the following:

(1) The SSBIC would be required to capitalize its retained earnings available for distribution. Idle funds would be used only to fund the difference between the repurchase price and the capitalizable retained earnings.

(2) The use of idle funds in the financing of a repurchase transaction would be a temporary measure only. Within two years of using idle funds in its repurchase transaction, the SSBIC must "replace" those funds by increasing its private capital through the sale of stock for cash to non-SBA sources or through a capitalization of retained earnings available for distribution.

(3) Until private capital is increased in the manner described in the preceding paragraph, the SSBIC must continue to hold unencumbered publicly traded and marketable securities with a value, after allowances, of not less than two times the amount of capital yet to be raised by the SSBIC. Failure to comply with this paragraph or the preceding paragraph could result in the transfer of the SSBIC to the Office of Liquidation.

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*; 15 U.S.C. 687(c); 15 U.S.C. 683; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 102-366.

Dated: August 18, 1994.

Erskine B. Bowles,
Administrator.

[FR Doc. 94-20903 Filed 8-24-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 2052]

Office of the Assistant Secretary for Economic and Business Affairs; Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

The Department of State has received an application from Chevron Pipe Line Company for a permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, to construct, connect, operate and maintain at the U.S.-Mexican border near El Paso, Texas, a pipeline carrying petroleum products. Chevron Pipe Line Company is a Delaware corporation with its principal office in San Francisco, California. The proposed new pipeline would extend 2.75 miles within the United States along an existing pipeline right of way.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Donald E. Grabenstetter, Office of International Energy Policy, Department of State, Washington, DC 20520 (202) 647-4557.

Dated: August 4, 1994.

Daniel K. Tarullo,
Assistant Secretary of State.

[FR Doc. 94-20947 Filed 8-24-94; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the

requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATES: August 18, 1994.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366-4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the *Federal Register*, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on: August 18, 1994.

DOT No: 3973.

OMB No: New.

Administration: U.S. Coast Guard.

Title: Survey of Organizations that issue Certificate of Class and/or International Convention Certificate to Determine Compliance with International Maritime Organization (IMO) Resolution A.739(18).

Need for Information: Senate Report (103-150) 1994 DOT Appropriation Bill required a program to eliminate substandard ships from U.S. waters.

Proposed Use of Information: Coast Guard will use this information to determine if an organization's technical, managerial and research capabilities are in conformity with Appendix 1 of IMO Resolution A.739(18).

Frequency: One time survey.

Burden Estimate: 52.5 hours.

Respondents: Organizations that issue certificates of class or international convention certificates.

Form(s): None.

Average Burden Hours Per Response: 45 min reporting.

DOT No: 3974.

OMB No: 2133-0013.

Administration: Maritime Administration.

Title: Monthly Report of Ocean Shipments Moving Under Export-Import Bank Financing.

Need for Information: Title 46 USC 1241-1 or Public Resolution 17, 73rd Congress (PR 17) require the Maritime Administration (MARAD) to monitor and enforce the U.S.-flag shipping requirements relative to the loans/guarantees extended by the Export-Import Bank (Eximbank) to foreign borrowers. PR 17 requires that all shipments financed by Eximbank and that move by sea, must be transported exclusively on U.S.-flag registered vessels unless a waiver is obtained from MARAD.

Proposed Use of Information: The information will be used to determine compliance or noncompliance of the U.S.-flag shipping requirements relative to the loan agreement.

Frequency: Monthly.

Burden Estimate: 192 hours.

Respondents: Export-Import Bank Loan recipients, i.e., contractors, freight forwarders, or suppliers.

Form(s): MA-518.

Average Burden Hours Per Response: 30 minutes.

DOT No: 3975.

OMB No: 2132-0555.

Administration: Federal Transit Administration.

Title: Americans with Disabilities Act (ADA) Requirements.

Need for Information: Title 49 CFR parts 27 and 37 acquisition of accessible vehicles by private and public entities; requirements for complementary paratransit service by public entities operating a fixed route system; and provision of nondiscriminatory accessible transportation service.

Proposed Use of Information: The information will be used to satisfy the civil rights compliance requirements for persons with disabilities.

Frequency: Annually.

Burden Estimate: 120,000.

Respondents: FTA recipients and other operators primarily engaged in transporting people.

Form(s): None.

Average Burden Hours Per Response: 120 hours.

DOT No: 3976.
OMB No: 2132-0544.
Administration: Federal Transit Administration.
Title: Pre-Award, Post-Delivery Audit Requirements under Buy America.
Need for Information: Title 49 CFR part 661 requires all bidders to certify compliance with the general or specific requirements of Buy America.
Proposed Use of Information: This information will be used to assure that the products purchased for transit projects comply with applicable statutory and regulatory requirements.
Frequency: Occasional, per order.
Burden Estimate: 1,729 hours.
Respondents: Grantees and bidders on FTA-funded projects.
Form(s): Pre-Award, OST-Delivery Buy America; in-plant inspection.
Average Burden Hours Per Response: 77 hours.

DOT No: 3977.
OMB No: 2115-0092.
Administration: U.S. Coast Guard.
Title: Barge Fleeting Facility Records.
Need for Information: Title 33 CFR 165.803(i) requires the person in charge of a barge fleeting facility to keep records of the twice daily inspections of the barge moorings and the movements of barges and hazardous cargo in and out of the facility.

Proposed Use of Information: The information will be used to ensure that inspections of barge moorings and movements are being conducted by the persons in charge of the barge fleeting facilities.

Frequency: Twice daily.
Burden Estimate: 19,801 hours.
Respondents: Owners or operators of barge fleeting facilities.
Form(s): None.
Average Burden Hours Per Response: 283 hours per recordkeeper.

DOT No: 3978.
OMB No: 2133-0514.
Administration: Maritime Administration.
Title: Determination of Fair and Reasonable Rates for the Carriage of Bulk Preference Cargoes.

Need for Information: Section 901(b)(1) of the Merchant Marine Act, 1936 as amended (46 U.S.C. 1241) requires that at least 75 percent of certain government sponsored cargoes be shipped on United States-flag vessels to the extent such vessels are available at fair and reasonable rates.

Proposed Use of Information: The information will be used to calculate fair and reasonable rates for United States flag-vessels engaged in the carriage of preference cargoes.
Frequency: Annually and on occasion.

Burden Estimate: 600 hours.
Respondents: Ship owners and ship operators.
Form(s): None.
Average Burden Hours Per Response: 4 hours.

DOT No: 3979.
OMB No: 2133-0036.
Administration: Maritime Administration.
Title: Relative Cost of Shipbuilding in the Various Coastal Districts of the United States.

Need for Information: Section 213 (C) of the Merchant Marine Act, 1936, as amended, requires that the Maritime Administration report to the Congress on the relative cost of construction or reconditioning of comparable ocean vessels in shipyards in the various coastal districts of the United States.

Proposed Use of Information: The information will be used to monitor current cost differentials between coastal shipyards.

Frequency: Annually.
Burden Estimate: 50 hours.
Respondents: Various shipyards in the U.S.A.
Form(s): MA-939.
Average Burden Hours Per Response: 5 hours.

DOT No: 3980.
OMB No: New.
Administration: National Highway Traffic Safety Administration.
Title: Voluntary Child Safety Seat Registration Form.

Need for Information: Part B of the National Traffic and Motor Vehicle Safety Act, 15 USC 1411-1414 provides that if either NHTSA or a manufacturer determines that motor vehicles or items of motor vehicle equipment contain a defect that relates to motor vehicle safety or fail to comply with an applicable Federal Motor Vehicle Safety standard.

Proposed Use of Information: This information will be used for manufacturers in the event of a safety recall.

Frequency: One time.
Burden Estimate: 266 hours.
Respondents: The number of people.
Form(s): The Voluntary Child Safety Seat Registration Form.
Average Burden Hours Per Response: 0.1 hours (6 minutes).

DOT No: 3981.
OMB No: 2133-0005.
Administration: Maritime Administration.
Title: Uniform Financial Reporting Requirements.

Need for Information: Section 21, Shipping Act, 1916, as amended (46 App. USC 820) and Section 801,

Merchant Marine Act, 1936, as amended (46 App. USC 1211) requires financial reports, including purchasers of ships from MARAD on credit, companies chartering ships from MARAD, and as required, of companies having Title XI guarantee obligations (46 CFR Part 298).

Proposed Use of Information: The information will be used in analyses and reviews by Maritime Administration accountants and examiners in order to determine compliance with legal and contractual requirements and to evaluate company, industry segment, and industry financial trends.

Frequency: Semi-annually, Annually.
Burden Estimate: 4,560 hours.
Respondents: Various business entities which choose to build ships or charter ships from Maritime Administration.

Form(s): MA-172.
Average Burden Hours Per Response: 12 hours.
DOT No: 3982.
OMB No: 2133-0501.
Administration: Maritime Administration.

Title: Records Retention Schedule.
Need for Information: Section 801, Merchant Marine Act, 1936 as amended (46 APP USC 1211) requires retention of operating differential subsidy or construction differential subsidy records.

Proposed Use of Information: The information will be used to audit pertinent records at the conclusion of a contract when the contractor was receiving financial assistance from the government.

Frequency: Quarterly, Semi-annually, Annually.
Burden Estimate: 3,914 hours.
Respondents: U.S. shipping companies.
Form(s): None.
Average Burden Hours Per Response: 78 hours.

DOT No: 3983.
OMB No: 2115-0505.
Administration: U.S. Coast Guard.
Title: Plan Approval for Various Vessels Certificated Under 46 CFR Subchapters D, H, I, I-A, J, R, and U.

Need for Information: Title 46 USC, 3301 and 3306, marine safety regulations, authorizes Coast Guard to review, inspect and approve plans of various vessels before being certified for their intended service.

Proposed Use of Information: The information will be used to ensure that each vessel's structural strength, propulsion and equipment, accommodation arrangement, vessel stability, cargo gear, structural fire

protection and vapor control systems are in compliance with marine safety regulations.

Frequency: On occasion.

Burden Estimate: 7,650 hours.

Respondents: Shipbuilders and owners.

Form(s): None.

Average Burden Hours Per Response: 30 minutes reporting.

DOT No: 3984.

OMB No: 2125-0501.

Administration: Federal Highway Administration.

Title: Structure Inventory and Appraisal Sheet.

Need for Information: Title 23 United States Code Sections 144 and 151 and Title 23 Code of Federal Regulations Part 650, Subpart C, requires the inspection of the condition, and reporting of the findings of all bridges on public roads and highways at intervals not to exceed 2 years.

Proposed Use of Information: The information will be used to identify and schedule unsafe bridges for replacement or rehabilitation.

Frequency: Annually.

Burden Estimate: 540,000 hours.

Respondents: State highway agencies.

Form(s): None.

Average Burden Hours Per Response: 2 hours reporting.

DOT No: 3985.

OMB No: 2120-0563.

Administration: Federal Aviation Administration.

Title: Part 161, Notice and Approval of Airport Noise and Access Restrictions.

Need for Information: The Airport Noise and Capacity Act of 1990, Public Law 101-508 mandates the formulation of a national noise policy. One part of that mandate is the development of a national program to review noise and access restrictions on the operation of Stage 2 and Stage 3 aircraft. Part 161 is the principal means implementing this part of the Act; it further details and clarifies the notice and approval requirements for airport noise and access restrictions set forth in the Act.

Proposed Use of Information: The information will be used to comprehend and evaluate the restriction and, in the case of restrictions on Stage 3 aircraft operations useful to the FAA in determining whether the restriction should be approved or disapproved in accordance with the conditions of approval defined in the Act.

Frequency: Occasionally.

Burden Estimate: 31,905 hours annually.

Respondents: Airport operators proposing voluntary agreements and/or

mandatory restrictions on Stage 2 and State 3 aircraft operations, and Aircraft operators that request re-evaluation of a restriction.

Form(s): None.

Average Burden Hours Per Response: 1772.5 hours per response for reporting burden.

DOT No: 3986.

OMB No: 2120-0033.

Administration: Federal Aviation Administration.

Title: Representatives of the Administrator, FAR 183.

Need for Information: Title 49 U.S.C. Section 44702 (formerly the FAA Act of 1958) states the Secretary of Transportation may delegate to any properly qualified private person, the examination and testing necessary for issuance of certificates. FAR Part 183 implements the provisions of that section by describing the requirements for delegating to private individuals the authority to examine and test persons for the purpose of issuing those persons airmen certificates. In addition to the regulatory basis, the purpose of this information collection is to make designated examiners readily available to the public, especially in those areas where FAA inspector resources are limited.

Proposed Use of Information: The information will be used to screen and select the designees who act as representatives of the Administrator in performing various certification and examination functions under the code.

Frequency: Once at initial request, and annually.

Burden Estimate: 5,693 hours annually.

Respondents: Those persons wishing to become designees.

Form(s): FAA Forms 8110-14, 8520-2, 8710-6, and proposed form 8710-X.

Average Burden Hours Per Response: Approximately 40 minutes on average per response for reporting burden.

Issued in Washington, DC, on August 18, 1994.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 94-20893 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

Advisory Circular 21-20A, Supplier Surveillance Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular 21-

20A, Supplier Surveillance Procedures. Advisory Circular 21-20A provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of Federal Aviation Regulations Part 21, Certification Procedures for Products and Parts, regarding Supplier Surveillance Procedures.

ADDRESSES: Copies of AC 21-20A can be obtained from the following: Department of Transportation, Utilization and Storage Section, M443.2, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on August 4, 1994.

Michael Gallagher,

Manager, Production and Airworthiness Certification Division.

[FR Doc. 94-20929 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program, Kalamazoo/Battle Creek International Airport, Kalamazoo, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the County of Kalamazoo, Michigan, 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. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On March 1, 1993, the FAA determined that the noise exposure maps submitted by the County of Kalamazoo under Part 150 were in compliance with applicable requirements. On May 17, 1994, the Assistant Administrator for Airports approved the Kalamazoo/Battle Creek International Airport noise compatibility program.

A total of sixteen (16) measures were included in the Kalamazoo County recommended program. Of the sixteen (16) measures, four (4) are listed as "Noise Abatement Plan Measures," nine (9) are listed as "Land Use Management Program Measures," and three (3) are listed as "Continuing Program Measures." The FAA has approved fifteen (15) of the sixteen (16) measures.

EFFECTIVE DATE: The effective date of the FAA's approval of the Kalamazoo/Battle Creek International Airport noise compatibility program is May 17, 1994.

FOR FURTHER INFORMATION CONTACT:

Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 313-487-7280. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Kalamazoo/Battle Creek International Airport, effective May 17, 1994.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

- a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;
- b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;
- c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and
- d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating

safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The County of Kalamazoo submitted to the FAA noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from June 20, 1989, through November 18, 1993. The Kalamazoo/Battle Creek International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on March 1, 1993. Notice of this determination was published in the **Federal Register** on March 15, 1993.

The Kalamazoo/Battle Creek International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of the study completion to the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on November 18, 1993, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be approval of such program.

The submitted program contained sixteen (16) proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive

requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective May 17, 1994.

Outright approval was granted for 15 of the 16 specific program elements. One proposed element to extend Runway 35 1,000 feet was disapproved pending submission of additional information regarding air traffic safety and efficiency.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on May 17, 1994. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to the FAA, are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591;
Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111;
Kalamazoo/Battle Creek International Airport, 5235 Portage Road, Kalamazoo, Michigan 49002.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Belleville, Michigan, August 3, 1994.

Dean C. Nitz,
Manager, Detroit Airports District Office,
Great Lakes Region.
[FR Doc. 94-20928 Filed 8-24-94; 8:45 am]
BILLING CODE 4910-13-M

Proposed Establishment of the St. Thomas, VI, Class C Airspace Area; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of Meeting.

SUMMARY: This notice announces a fact-finding informal airspace meeting to solicit information from airspace users and others concerning a proposal to establish Class C airspace for the Cyril E. King, St. Thomas, VI, Airport. The FAA is holding this meeting to provide interested persons an opportunity to discuss the proposal. All comments received during this meeting will be considered prior to any issuance of a notice of proposed rulemaking.
TIME AND DATES: The informal airspace meeting will be held from 7:00 p.m. to 9:00 p.m., on Thursday, October 27, 1994. Comments must be received on or before December 27, 1994.

PLACE: Cyril E. King, St. Thomas, Virgin Islands Airport, Airport Managers Conference Room, St. Thomas, VI 00803.

COMMENTS: Send or deliver comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

FOR FURTHER INFORMATION CONTACT: David Senechal, Manager, Airport Traffic Control Tower; P.O. Box 302120, St. Thomas, USVI 00803; telephone: (809) 774-1836.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by a representative of the Administrator, FAA Southern Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) The meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) The meeting will not be formally recorded. However, a summary of the comments made at this meeting will be filed in the docket.

Agenda for Each Meeting

- Introductions
- Presentation of Meeting Procedures
- Presentation of Class C Airspace Design Proposal
- Public Presentations and Discussion

Issued in Washington, DC, on August 17, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-20932 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-13-P

RTCA, Inc.; RTCA Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for the RTCA Technical Management Committee meeting to be held September 12, 1994, starting at 9:00 a.m.. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda is as follows: (1) Chairman's remarks; (2) Review/approve summary of July 13, 1994 meeting; (3) Consider/approve: (a) Proposed Final Draft Signal-in-Space Minimum Aviation System Performance Standards (MASPS) for Advanced VHF Digital Data Communications Including Compatibility with Digital Voice Techniques. Prepared by SC-172 (b) Proposed Change No. 1 to RTCA/DO-185 Consolidated Edition, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) for Airborne Equipment. Prepared by SC-147 (c) Proposed RTCA/DO-197-A, Minimum Aviation System Performance Standards for an Active Traffic Alert and Collision Avoidance System I (Active TCAS I) for Revenue Passenger Operations. Prepared by SC-147 (d) Proposed revised terms of reference for SC-147, TCAS (e) Proposed reviewed terms of reference for SC-184, Taxi-holding position lights (f) Proposed revised terms of reference for SC-185, Aeronautical Spectrum Planning Issues; (4) Other business (a) Review MASPS Drafting Guidelines initiative (b) Review status of SC-169/WG-4, Surface Lighting; (5) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 19, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94-20930 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Montgomery and Prince George's Counties, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed transportation improvements in Montgomery and Prince George's Counties, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. David Lawton, Planning, Research and Environment Engineer, Federal Highway Administration, The Rotunda, Suite 220, 711 West 40th Street, Baltimore, MD 21211. Telephone: (410) 962-4440.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland Department of Transportation and both Montgomery and Prince Georges Counties, will prepare an environmental impact statement (EIS) that will consider upgrading the east-west transportation network and alternatives that provide for a facility between the I-270 and US 1 corridors.

A full range of alternatives (including taking no action and using alternative travel modes) will be studied to improve the traffic congestion that has developed between the I-270 and U.S. 1 corridors.

Notices describing the project status at various points in the process and solicitations for comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have expressed an interest in or are known to have an interest in this action. The study process will include many public meetings and a formal public hearing. Public notices advertising the locations and times of the meetings and hearing will be prepared. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that a full range of alternatives and issues related to this proposed action are identified, questions and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 18, 1994.

A. Porter Barrows,

Division Administrator, Baltimore, MD.

[FR Doc. 94-20948 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Notice of Change of Name of Approved Trustee

Notice is hereby given that effective July 1, 1994, American National Bank and Trust Company, with offices at 101 East Fifth Street, St. Paul, Minnesota 55101-1860, has changed its name to American Bank National Association.

Dated: August 17, 1994.

By Order of the Maritime Administrator.

Joel C. Richard,

Acting Secretary.

[FR Doc. 94-20981 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-81-P

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which NHTSA will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, the National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on September 13, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro, 8270 Wickham Rd., Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the seventh of a series of quarterly public meetings to provide detailed information about its research and development programs. This meeting will be held on September 13, 1994. The meeting was announced on August 1, 1994 (59 FR 39014). For additional

information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

- National safety belt use survey,
- Guidelines for crash avoidance warning devices,
- Portable data acquisition system for crash avoidance research,
- Lower extremity injury research, and
- Advanced glazing research.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by August 17, 1994, in response to the announcement published August 1, 1994.

As announced on August 1, 1994, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs where those questions have been submitted in writing by 4:15 p.m. on September 6, 1994, to George L. Parker, Associate Administrator for Research and Development, NRD-01, National Highway Traffic Safety Administration, Washington, DC 20590, FAX number: 202/366-5930.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202-366-4730. Fax number: 202-366-5930.*

Issued: August 19, 1994.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 94-20924 Filed 8-24-94; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

College and University Affiliations Program (CUAP) (formerly "University Affiliations Program"); Application Notice for Fiscal Year 1995

ACTION: Notice—request for prospectuses.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition to award grants to post-secondary educational institutions for academic exchange programs.

This is a two-step competition. For Step I, interested institutions whose

proposed projects are eligible in terms of partner country(ies) and academic discipline(s) (see below) should submit a five-page, double-spaced prospectus. Agency panels will review prospectuses according to the established review criteria listed below.

In Step II, approximately forty-five to fifty institutions will be invited to submit comprehensive proposals which will be reviewed by independent academic review panels and by an Agency panel. Subject to the availability of funds, 16-20 grants will then be awarded in Fiscal Year 1995 with a minimum of two grants for each geographic region (described below).

Overall grant making and funding authority for this program is contained in Fulbright-Hays Act, also known as the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Projects must conform with Agency requirements and guidelines outlined in this announcement. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/ASU-94-01.

DATES:

Step I deadline: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, October 7, 1994. Faxed documents will not be accepted, nor will documents postmarked on October 7, 1994, but received at a later date. It is the responsibility of each applicant to ensure that prospectuses are received by the above deadline.

Step II schedule: Those applicants with successful prospectuses will be invited on or about November 30, 1994 to submit comprehensive proposals due at the Agency on or about February 22, 1995. Final awards will be made on or about August 1, 1995.

Program dates: Grants should begin on September 1, 1995.

Program duration: September 1, 1995–August 31, 1998.

FOR FURTHER INFORMATION CONTACT:

Ms. Sue Borja or Ms. Deborah Trent, College and University Affiliations Program (CUAP), E/ASU, Room 349, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, phone: (202) 619-5289, fax: (202) 401-1433, e-mail: sborja@usia.gov. Interested applicants should read the complete Federal Register announcement before addressing inquiries to the CUAP staff or submitting their prospectuses. Please note that there is no separate application package. All information necessary for submitting a prospectus is contained in the RFP.

Once the deadline for submission of the comprehensive proposal has passed, the CUAP staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in this announcement and send only complete applications including the original and 10 complete copies along with a 3½" diskette (DOS compatible software includes Wordperfect, microsoft word and ASCII) to: U.S. Information Agency, Ref.: E/ASU-95-01, Office of Grants Management, E/XE, Room 336, 301 4th St., S.W., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social, and cultural life. Diversity should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The objectives of the College and University Affiliations program are to:

- Promote institutional linkages between U.S. and foreign institutions of higher education in academic disciplines and in countries and regions without significant, privately funded exchanges.

- Provide significant mutual benefit to both the U.S. and foreign institutions involved in the exchanges.

- Support current Agency disciplinary and geographic programming priorities.

- Develop skills and knowledge and advance scholarship and teaching in the disciplines supported through the program.

- Advance mutual understanding between the U.S. and the countries or regions represented in the linkages.

- Complement the individual lectureship, research and graduate study fellowships available under Fulbright and other Agency auspices.

- Increase international academic exchange by two-year and small, four-year colleges and schools, especially community colleges and those with significant minority student enrollments.

- Ensure a wide-ranging distribution of grants geographically throughout the U.S. and abroad.

- Support linkages which have institutional backing and cost sharing from both the U.S. and foreign institution.

- Foster long-term, active relationships between the affiliated institutions after Agency funding has terminated.

Program Guidelines

Exchange visits will involve some combination of the following activities: teaching, lecturing, research, faculty and curriculum development, and community outreach directly related to the purpose of the affiliation. The ideal and most competitive projects will constitute a well-reasoned combination of all of these activities. The exchange visits to all partner institutions must be for one month or more with the exception of planning visits which may be for shorter periods. Three-month or one-semester visits are strongly preferred and projects with longer lengths of stay will be more competitive.

Acceptable projects will be to either establish new affiliations or to innovate and strengthen existing partnerships, not merely to extend projects previously funded by the College and University Affiliations Program (formerly the "University Affiliations Program"), other USIA linkage programs or similar linkage programs funded by other U.S. government agencies. Projects for technical or development assistance and feasibility studies to plan affiliations will not be considered. Research projects must include collaboration by researchers from participating institutions and be linked to substantial participation in graduate-level seminars.

The competition, as described in the separate section below on geographic area programs, is limited to selected countries and academic disciplines which represent USIA's geographic and academic priorities for the College and University Affiliations Program.

U.S. institutions are responsible for submitting the application and should collaborate with their foreign partners in

planning and preparation. U.S. and foreign institutions are encouraged to consult with the appropriate U.S. Information Service (USIS) office and/or Fulbright Commission about the proposed project.

Eligibility

In the U.S. participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. An application from a U.S. consortium must be submitted by a member institution with authority to represent the consortium. Overseas, participation is limited to recognized, degree-granting institutions of post-secondary education and internationally recognized and highly regarded independent research institutes. Participants representing the U.S. institution who are traveling under USIA grant support must be U.S. citizens. Participants representing the foreign institutions must be citizens, nationals, or permanent residents of the country of the foreign partner and be qualified to hold a valid passport. In the case of a partnership with an institution in one of the New Independent States (NIS), foreign participants with citizenship in any of the NIS will be eligible.

The Agency encourages projects from eligible Historically Black Colleges and Universities (HBCUs) and other institutions in the U.S. with significant minority student enrollment. Consortia of colleges and universities including such institutions are also encouraged to apply.

Ineligibility

A project will be deemed technically ineligible if:

- (1) It does not fully adhere to the guidelines established herein and the application requirements stated below;
- (2) It is not received by the deadline;
- (3) The length of the proposed project is less than three years;
- (4) It is not submitted by the U.S. partner;
- (5) One of the partner institutions is ineligible;
- (6) The foreign geographic location is ineligible;
- (7) The project involves a partnership with more than one country (with the exception of the North American trilateral and APEC components);
- (8) The field of study is ineligible.

Proposed Budget

A budget is not required with the prospectus submission. However a comprehensive, line-item budget will be required of those applicants invited to submit a comprehensive proposal and

complete budget guidelines will be given at that time. Each budget award will not exceed a total of \$120,000 for three years.

The following is a brief outline of allowable costs for the program:

(1) International economy-class airfare for participants. Travel must be on U.S. flag carriers wherever such routes exist.

(2) Project-related domestic travel to other academic institutions, libraries for research, and conferences, while in the host country. International and domestic travel costs for all participants funded by the Agency must be based upon economy fare.

(3) Per diem for housing, meals, and incidentals.

(4) Educational materials, excluding computer hardware and audio-visual equipment, not to exceed \$12,000 for three years.

(5) One planning trip for one participant per institution.

(6) Medical insurance for foreign participants only, while on project-related travel to the U.S. Medical insurance is compulsory for all U.S. and foreign participants.

(7) All direct administrative costs associated with grant activities are not to exceed 20% of the total grant amount.

Unallowable costs:

(1) Expenses for student exchanges.

(2) Travel and per diem for dependents.

(3) Any costs for non-U.S. citizens or nationals from U.S. institutions, or citizens of other than the host country representing foreign institutions (except for the New Independent States as stated in the eligibility section above).

(4) Any indirect administrative costs.

Note: Grants awarded to eligible U.S. organizations with less than four years of experience in conducting international exchange programs will be limited to \$60,000.

Geographic Area Programs

The program invites prospectuses, for two-way projects only (involving the U.S. and one foreign country) except for the North American Trilateral (Canada-U.S.-Mexico) and APEC (Asia Pacific Economic Cooperation) exchanges. Prospectuses may encompass one or more eligible academic disciplines.

American studies includes the fields of American history civilization, literature, social sciences, and art.

Africa

Eligibility is open to all sub-Saharan African countries except for the following: Angola, Burundi, Cape Verde, Central African Republic, Congo, Equatorial Guinea, Liberia, Rwanda, Somalia, and Zaire. Eligible academic

disciplines are limited to the social sciences, humanities, the arts, business administration, education, educational administration, law, and environmental studies.

Prospectuses which focus on democratic institution-building, including economic reform, and prospectuses which focus on conflict resolution and "Rule of Law" are also encouraged.

American Republics¹

Eligible countries and academic fields and limited to: Argentina, Belize (two-year U.S. institutions encouraged), Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Panama, Paraguay, Trinidad and Tobago, Uruguay and Venezuela. Eligible academic disciplines are American studies; archaeology; business administration; English as a Second Language; journalism; law; humanities; social sciences; public administration; environmental studies; minority and ethnic studies; higher education planning, administration, and reform; and international economics and trade. Prospectuses may focus on one or more of these fields.

East Asia/Pacific²

Eligible countries and academic fields are limited to: Australia (international trade and business studies, humanities, public administration, international affairs); Papua New Guinea (limited to education, social sciences, humanities at University of Papua New Guinea's Goroka campus in Eastern Highlands Province); People's Republic of China: Tibet Autonomous Region and Southwest China (Sichuan and Yunnan provinces) (English language teaching and area studies); Philippines (American studies, economics and trade, environmental studies, and conflict resolution)—please note that interdisciplinary and innovative uses of Internet are encouraged; and Singapore (journalism/mass communications; American studies, particularly American literature; performing arts).

¹ The program invites prospectuses for two-way projects only (involving the U.S. and one foreign country) except for North American Trilateral (Canada-U.S.-Mexico) exchanges described below. Prospectuses can focus on one or more eligible academic discipline.

² The program invites prospectuses for two-way projects only (involving the U.S. and one foreign country) except for APEC (Asia Pacific Economic Cooperation) exchanges described below. Prospectuses can focus on one or more eligible academic discipline.

Europe

Western Europe

Eligible in Western Europe are Turkey, in the fields of American studies and Islamic studies (linkages outside of Ankara are encouraged), Malta, and the five New States of the Former East Germany (Thuringia, Saxony, Saxony-Anhalt, Brandenburg, Mecklenburg-Vorpommern). The eligible academic fields for Malta and the German states are social sciences, humanities, American studies/area and country studies, education, environmental studies, the arts, and law.

East/Central Europe

For East/Central Europe eligible countries are limited to: Albania, Bulgaria, Croatia, Czech Republic, Estonia, Hungary (for Hungary note specified fields below), Latvia, Lithuania, Macedonia, Poland, Romania, Slovak Republic, and Slovenia. Eligible academic disciplines are limited to the social sciences, humanities, American studies, area and country studies, education, environmental studies, the arts, and law. Possible areas within those disciplines include but are not limited to communications/journalism, library science, sociology, and social work. Prospectuses which focus on conflict resolution are also encouraged. (Note: For Hungary, proposals will only be accepted in American studies, communications/journalism, educational administration, and political science. Prospectuses dealing with American studies and political science should specifically target the development of a doctoral program at a Hungarian institution in these fields).

New Independent States of the Former Soviet Union

Eligibility is limited to the following NIS countries: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzia, Moldova, the Russian Federation (limited to institutions outside of Moscow and St. Petersburg), Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Eligible academic disciplines are limited to the social sciences, humanities, the arts, education administration, and environmental studies. Possible areas within those disciplines include but are not limited to communications/journalism, library science, sociology, and social work. Prospectuses which focus on American studies, area and country studies or conflict resolution are encouraged. For Georgia, Moldova, Tajikistan, Turkmenistan, and Uzbekistan,

prospectuses in business administration, economics, public administration, and law are also encouraged.

Please Note: Programs with Azerbaijan are subject to restrictions of Section 907 of the Freedom Support Act of 1992: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation and no U.S. participation overseas may work for the Government of Azerbaijan and/or its instrumentalities. In addition, the Government of Azerbaijan and/or its instrumentalities will have no control in the actual selection of the participants.

North Africa/Near East/South Asia

Eligible countries/regions are limited to: Bahrain, Bangladesh, Egypt, India, Israel, Jordan, Kuwait, Morocco, Nepal, Oman, Pakistan, Qatar, Saudi Arabia, Sri Lanka, Syria, Tunisia, United Arab Emirates, West Bank, and Gaza. Eligible academic disciplines are limited to the social sciences, humanities, the arts business administration, communications/journalism, education, and environmental studies.

Prospectuses in Islamic or American studies or prospectuses which focus on conflict resolution are also encouraged.

North American Trilateral Exchanges

Canada-U.S.-Mexico

The Agency invites prospectuses for three-way projects linking an institution in the U.S. with institutions in Canada and Mexico. Eligible academic disciplines are: The arts, humanities, comparative education and culture, business, trade, economics, and environmental studies.

Asia Pacific Economic Cooperation (APEC) Exchanges

U.S. and two other APEC Members

The Agency invites prospectuses for three-way projects linking an institution in the U.S. with institutions in two other APEC member economies. The eligible APEC members are: Australia, Brunei, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, New Zealand, Papua New Guinea, The Philippines, Singapore, Thailand, and Chinese Taipei. Note: Canada and Mexico are not included as eligible member economies for this program to avoid duplication with the North American Trilateral Exchanges Program.

Prospectuses that address issues concerned with regional economic growth and development and that envision a community of Asia Pacific economies are desired. Priority will be given to prospectuses with a regional emphasis that focus on one or more of these academic disciplines: economics (with emphasis on international

economics or trade and investment flows), business administration (with an emphasis on marketing and international business) and the environment (with emphasis on sustained growth and the environment).

Step I—Application Requirements for Prospectuses

Each prospectus must be signed by a Dean, Department Chair, International Programs Director, or other institutional official of similar rank. Such signatures will indicate an understanding of the following requirement for comprehensive proposals to be invited at the conclusion of the prospectus review: invited comprehensive proposals will be required to include documentation of institutional support for the proposed linkage including signed letters of endorsement from the U.S. and foreign institutions' presidents, chancellors, or directors committing the institution to maintaining exchange participants on salary and benefits.

Prospectuses must not exceed five, double-spaced pages and must include the following information in the order given:

- (1) Project title;
- (2) U.S. institution, department, and project director with complete contact information (address and phone and fax numbers);
- (3) Partner institution, department, and brief description of institution;
- (4) Academic discipline(s)/subject matter/sub-topics/foci;
- (5) Project summary;
- (6) Project objectives, statement of need;
- (7) Outline of proposed activities (some combination of research, faculty and staff exchange, curriculum development, community outreach, etc.);
- (8) Contacts between partner institutions made to date;
- (9) Proposed project faculty and staff participants for all partner institutions;
- (10) Anticipated results/benefits to partner institutions;
- (11) Long term impact.

In addition, the prospectus must have as an attachment the U.S. Project Director's curriculum vitae which must not exceed two pages.

REVIEW PROCESS: USIA will acknowledge receipt of all prospectuses and will review them for technical eligibility. Prospectuses will be deemed ineligible if they do not fully adhere to the guidelines stated herein. Eligible prospectuses will be forwarded to a panel of USIA officers for advisory review. This review will include the Office of Academic Programs, the USIA

geographic area offices, and USIA posts overseas.

REVIEW CRITERIA: An Agency panel will review each technically eligible prospectus by the following criteria:

- (1) Quality of program idea;
- (2) Potential to advance scholarship, teaching, and mutual understanding in partner institutions;
- (3) Feasibility;
- (4) Adequacy of resources;
- (5) Degree to which project complements other country/regional exchange programs;
- (6) Furtherance of geographic/institutional diversity. The participation of community colleges and Historically Black Colleges and Universities (HBCUs) and other institutions with significant minority student enrollments is strongly encouraged.

Step II—Application Process for Comprehensive Proposals

The Agency will select approximately 45 to 50 prospectuses which most closely address the goals and guidelines set forth above and invite those applicants to submit comprehensive proposals under the following guidelines and review criteria.

Applicants invited to submit a comprehensive proposal will be asked to include the following information:

- (1) A proposal cover sheet (in addition to the Bureau cover sheet) with names of both institutions, name of foreign country, project directors including their addresses, telephone and fax numbers, and academic field(s) of proposal. A sample cover sheet format will be included in the letter of invitation.
- (2) An executive summary (abstract) of proposed project, not to exceed two double-spaced pages.
- (3) A narrative, not to exceed twenty double-spaced pages, including (a) concise descriptions of institutions and participating academic departments or schools; (b) a detailed description of the proposed affiliation program, including names and qualifications of designated project directors; (c) a statement of need for the proposed program; (d) a detailed plan and chronology of exchange activities, including who will travel, when, where, and how activities will occur for each of the three years; (e) the program's anticipated benefits to participating institutions; (f) evidence of the institutions' commitment to the internationalization of their academic programs, e.g., through international partnerships, student exchanges, etc.; (g) a plan for institutional evaluation of the project; and (h) evidence that the partnership is likely to continue after the USIA grant expires.

(4) A comprehensive line item budget for the three-year program, outlining specific expenditures and sources from which funds are anticipated. Detailed information concerning eligible and ineligible items and required budget format will be available in the letter of invitation.

(5) Documentation of institutional support for the proposed linkage, including signed letters of endorsement from the U.S. and foreign institutions' presidents, chancellors, or directors, making specific reference to the 1995 College and University Affiliations Program and committing their participating institution(s) to maintaining their exchange participants on salary and benefits during the exchange. A general letter of support or an agreement between the two institutions without reference to the maintenance of salaries and benefits will not fulfill this requirement.

A grace period will be granted to applicants for the submission of the foreign letter of support only. One original and 10 copies of the letter must be received by 5 p.m. Washington, D.C. time on March 8, 1995. A sample letter of endorsement and commitment will be included in the letter of invitation.

(6) Brief academic résumés, not to exceed two single-spaced pages each, of participating faculty/staff from both institutions, clearly indicating level of language skills, overseas experience, knowledge of prospective partner country, relevant scholarly and non-scholarly travel, publications, professional memberships, and research activities. Note: All pages in excess of the two-page limit will be discarded.

(7) A list of past and present international institutional linkages (for the U.S. partner). Include linkages and other projects supported by USIA and other U.S. government agencies. Also note any pending grant applications submitted to other USIA programs.

REVIEW PROCESS: The College and University Affiliations Program review process for invited institutions will be conducted in three stages: Technical, Academic, and Agency.

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the letter of invitation. Eligible proposals will be forwarded to outside academic panel(s) and Agency panel(s) for advisory review. All eligible proposals will also be reviewed by the Agency's contracts offices, as well as the Office of Academic Programs, the USIA geographic area office, and the USIA

post overseas. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grants resides with the USIA grants officer.

Review Criteria

Academic Review Criteria

Proposals are reviewed by independent academic peer panels with geographic and disciplinary expertise which make comments and recommendations to the Agency based on the following criteria:

(1) Useful and appropriate faculty and curriculum development activities.

(2) Feasibility of the program plan as it relates to the stated goals and selected topics and activities.

(3) Promise of the production of new skills/knowledge and advancement of scholarship and teaching in fields covered by the program.

(4) Academic quality of credentials/experience of participants in relation to the goals of the proposed exchange plan (including linguistic proficiency, where required).

(5) Length of exchange visits in furtherance of project goals. Longer visits up to a full academic semester are preferred.

(6) Evidence of strong institutional commitment by participating institutions.

(7) Evidence of a strong commitment to internationalization of their academic programs by participating institutions.

(8) For proposals whose primary activity is research: inclusion of collaboration by researchers from both institutions, linked to substantial participation in graduate-level seminars.

(9) Presentation of a detailed evaluation plan.

Agency Review Criteria

Agency considerations will be based on:

(1) Clear indication that the proposal seeks to establish a reciprocal and mutually beneficial institutional affiliation overseas or to innovate an existing affiliation.

(2) Evidence of mutual advancement of cultural and political understanding of the countries or geographic areas represented in the partnership through development of individual and institutional ties.

(3) Academic quality, reflected in academic review panel's comments and recommendations.

(4) Institutional and geographic diversity of the U.S. and overseas partner.

(5) USIA overseas post assessments of need and feasibility.

(6) Promise of long-term impact.

(7) Cost-effectiveness.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the prospectus review process no later than Friday, December 15, 1994. Selected institutions will be invited to submit comprehensive proposals due on or about February 22, 1995. Final awards will be made on or about August 1, 1995. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 17, 1994.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 94-20584 Filed 8-24-94; 8:45 am]

BILLING CODE 8230-05-M

Business for Russia

ACTION: Notice—request for proposals.

SUMMARY: The Russia/Eurasia Division of the Office of Citizen Exchanges of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award program. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to conduct at least three five-week, U.S.-based internship programs for Russian business people and local government officials. A minimum of ten Russian participants must be included in each internship cycle. Programs may not begin any earlier than March 1995. Pending the availability of funds, the program may be extended through December 1997.

This program is a continuation of a pilot project conducted in 1994 and seeks to provide Russian business people with knowledge of a market economy and promote a supportive business environment for the participants upon their return to Russia.

The participants will be recruited, through an open and competitive process, from selected regions of Russia and will begin arriving in the United States in March 1995.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P-95-15.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, October 15, 1994. Faxed documents will not be accepted, nor will documents postmarked on October 14 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Kathie Guroff or Gene Draschner, Office of Citizen Exchanges (E/PN), Rm. 216, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 401-6884, fax: (202) 260-0437, internet addresses: KGUROFF@USIA.GOV,

EDRASCHN@USIA.GOV to request an Application Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officers Kathie Guroff or Gene Draschner on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has

passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications to: U.S. Information Agency, Ref.: E/P-95-15, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The "Business for Russia" program has been developed in full partnership with the Russian Government and various Russian organizations. It has been designed as a working partnership between U.S. federal, state, and local governments, NGOs, and private enterprises and their counterpart institutions in Russia. Pending the availability of fund, approximately 1,000 Russian business people and local government officials will be recruited from selected regions of Russia through an open competition coordinated in Russia by an experienced, Moscow-based U.S. grantee organization in conjunction with the Russian government and Russian partner organizations. Participants will be screened for proficiency in English prior to final selection. Operating in accordance with guidelines established by USIA, the recruitment/selection organization will also cooperate with the U.S. Embassy, Peace Corps, American private organizations and businesses, and the Russian government and business organizations to select Russian participants.

This announcement seeks American grantee organizations to organize and implement business internships in the United States that will enhance the Russians' ability to develop their own businesses upon returning to Russia. USIA is interested in proposals that provide a professional business experience and, secondarily, expose the participants to American life and

culture. USIA is not interested in programs that are academic in nature; this program is designed to provide practical, hands-on training in the American business environment that can be transferred to the individual's employment situation in Russia.

Participant Profile

Russian participants will be predominantly business managers in existing small or medium-sized firms and entrepreneurs who manage their own businesses, mostly in the 25-40 age group. A small number of local government officials may also be recruited for participation in the program. All participants will be required to have a working knowledge of English. Depending on the results of this selection process, the Agency may request that the U.S.-based grantee organizations modify the number of individual interns assigned to their local region to meet the demands of the program. The Office of Citizen Exchanges will be responsible for matching interns with the appropriate US host organizations.

Interns will be placed in geographic "clusters" in the U.S. (i.e., areas within two hours' driving time of a central meeting point) in order to maximize local resources and strengthen the effectiveness of all aspects of the training program. Every effort will be made to group the interns by Russian region of origin in order to permit them to share common experiences and to develop networks and professional associations upon their return home. Proposals should explain how the grantee organizations will utilize the cluster to improve Russians' exchange experience.

Programs must comply with J-1 visa regulations. Participants will be covered by the Agency's self-insurance policy.

Proposed Budget

Organizations must submit a comprehensive line item budget based on the specific guidance provided in the Budget Guidelines section of the Application Package. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to \$60,000. Allowable costs for the program include the following:

(1) International and domestic air fares; transit costs; ground transportation costs.

(2) Housing. Participants are to be housed with volunteer US homestay families. There are no provisions for reimbursing homestay families for their hosting costs. Participants may be housed in hotels for a maximum of five

nights, at a rate not to exceed \$100/night.

(3) *Per diems.* Participants may be compensated for meals and incidental expenses a rate not to exceed \$25/day for the duration of the program.

(4) *Book and Cultural Allowances.* Participants are entitled to a one-time book allowance payment of \$150 and a cultural allowance of \$100 per person. Accompanying staff are not eligible for these benefits.

(5) *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria may not exceed \$250/day.

(6) *Room rental.* Generally not to exceed \$250/day.

(7) *One working meal per project.* Per capita costs may not exceed \$15-20 for a lunch and \$20-30 for a dinner. The number of invited guests may not exceed the number of participants by more than a factor of two. This includes room rental if applicable.

(8) *Administrative costs.* The costs necessary for the effective administration of the program, including salaries for grant organization employees; staff travel for local community organizers; benefits and other indirect costs, per detailed instructions in the Application package.

Cost-sharing and enhancement of the basic package provided by USIA is encouraged. The Agency reserves the right to reduce, revise, or increase the proposal budget in accordance with the needs of the program. Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Application Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contracts offices, as well as the USIA Office of Eastern Europe and the NIS and the USIA post in Russia. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final

technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. *Program planning and ability to achieve program objectives:* The proposal should clearly show how the grantee institution will meet the program's objectives. The proposal should include a detailed agenda and work plan that illustrate logistical capacity. The project content should be substantive and the planned execution realistic.

3. *Institutional ability/record:* Interested institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements from past Agency grants, as determined by USIA's Office of Contracts (M/KG), will be considered. Pertinent evaluation results of previous projects are a part of this assessment.

4. *Thematic and area expertise:* Proposals should reflect the institution's expertise in the subject area and should address the specific issues of concern facing the Russian Federation.

5. *Project personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program. Résumés should be suited to the specific proposal and no longer than two pages.

6. *Cross-cultural sensitivity:* Proposals should show evidence of sensitivity to historical, linguistic, and other cross-cultural factors, as well as appropriate knowledge of Russia's geography, and should show how this sensitivity will be used in practical aspects of the program, such as pre-departure orientations or briefing of American hosts.

7. *Multiplier effect/follow-on activities:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties. Proposals should also reflect an institutional commitment

for continued exchange activity beyond the term of the USIA grant.

8. *Cost-effectiveness/cost-sharing:* The overhead and administrative components should be kept as low as possible. Costs to USIA per exchange participant should be reasonable, and all items proposed for USIA funding must be necessary and appropriate to achieve the program's objectives. Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution.

9. *Project evaluation:* Proposals should include a plan to evaluate the project's success.

10. *Support of diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both their organization and their activities.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about January 16, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: August 17, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94-20586 Filed 8-24-94; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 164

Thursday, August 25, 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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 29, 1994, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the

public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matter to be considered at the meeting is: **Open Session**

A. Corporate Prior Approval

1. Agricultural Credit Bank (ACB) Creation

Dated: August 23, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94-21165 Filed 8-23-94; 3:32 pm]

BILLING CODE 6705-01-P

Corrections

Federal Register

Vol. 59, No. 164

Thursday, August 25, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[PP Docket No. 93-253, FCC 94-98]

Competitive Bidding

Correction

In rule document 94-12165 beginning on page 26741 in the issue of Tuesday, May 24, 1994, make the following correction:

§ 24.415 [Corrected]

On page 26752, in the first column, in § 24.415, the last paragraph designated "(i)" should read "(j)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AD72

Computing Benefit Amounts, Disposing of Underpayments, Resolving Overpayments, and Payment Restriction

Correction

In proposed rule document 94-17401 beginning on page 37000 in the issue of Wednesday, July 20, 1994, make the following corrections:

1. On page 37000, in the second column, in the SUPPLEMENTARY INFORMATION, in the first paragraph, in the sixth line from the bottom, "that" should read "than".

2. On the same page, in the same column, in the same paragraph, in the fifth line from the bottom, insert "not" after "had".

3. On page 37001, in the first column, in the first full paragraph, in the second line from the bottom, "§ 404.510(I)" should read "§ 404.510(l)".

§ 404.503 [Corrected]

4. On page 37001, in the third column, in § 404.503(b)(6), in the third line, "(of" should read "(if".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC 93-21]

RIN 2125-AD18

Parts and Accessories Necessary for Safe Operation; Protection Against Shifting or Falling Cargo

Correction

In rule document 94-16069 beginning on page 34712 in the issue of Wednesday, July 6, 1994 make the following corrections:

§ 393.102 [Corrected]

1. On page 34719, in § 393.102(b)(6), in the table, under the headings "Manila Rope WLL, Polypropylene Fiber Rope, and Polyester Fiber Rope", the headings "Diameter inch (mm)" should appear in the left column and "WLL pounds (kg)" should appear in the right column.

2. On page 34720, in § 393.102(b)(6), in the table, under the heading, "Double Braided Nylon Rope WLL" the headings "Diameter inch (mm)" should appear in the left column and "WLL pounds (kg)" should appear in the right column.

BILLING CODE 1505-01-D

Federal Register

Thursday
August 25, 1994

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 200, et al.
Restrictions on Assistance to
Noncitizens; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 215, 235, 236, 247, 812, 850, 880, 881, 882, 883, 884, 886, 887, 900, 904, 905, 912 and 960

[Docket No. R-94-409; FR-2383-P-04]

RIN 2501-AA63

Restrictions on Assistance to Noncitizens

AGENCY: Office of the Secretary, HUD.
ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 214 of the Housing and Community Development Act of 1980, as amended. Section 214 prohibits the Secretary of HUD from making financial assistance available to persons other than United States citizens, nationals, or certain categories of eligible noncitizens in HUD's Public Housing and Indian Housing programs (including homeownership), the section 8 housing assistance payments programs, the Housing Development Grants program, the section 236 interest reduction and rental assistance programs, the Rent Supplement program, and the section 235 homeownership program.

DATES: Comments due date: October 24, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection during regular business hours weekdays at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: For the covered programs, the following persons should be contacted:

(1) For Public Housing, Section 8 Certificate, Rental Voucher, and Moderate Rehabilitation (except Single Room Occupancy—"SRO") programs—Edward Whipple, Rental and Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000, telephone (202) 708-0744;

(2) For Indian Housing programs—Dominic Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development,

451 Seventh Street, SW., Washington, DC 20410-5000, telephone (202) 708-1015;

(3) For the Section 8 Moderate Rehabilitation SRO program—Barbara Richards, Acting Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000, telephone (202) 708-4300;

(4) For the other Section 8 programs, the Section 236 programs, Housing Development Grants and Rent Supplement—Barbara Hunter, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 708-3944; and

(5) For the Section 235 homeownership program—William Heyman, Office of Lender Activities and Land Sales Registration, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 708-1824.

For persons with hearing impairment, the TDD number is (202) 472-6725. None of the foregoing telephone numbers are toll-free.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. 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 a separate notice in the *Federal Register*.

Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Information on the estimated public reporting burden is provided under the preamble heading Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the

Office of Management and Budget, Office of Information and Regulatory Affairs, Attention HUD Desk Officer, room 3001, Washington, DC 20503.

II. Statutory and Regulatory Background

The restrictions on providing housing assistance to noncitizens with ineligible immigration status have been embodied in statute since 1980. Section 214 of the Housing and Community Development Act of 1980 (94 Stat. 1637) (Section 214) was the original basis for restrictions on providing assistance to noncitizens with ineligible immigration status in the assisted housing programs. Section 214 was amended by section 329(a) of the Housing and Community Development Amendments of 1981 (94 Stat. 408), by section 121(a)(2) of the Immigration Reform and Control Act of 1986 ("IRCA", 100 Stat. 3384), and by section 164 of the Housing and Community Development Act of 1987 (101 Stat. 1860). (Section 214, as amended by these statutory sections, is codified at 42 U.S.C. 1436a.)

There have been numerous attempts by HUD to implement by regulation the statutory restrictions on providing assistance to noncitizens with ineligible immigration status. Rules, both proposed and final, were published in 1982 (47 FR 18914, and 47 FR 43674), in 1986 (51 FR 15611), and 1988 (53 FR 842, and 53 FR 41038). Despite the publication of final rules during the period between 1982 and 1988, the statutory restrictions of section 214 have not been made effective. A detailed history of the regulatory efforts to implement section 214 (including why the final rules were not made effective) can be found in the rule published on January 13, 1988 (53 FR 842).

The most recent proposed rule implementing section 214 (before publication of this proposed rule) was published on October 19, 1988 (53 FR 41038). The proposed rule published in today's *Federal Register* is based on the October 19, 1988 proposed rule, and takes into consideration public comment received on the October 19, 1988 proposed rule. The discussion of public comments is set forth in section VII of this preamble.

III. Procedural Matters

A. No Restrictions on Use of Assistance Until Final Rule Is Published and Effective

Until a final rule implementing section 214 is published and made effective, there are no HUD restrictions on the use of assisted housing by noncitizens with ineligible immigration

status. Consequently, until this proposed rule has reached the final rule stage, covered entities (i.e., housing authorities, managers of HUD-assisted housing, and mortgagees in the section 235 FHA insurance program) are not authorized to take any action based on the eligible immigration status of applicants and tenants.

B. Using the "Effective Date of the Final Rule" as the Critical Date Rather Than "Date of Enactment"

Paragraph (c)(1) of section 214 was added by the Housing and Community Development Act of 1987 (the 1987 Act) and confers discretion on the Secretary of HUD to continue assistance or defer termination of assistance on behalf of an individual for whom assistance would otherwise be terminated if that person was "receiving such assistance on the date of enactment of the Housing and Community Development Act of 1987."

The term "date of enactment" is also found in section 214(d) in the description of the elderly persons who need not provide documentation of their immigration status. The statute exempts from such documentation any individual who is "62 years of age or older, and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987."

HUD has determined that the provisions of section 214 are too complex to be determined self-implementing as of the date of enactment of the 1987 Act (February 5, 1988). Thus, the restrictions of section 214 will not be felt until a final regulation is published and becomes effective.

The general Congressional intent of section 214(c)(1) was to protect "the sanctity of the family." (See remarks of Sen. William Armstrong, 133 Cong. Rec. S18615, December 21, 1987.) To honor this intent, HUD believes it is necessary to implement the new protective provisions at the same time that the restrictions of section 214 become effective. To do otherwise would be to thwart the pro-family intent of the Congress by prematurely triggering the statute's protections and rendering them meaningless for families admitted after the enactment date, but before a final rule effectively applies the restrictions of section 214.

In other words, since the exact effect on persons applying for or participating in the covered HUD programs will not be known until publication of the final rule, HUD is interpreting the statutory language to permit lenient treatment to persons receiving assistance on the effective date of the final rule when all

parties affected will have notice of the methods that HUD has chosen for implementing the statutory restrictions rather than on the precise date of enactment of the 1987 Act. To limit lenient treatment to persons receiving assistance on the precise date of enactment would create a category of persons (admitted between February 5, 1988 and the final rule's effective date) who would be denied the new statutory protections simply because of the time associated with promulgation of a final rule. Support for this position is found in a House Committee Report in connection with the 1987 Act (H.R. Rep. No. 100-1222, 100th Cong., 1st Sess. 49 (1987) ("House Report")). In that report, the Congress stated: "The modifications [made by the 1987 Act] are intended to clarify the original intent of Congress that families in which at least one person is eligible are not disqualified and that the rules not be applied retroactively." (House Report at p. 50.)

IV. Reimbursement for Costs of Implementing and Operating Verification System

Section 214(g) authorizes HUD to reimburse covered entities for the costs incurred in implementing and operating the system developed by the Immigration and Naturalization Service (INS) for verifying immigration status. The INS system is referred to as the Systematic Alien Verification for Entitlements or SAVE.

Although implementation and operation of the INS verification system is not specifically addressed in this rule, detailed guidance will be issued to covered entities at the time of publication of the final rule. HUD will be developing a method of coordinating with the INS for verifying immigration status through SAVE, which includes an automated system, and a manual search capability. HUD anticipates that the cost of necessary verification inquiries made on the automated system will be billed directly to HUD.

V. Section 214 Coverage of HUD Programs

A. HUD Programs Covered by Section 214

Paragraph (b) of section 214 states that its restrictions concerning noncitizens with ineligible immigration status apply to the provision of "financial assistance made available pursuant to the United States Housing Act of 1937, section 235, or 236 of the National Housing Act, or section 101 of the Housing and Urban Development Act of 1965."

1. Programs Covered by the 1937 Act

The programs providing financial assistance on behalf of tenants (or homebuyers) pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) are the Public and Indian Housing programs, the Section 8 Housing Assistance Payments programs, and the Housing Development Grant programs (with respect to low income units only). All of these programs provide housing, either directly (such as public housing) or indirectly (such as through Section 8 Certificates), that is assisted by HUD.

a. Public and Indian Housing Programs. Included among the Public and Indian Housing programs are the Mutual Help and Turnkey III Homeownership Opportunity programs. The restrictions against financial assistance to noncitizens with ineligible immigration status are to be applied to current homebuyers under the Turnkey III and Mutual Help programs only to the extent that applying the restrictions would be consistent with existing contracts. All homeownership contracts executed after the effective date of the final rule will be covered by the restrictions. Another homeownership program covered is the HOPE for Public and Indian Housing Homeownership program developed pursuant to 42 U.S.C. 1437aaa.

b. Section 8 Housing Assistance Payments Programs. The Section 8 Housing Assistance Payments programs include New Construction, Substantial Rehabilitation, Moderate Rehabilitation, Certificate, Voucher, State Housing Agency and Farmers Home Administered, Section 202 Housing for the Elderly or Handicapped projects (when section 8 assistance is involved), Loan Management and Property Disposition projects. While the Rental Rehabilitation program also is operated under the 1937 Act (section 17 of the 1937 Act), it does not provide financial assistance to tenants except to the extent tenants participate in the Section 8 Certificate or Voucher programs, which are separately covered by the restrictions of section 214.

2. Section 235 of the NHA

The program authorized under section 235 of the National Housing Act (12 U.S.C. 1715z) (NHA), provides for payments by HUD to the mortgagee on behalf of a low income mortgagor to reduce the homebuyer's payments to an affordable level, e.g., the higher of a certain percentage of income or the amount that would be payable if the interest charged on the mortgage loan were set at some figure such as four

percent. This program is available to purchasers of single family homes, and to purchasers of units in cooperatives and condominiums. The rule will affect mainly new applicants for participation in the program.

Assistance contracts of section 235 homeowners who executed their contracts before the effective date of this rule will be honored without regard to their citizenship or immigration status. Additionally, mortgagors who refinance their section 235 mortgages (which were executed before the effective date of the final rule, and whose assistance contracts were unchanged after that date) with mortgages insured under section 235(r) of the NHA are not subject to the section 214 requirements. The reason for the latter exemption is that many old 235 mortgages bear an interest rate higher than 12 percent. If the section 214 requirements (with the required recertifications) are made applicable to current 235 mortgagors who agree to refinance under section 235(r), this may be a disincentive to refinancing, and also would be detrimental to HUD. The section 235(r) program is designed to aid HUD in saving millions of dollars in section 235 assistance payments by refinancing the 235 mortgages at a lower interest rate. Because the 235(r) program was designed specifically to provide for the refinancing of section 235 mortgages, HUD does not believe that this is the type of contract modification or program change that triggers the section 214 requirements.

The rule will largely have an impact on current section 235 homeowners themselves only if a homeowner's mortgage is to be revised for some reason (other than refinancing under section 235(r)), in which case the modification will include application of the restrictions on immigration status as if the mortgagor were an applicant for participation in the assistance program. Although there may be no new mortgages insured and assisted under this program, at conveyance of properties already insured and assisted under the program, purchasers will be required to demonstrate eligibility in order to be approved for assistance (and thereafter at each annual recertification, to continue to receive assistance).

3. Section 236 of the NHA

The section 236 program provides for payments to a mortgagee on behalf of the owner of a rental housing project designed for occupancy by low income families in order to reduce the owner's payments to the amount that would be payable if the interest rate on the mortgage loan were set at a figure such

as one percent. These lower mortgage payments enable the owner to charge qualified tenants lower than market rate rents ("basic rents"), although tenants who are not qualified for the benefits of the program may be charged market rate rents. In addition, rental assistance payments are available for some units in these projects to enable the rents charged to tenants who cannot afford the "basic rent" to be reduced to an amount based on a percentage of income, similar to the rents charged in the public housing and section 8 programs. This rule applies to all the tenants of a section 236 project who pay a below market-rate rent. It does not apply to tenants who pay a market-rate rent. (It should be noted, however, that a market rent tenant would be required to submit evidence of citizenship or eligible immigration status if he or she subsequently applied for tenant-based assistance.)

4. Section 101/Rent Supplement Program

The program authorized under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), is the Rent Supplement program. Under this program, HUD makes payments to a housing owner that is a private nonprofit entity or limited dividend entity and whose purchase of the property is financed by a mortgage loan insured under certain HUD programs, or is financed under a State or local program approved by HUD. These payments are for the benefit of low income tenants to enable the owner to charge these tenants rents based on a percentage of their incomes, similar to the rents charged in the public housing and section 8 programs.

B. HUD Programs Not Covered by Section 214

HUD-assisted housing programs that are not covered by 42 U.S.C. 1436a, and consequently are not covered by this rule, are: (1) The section 221(d)(3) and (d)(5) program of interest subsidy for projects with mortgages insured under those sections of the National Housing Act (12 U.S.C. 17151); (2) the programs developed to serve the homeless (see 42 U.S.C. 11361), except for Section 8 Moderate Rehabilitation SRO program (24 CFR part 882, subpart H); (3) the HOPE Homeownership of Multifamily Units program developed pursuant to 42 U.S.C. 12871; (4) the HOPE for Homeownership of Single Family Homes developed pursuant to 42 U.S.C. 12891; (5) the HOME program developed pursuant to 42 U.S.C. 12741; (6) the Supportive Housing for the Elderly program developed pursuant to

42 U.S.C. 1701q; and (7) the Supportive Housing for Persons with Disabilities program developed pursuant to 42 U.S.C. 8013.

The above listed programs are not covered unless any of these programs is used in conjunction with a covered program, such as section 8 housing assistance payments.

VI. Overview of 1994 Proposed Rule

The proposed rule published in today's *Federal Register* (the 1994 proposed rule) is substantially similar to the proposed rule published on October 19, 1988 (1988 proposed rule). In many respects, section 214 allows little discretion on the part of HUD to expand or reduce the statutory provisions by regulation. As noted above, section 214 is very specific about what HUD programs are covered by the statute. Section 214 is also specific about what categories of noncitizens are eligible to receive HUD financial assistance, the procedures to be used to verify immigration status, the types of documentation that must be submitted and who must submit this documentation, the appeal procedures to be provided to persons initially determined to have ineligible status, and the special assistance to be provided to certain families with members who have eligible status and those who have ineligible status.

A. Summary of Principal Provisions of 1994 Proposed Rule

The following provides a summary of the principal provisions of the 1994 proposed rule.

1. Eligibility for HUD Financial Assistance

Noncitizens eligible for financial assistance are limited to statutory categories.

Noncitizen students who are nonimmigrants are excluded from receiving financial assistance in accordance with section 214.

2. Evidence of Eligible Status (Who Submits What)

For citizens—

A written declaration only. (The proposed rule removes the 1988 proposed rule language concerning suspicion of submission of false declaration of citizenship.)

For noncitizens 62 years of age or older, and receiving HUD assistance on the effective date of the rule—

A written declaration, and Proof of age document.

For all other noncitizens—

A written declaration, A verification consent form, and

Evidence of immigration status.

Election not to declare eligible status.

The 1994 proposed rule also contains a provision that permits a member of a family to elect not to contend that he or she has eligible status (i.e., the person elects not to submit a declaration of eligible status), and if other members of the family declare eligible status and have eligible status, the family may be eligible for continued assistance, proration of assistance (see discussion of proration of assistance under section VI.A.11 of this preamble), or temporary deferral of termination of assistance, as appropriate.

Permissible to incorporate declaration in housing application assistance. The 1994 proposed rule does not prescribe a specific declaration. A responsible entity may provide for the declaration to be incorporated in the application for assistance, or make it a separate document. The declaration, however, must cite the statutory authority under which it is required to be provided, and the purpose for the requirement (i.e., that financial assistance is contingent upon the submission of the form). Additional guidance on implementing the requirements of section 214, that is to be issued at the time of publication of the final rule, will include model language for the declaration, as well as the verification consent form.

3. When to Submit Evidence of Eligible Immigration Status

For applicants, the 1994 proposed rule provides for the responsible entity to require submission of the evidence by the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance (i.e., income, family composition) will occur.

For persons already receiving assistance, the rule provides for the responsible entity to require submission of evidence at the first regular reexamination of eligibility (i.e., reexamination of income and family composition) that occurs after the effective date of the final rule.

For new occupants in an assisted unit, the rule provides for the responsible entity to require submission of evidence at the first interim or regular reexamination following the person's occupancy.

One-time submission for continuous occupancy. The proposed rule clarifies that evidence of eligible status is required to be submitted only one time for each family member that maintains continuous occupancy in an assisted unit.

4. Extension of Time to Submit Evidence

The 1994 proposed rule would require responsible entities to grant an extension of time in which to submit evidence if the applicant or tenant submits the declaration of eligible immigration status, and certifies that the evidence needed to support the declaration is temporarily unavailable, and prompt and diligent efforts to obtain this evidence will be undertaken. The proposed rule provides that the extension may not be for an indefinite period, but allows for the responsible entity to establish a time period that is sufficient for the applicant or tenant to obtain the needed evidence.

5. When Verification of Eligible Status is to Occur

For applicants, the 1994 proposed rule provides for the responsible entity to verify evidence of eligible immigration status at the time the responsible entity verifies other aspects of eligibility for assistance (i.e., income, family composition).

For persons already receiving assistance, the rule provides for the responsible entity to verify evidence of eligible status at the time that it verifies other aspects of eligibility (i.e., reexamination of income, family composition) for continued occupancy in the assisted unit.

Verification of evidence of eligible immigration status is to be treated the same as any other factor which determines a family's eligibility for assistance.

6. Verification Procedures

The proposed rule provides for the following verification procedures in accordance with the INS verification systems:

(1) *Primary verification* of the immigration status is conducted by means of an automated system (SAVE) that provides access to the names, file numbers, and admission numbers of noncitizens;

(2) *Secondary verification* is a manual search by the INS of its records to determine an individual's immigration status. If primary verification fails to confirm eligible immigration status, secondary verification must be performed. The results of primary verification are not sufficient to conclude that an individual does not have eligible immigration status.

(3) *No waiver of verification procedures.* The proposed rule does not provide for waiver of the INS verification procedures.

7. Protection of Individual's Privacy

Section 214(d)(3) requires HUD to protect the "individual's privacy to the maximum degree possible." The 1988 proposed rule provided that evidence of immigration status submitted by an applicant or tenant to the responsible entity may be released by the responsible entity to HUD, or to a Federal, State or local agency under specific circumstances, or may be released by HUD to any Federal, State, or local government agency (including the Social Security Administration and the INS) under specific circumstances, and listed those circumstances.

The 1994 proposed rule recognizes the impossibility of anticipating all circumstances under which a responsible entity or HUD may be required to release information. Accordingly, the 1994 proposed rule removes the list of circumstances, and provides that (1) the responsible entity may release the information to HUD and the INS for purposes of determining eligible immigration status, (2) HUD may release the information to the INS, and (3) the responsible entity and HUD may release the information to any other Federal, State or local government agency in accordance with applicable Federal, State or local law that requires the release of the evidence to that agency.

8. No Delay, Denial, Reduction, or Termination of Assistance Pending Verification of Eligible Status or Pending INS Appeal; but Delay for Applicant Following INS Appeal

Consistent with section 214(d)(4), the 1994 proposed rule provides that assistance to an applicant may not be delayed, reduced, or denied, and assistance to a tenant may not be delayed, denied, reduced or terminated, during the pendency of the verification procedures for eligible status, or during the pendency of the INS appeal procedure.

Consistent with section 214(d)(5), assistance to an applicant may not be denied, and assistance to a tenant may not be terminated during the pendency of the informal hearing procedure provided by the responsible entity. However, section 214(d)(5) only restricts denial or termination of assistance. Thus, assistance to an applicant may be delayed, but not denied, during the pendency of the informal hearing process.

9. Extension of Time to Request INS Appeal or Informal Hearing

The 1994 proposed rule requires the responsible entity extend the time for

requesting an appeal to the INS or for requesting an informal hearing upon good cause shown by the applicant or tenant.

10. Continued Assistance/Deferred Termination of Assistance

Consistent with section 214, the 1994 proposed rule provides for assistance to be continued or termination of assistance temporarily deferred for certain families and under certain circumstances as set forth in section 214(c)(1).

11. Proration of Assistance

The 1994 proposed rule provides for proration of assistance for applicant and tenant families containing family members with eligible and ineligible immigration status ("mixed families"). The allowance for proration of assistance departs from HUD's previous position on this issue. HUD previously took the position that proration was not authorized by section 214, and even if authorized, not feasible in its covered programs, particularly in HUD's public housing and section 8 programs. On further consideration, HUD acknowledges that the statutory language does not prohibit proration of assistance, and HUD has designed formulas for proration that it believes will make proration of assistance possible in covered programs.

HUD specifically requests comment from the public on the proration formulas set forth in §§ 200.188, 812.11, 905.310(s), and 912.11. HUD welcomes suggestions on alternative formulas and comments on the subject of proration of assistance, generally.

12. Other

Additional provisions in the 1994 proposed rule (particularly those that differ from the 1988 proposed rule) are addressed in the discussion of public comments on the 1988 proposed rule set forth in section VII of this preamble.

Documents in Other Languages. One additional provision included in the 1994 proposed rule is a requirement that for any document or notice that the rule requires the responsible entity (housing authority, project owner, mortgagee) to provide an applicant or tenant or to obtain the signature of the applicant or tenant, the responsible entity, where feasible, is to provide such document in a language that is understood by the applicant or tenant if he or she is not proficient in English.

Nondiscrimination Requirements. The 1994 proposed rule includes a provision that restricts the responsible entity from administering the restrictions of section 214 in a manner which discriminates or

treats persons differently because of race, color, religion, national origin, sex, disability or familial status, as prohibited by the Fair Housing Act (42 U.S.C. 3601-3619), Title VI of the Civil Rights of 1964 (42 U.S.C. 2000d-2000d-5), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Such unlawful actions include determinations of eligibility and ineligibility, using different requirements to ascertain that eligibility or ineligibility, and treating persons differently, if those actions are based on such factors as language, country of origin, or family associations.

B. Organization of Proposed Rule

Because of the number of HUD programs covered by section 214, this proposed rule amends several program regulations in three chapters of HUD's regulations: 24 CFR Chapter II, Chapter VIII, and Chapter IX. Within these three chapters, conforming amendments are made to several parts, and four parts are substantially amended to address the restrictions of section 214. These parts are: parts 200, 812, 905, and 912. The regulations implementing section 214 in each of these four parts are divided into the following regulatory sections, and generally follow the order shown below.

Sec. Definitions. (200.181, 812.2, 905.102, 912.2)

Sec. Requirements concerning notices and documents. (200.180a, 812.5a, 905.310(a), 912.5a)

Sec. General provisions (200.182, 812.5, 905.310(b), 912.5)

Sec. Submission of evidence of citizenship or eligible immigration status. (200.183, 812.6, 905.310(e), 912.6)

Sec. Documents of eligible immigration status. (200.184, 812.7, 905.310(k), 912.7)

Sec. Verification of eligible immigration status. (200.185, 812.8, 905.310(l), 912.8)

Sec. Delay, denial or termination of assistance. (200.186, 812.9, 905.310(m), 912.9)

Sec. Preservation of mixed and other families. (200.187, 812.10, 905.310(f), 912.10)

Sec. Proration of assistance. (200.188, 812.11, 905.310(s), 912.11)

Sec. Prohibition of assistance to noncitizen students. (200.189, 812.12, 905.310(t), 912.12)

Sec. Compliance with nondiscrimination requirements. (200.190, 812.13, 912.13)

Sec. Protection from liability for responsible entities, State and local agencies and officials. (200.191, 812.14, 905.310(u), 912.14)

Sec. Liability of ineligible families for reimbursement of benefits. (200.192, 812.15)

VII. Response to Public Comments on 1988 Proposed Rule

This section of the preamble discusses the significant issues and questions raised by public comments received on the 1988 proposed rule. The discussion of public comments on the 1988 proposed rule is included in the preamble to the 1994 proposed rule to assist the public in understanding why certain provisions in the 1988 proposed rule were revised or not revised in the 1994 proposed rule.

During the public comment period for the 1988 proposed rule, 20 comments were received. These represented the views of several housing authorities, two State departments of housing, project owners, an association of management agents, and an association of housing officials, legal services organizations, immigration law organizations, and an advocacy group for the elderly. Many comments made suggestions criticizing the restrictions for being too broad, the special relief for being too narrow, or the procedures for giving inadequate opportunity to applicants to demonstrate eligibility. However, other comments focused on the burden placed on the entity responsible for enforcing the restrictions and complained that the procedures were too complicated and costly.

In addition to the comments received during the comment period of the 1988 proposed rule, HUD held an informal meeting at HUD headquarters in February 1994 on the subject of the restrictions imposed by section 214. This meeting was attended by representatives of organizations that included, but were not limited to: The Farmers Home Administration, the Association of Farmworker Opportunity Programs, California Rural Legal Assistance, Inc., Chicanos for La Causa, New York Legal Aid Society, National Center for Youth Law, National Council of La Raza, National Housing Law Project, and the Puerto Rican Legal Defense and Education Fund. These organizations submitted additional written comments at, and subsequent to, the meeting. These comments are part of the docket file for this rule, and are available for inspection by the public.

The following provides a discussion of the comments received on the 1988 proposed rule, and notes the changes that HUD made, and declined to make in the 1994 proposed rule as a result of these comments.

A. Restrictions To Apply on Effective Date of Final Rule

As discussed in section III.B. of the preamble, the 1994 proposed rule uses, as did the 1988 proposed rule, the phrase "the effective date of the final rule" in lieu of the statutory phrase—"date of enactment" of the 1987 Act.

B. Eligible Status

1. Noncitizen Eligibility Limited to Statutory Categories

Two housing agencies and a legal services organization stated that Seasonal Agricultural Workers (SAWs) and Replenishment Agricultural Workers (RAWs) should be included in the rule's list of noncitizens with eligible immigration status. These two categories of noncitizens were authorized to be given temporary lawful resident status by IRCA, which also granted amnesty to noncitizens who had resided illegally in the United States since before January 1, 1982. Although a later amendment to the HUD statute governing eligible immigration status for these programs (the 1987 Housing Act) clarified that the latter category of noncitizens have eligible status, it did not refer to the SAWs and RAWs. For this reason, the 1988 proposed rule did not include SAWs and RAWs as having eligible status.

However, after reviewing the language of IRCA pertaining to SAWs and RAWs (amending sections 210 and 210A of the Immigration and Nationality Act), and consulting with the Immigration and Naturalization Service (INS) about the interpretation to be given sections 210(a)(5) and 210A(d)(4) (8 U.S.C. 1160 and 1161), HUD determined that noncitizens admitted for temporary or permanent lawful residence under these sections have eligible status, as long as their status has not expired or changed. In a letter to HUD dated December 17, 1993, the INS noted that as a practical matter, no additional RAWs were admitted during Federal fiscal years 1990 through 1993, the period in which RAWs could have been admitted, and stated that no noncitizens "were or will be admitted as RAWs." Consequently, the 1994 proposed rule includes reference to SAWs, but not RAWs.

One commenter urged that HUD add to its list of the categories of eligible noncitizens two categories not expressly recognized by the statute as having such status: (1) Noncitizens who have lived, worked and paid taxes in the United States for many years and who will become legal permanent residents in the near future, such as relatives of citizens or permanent residents; and (2) noncitizens who are so elderly, ill, or

disabled that the INS will not deport them on humanitarian grounds.

HUD lacks the legal authority to add these categories of individuals to the list of those eligible for admission to the programs covered by this rule. However, if individuals meeting these descriptions already reside in assisted housing, they may qualify for continued assistance under the regulatory provisions pertaining to mixed families if they live with citizens or permanent residents, or for deferral of termination of assistance if they are unable to locate alternative suitable housing.

2. Ineligibility of Noncitizen Students

Section 214 provides that noncitizen students who are not immigrants (i.e., are not seeking to establish residency in the United States) are not eligible for assistance. The Congress passed the provision concerning nonimmigrant student noncitizens (sec. 164, Pub. L. 100-242, 101 Stat. 1861) in the late fall of 1987, directly targeted against noncitizen students who are nonimmigrant in very emphatic language: "Notwithstanding any other provision of law, the Secretary of Housing and Urban Development may not make financial assistance available for the benefit of" a noncitizen student who is a nonimmigrant. (Emphasis added) HUD lacks the authority to modify this mandate. However, the Chinese Student Protection Act of 1992, Public Law 102-404, dated October 9, 1992, allows certain persons who may have been admitted to the United States as noncitizen students who are nonimmigrants to adjust their status to that of lawful permanent residents of the United States, and thus become eligible noncitizens under this rule. (See 8 CFR part 245 as amended on July 1, 1993, 58 FR 35832.)

HUD, however, has interpreted the restrictions on assistance to noncitizen students as not applying to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student.

C. Submission of Evidence of Eligible Status

1. Documentation Requirements—Who Submits What

One commenter urged HUD to require all applicants and tenants, whether citizens or noncitizens, to submit documentation establishing eligibility. The commenter insisted that by doing so, HUD would reduce the likelihood of discrimination by owners, and ensure that applicants do not bypass the verification procedures by simply declaring that they are citizens. In

contrast, another commenter insisted that HUD's requirement that noncitizens and citizens submit documentation of eligible citizenship or immigration status would only increase the burden on already-busy property managers.

The 1994 proposed rule maintains documentation requirements because documentation requirements are imposed by statute. However, the 1994 proposed rule revises the documentation requirements for citizens, and for noncitizens who are or will be 62 years of age or older and are or will be residing in assisted housing when these regulations take effect. The 1994 proposed rule removes the requirement in the 1988 proposed rule that citizens and noncitizens 62 years of age or older and residing in assisted housing submit a verification consent form. (See section VI.A.2. of this preamble which describes the documentation required by the 1994 proposed rule.)

The 1994 proposed rule does not modify the documentation requirements for all other noncitizens (i.e., those who are not 62 years of age or older and residing in assisted housing) because these documentation requirements for noncitizens are statutorily prescribed by the Immigration Reform and Control Act of 1986 (IRCA) (42 U.S.C. 1320b-7). Under IRCA, every individual who declares him or herself to be a noncitizen with eligible immigration status (except for certain elderly tenants) must submit immigration documents for verification by the INS. This requirement applies to every member of a household, including children.

HUD disagrees with the commenter who suggested that requiring all tenants and applicants to submit documentation of citizenship or immigration status would lessen the likelihood of discrimination by responsible entities. Under both the 1988 and 1994 proposed rules, a responsible entity is required to ask any individual declaring eligible immigration status to submit immigration documents for verification with the INS.

Individuals who declare in writing that they are United States citizens are not required under IRCA to submit proof of citizenship. HUD construes this provision to mean that the Congress specifically intended to exempt citizens from IRCA's document submission and verification procedures, and this statutory construction is reflected in the 1994 proposed rule, as it was in the 1988 proposed rule. (See, also, the discussion between Senators Kennedy and Hawkins at 131 Cong. Rec. S11414, 11417 (daily ed. September 13, 1985).)

This interpretation is supported by the language contained in Part A of IRCA. Specifically, section 101 of IRCA (Control of Unlawful Employment of Aliens) amends the Immigration and Nationality Act by adding a new section 274A (8 U.S.C. 1324a), which provides at section 274A(b) for the establishment of an employment verification system. Under section 274A(b), the Congress specifically required an employer to attest under penalty of perjury that it had verified that an individual was not an unauthorized noncitizen, and that the verification was based upon a review of certain statutorily prescribed documents. These documents include, among others, U.S. passports and certificates of U.S. citizenship or naturalization. This statutory scheme is markedly absent under HUD's provisions under Part C of IRCA (Verification of Status Under Certain Programs). Accordingly, given the marked absence of these requirements from section 214, HUD is not imposing a proof of citizenship requirement in the rule.

One commenter urged HUD to exempt persons with disabilities from the rule's "citizen and noncitizen status documentation requirements." Another commenter asked that the rule exempt from the documentation requirements all persons who are covered by HUD's definition of "elderly person," which would include non-elderly persons and persons with disabilities. The commenter suggested that the exemption could be limited to those instances where the individual actually submitted medical proof of his or her disability.

The documentation requirements under the rule are statutorily mandated under IRCA, and HUD does not have the discretion to administratively exempt from those requirements a particular group of persons. Moreover, section 621 of the Housing and Community Development Act of 1992 (106 Stat. 3812) (1992 Act), which amended section 3 of the U.S. Housing Act of 1937 (42 U.S.C. 1437a) (1937 Act), revised the statutory definition of "elderly person" to remove the reference to persons with disabilities and limit this term to persons who are 62 years or older. (Before the amendment, persons with disabilities were included in the definition of "elderly person," regardless of the age of the disabled person.) Accordingly, as amended by the 1992 Act a person with disabilities meets the 1937 Act definition of "elderly person" if the person is 62 years or older. In light of the amendment made to the definition of "elderly person" by the 1992 Act,

HUD cannot treat disabled persons who are not 62 years of age or older as if they were elderly persons.

It is important to clarify two related points on this issue. Since any individual who declares, under penalty of perjury, that he or she is a United States citizen is not required to submit proof of citizenship, no documentation requirements are imposed upon a person with disabilities (or anyone else) who is a U.S. citizen. Similarly, any person with disabilities who (1) is a noncitizen, (2) is 62 years of age or older or will be 62 years of age by the time he or she is required to submit evidence of eligible status, and (3) is receiving HUD assistance on the effective date of this final rule, is exempt from the rule's requirements to submit evidence of immigration status. This person only would be required to submit, in addition to the declaration, a proof of age document. As a result, even though there is no specific exemption for persons with disabilities under this rule, it is still possible that a person with disabilities may not have to submit immigration status documentation because of the rule's own general exemptions.

2. Persons Other Than Citizens and Certain Elderly Persons Are Not Exempt From Documentation Requirements

One commenter argued that the statutory provision establishing the statutory documentation requirements does not apply to applicants because section 214(d) requires immigration documents to be submitted by individuals who are, among other things, "receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987." (As noted in the discussion under section VII.A. of this preamble, in both the 1988 and 1994 proposed rules, HUD replaces the term "date of enactment" of the 1987 Act with "effective date of final rule.")

Since applicants for HUD assistance could not have been "receiving financial assistance on February 5, 1988" (the date of enactment of the 1987 Act), the commenter contends that applicants do not need to submit documents verifying citizenship or eligible immigration status until they actually become recipients. Consequently, this commenter asked HUD to include in the rule a prohibition against the removal of any applicant's name from a waiting list based upon a failure to verify immigration status with the INS.

HUD disagrees with this interpretation. The 1987 Act amended section 214 to provide that:

If such an individual is not a citizen or national of the United States, is not 62 years of age or older, and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987, there must be presented either * * * (alien registration documents or other documents acceptable to HUD). (42 U.S.C. 1436a(d)(2))

HUD has construed this language to mean that only two classes of individuals are exempt from the immigration documentation requirements: (1) Those who declare themselves to be U.S. citizens or nationals; and (2) noncitizens who are or will be 62 years of age by the time they are required to submit immigration documents, and who were receiving HUD financial assistance on the effective date of this final rule. This second category of persons, however, would be required to present proof of age.

The commenter proposes that HUD establish an additional exemption for all applicants to assisted housing. Again, under this interpretation, the documentation requirements would not be triggered until the applicant becomes a tenant "receiving financial assistance." HUD believes that there is no legal basis for adopting this interpretation of the 1987 Act. There is no evidence in the 1987 Act that the documentation requirements of section 214 were intended to apply only to tenants. To the contrary, the 1987 Act contains other provisions that support that the documentation requirements were intended to cover applicants as well. (See, for example, 42 U.S.C. 1436a(d)(4)(A)(ii) and 1436a(d)(4)(B)(ii), which prohibit HUD from delaying, denying, reducing or terminating an individual's eligibility for financial assistance pending INS verification or appeal.)

Moreover, in discussing the proposed implementation of the SAVE verification system under IRCA, Senator Hawkins specifically remarked:

* * * [I]f the applicant is not a U.S. citizen, the State is required to use the person's alien file or alien registration number to verify with the Immigration and Naturalization Service the alien's immigration status * * * (Emphasis added) (at 131 Cong. Rec. S11415, daily ed. Sept 13, 1985).

Clearly, the Congress intended the SAVE system to be used to verify the immigration status of applicants to assisted housing, and not to delay this process until after the applicant became a tenant receiving HUD assistance. Consequently, the 1994 proposed rule does not revise the 1988 proposed rule's interpretation of this statutory language.

Two commenters urged HUD to consider an alternative interpretation concerning the elderly exemption, one which would exempt from the rule's documentation requirements any individual who not only is 62 years of age or older and receiving HUD financial assistance on the effective date of the final rule, but an individual who is receiving HUD financial assistance on the effective date of the final rule, and who will be 62 years of age by the time he or she is required to submit evidence of eligible status. This revision would provide individuals with a longer period of time in which to qualify under the elderly exemption. HUD agrees that this is the preferable statutory interpretation, and is consistent with Congressional intent concerning the protections to be provided to persons already receiving assistance and elderly persons. Accordingly, the 1994 proposed rule contains this interpretation.

Another commenter on the "elderly exemption," advocated that the exemption apply to both current tenants of HUD-assisted housing, and "to future applicants who are elderly." Citing from the House Committee Report on H.R. 4 (H.R. Rep. No. 100-122, 100th Cong., 1st Sess. 49 (1987)), the commenter contended that Congress meant to exclude from the rule's documentation requirements *all* elderly individuals, and not just those who were receiving financial assistance on the effective date of HUD's final rule. The commenter quoted from page 50 of the House Committee Report:

Elderly persons 62 years or older would only have to certify, and would not have to provide documentation establishing their immigration status or nationality.

While it is true that the House version of the 1987 Act would have extended the elderly exemption to all persons 62 years of age or older, this language was modified prior to passage of the bill. Under section 164(c)(1) of the 1987 Act, as passed (101 Stat. 1861), the Congress narrowed the exemption to apply only to an individual who is " * * * 62 years of age or older, and (who) is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987."

As discussed above, HUD construes this language to mean that the elderly exemption applies only to individuals who are or will be 62 years of age by the time they would be required to submit evidence of eligible status, and who are receiving HUD financial assistance on the effective date of the final rule. Accordingly, HUD has not adopted the

suggested modification in the 1994 proposed rule.

3. Submission of Original Documentation

One commenter argued that elderly persons would be unable to produce original records proving their age in the time period allowed by the proposed regulations. HUD notes that the 1988 proposed rule did not provide any time limit for the submission of documents, including documents establishing an individual's age. With regard to the documentation that is needed to establish an individual's age (i.e., the types of acceptable documents, and whether original documents must be submitted or whether some alternative procedure is permissible), the 1994 proposed rule does not prescribe acceptable documentation. Responsible entities will continue to follow existing procedures used in the various assisted housing programs to document age (i.e., to document that a person is an "elderly person"). HUD also notes that most individuals who are 62 years of age or older will have readily available the documents establishing age since those documents are needed to obtain social security benefits, and other benefits provided by communities (e.g., discounts for senior citizens).

Several commenters urged HUD to eliminate the requirement in the 1988 proposed rule that applicants and tenants must submit original immigration documents for verification with the INS. These commenters asserted that the proposed rule failed to consider the burden this requirement would impose upon individuals who had to surrender their INS documents, or upon HAs that would have to implement costly procedures to keep track of these documents. As an alternative, these commenters suggested that individuals be permitted to submit certified copies of INS documents, with original INS documents required only when the responsible entity has a reasonable suspicion of fraud or misrepresentation.

HUD has consulted with the INS about whether certified immigration documents, rather than original INS documents, are acceptable for SAVE verification. The INS has indicated to HUD that " * * * only originals of documents denoting immigration status" may be used to establish eligibility through the SAVE system. Consequently, HUD does not have the discretion to modify this provision of the rule. However, it should be noted that under no circumstance should a responsible entity retain in its possession any original INS documents.

The responsible entity should review the original INS document, make photocopies of the document for its own records, and return the original document to the applicant or tenant as quickly as possible. This restriction on the retention of original INS documents by the responsible entity is included in the 1994 proposed rule.

4. When Documentation Is To Be Submitted

Two commenters noted that the 1988 proposed rule did not contain time limits for applicants and tenants to submit their immigration documents. The commenters stated that, to the extent immigration documents must be submitted within the time period for the general recertification of eligibility process, it would be "too brief a period."

HUD agrees with the suggestion that owners and housing authorities (HAs) must provide notice of the time period for submission of immigration documents. Section VI.A.3 of this preamble describes the time for submission of documents as provided in the 1994 proposed rule. The 1994 proposed rule also requires owners and HAs to inform applicants and tenants of this time period in the notice to applicants and tenants that advises them that the provision of financial assistance or continued financial assistance is contingent upon the submission and verification of immigration documents.

Another commenter asked that the rule clarify that the responsible entity's notice to tenants and applicants, advising that financial assistance is contingent upon the submission and verification of immigration documents, be in writing. HUD intended that this notice be in writing, and the 1994 proposed rule makes this clarification.

Several commenters asked HUD to include in this notice, as well as the notice informing ineligible applicants and tenants about the denial or termination of assistance, of the existence of, and the procedures for obtaining relief under, the "preservation of families" provision. HUD agrees that both of these notices should inform applicants and tenants that they may qualify for relief under the preservation of families provision, and indicate the criteria and procedures for obtaining such relief, and the 1994 proposed rule adopts this requirement for notices.

5. Removal of 1988 "Reason to Suspect" Provisions

A number of commenters expressed concern that the 1988 proposed rule authorized an owner or HA to initiate

termination procedures whenever there is evidence of conflicting or inconsistent information regarding an individual's identity or claimed citizenship status. Several commenters claimed that the 1988 rule's "reason to suspect" provision invites discrimination against anyone who "appears foreign," and they urged that sanctions be imposed upon responsible entities that are found to have discriminated on this basis.

The 1994 proposed rule removes this provision. Any false statement or fraudulent evidence concerning eligibility on the basis of eligible citizenship or immigration status should be handled in the same manner that an owner or HA addresses false statements or fraudulent evidence with respect to other aspects of eligibility. To the extent possible, eligible citizenship or immigration status should be treated the same as other factors that are taken into consideration in determining a person's eligibility for assistance or continued assistance. Except where mandated by statute (notice requirements, verification procedures, hearing requirements, special relief provisions), the proposed rule directs the responsible entity to rely on existing procedures that are in place and applicable to other eligibility factors.

6. Privacy Issues

One commenter asked HUD to revise the provision in the 1988 proposed rule that granted authority to HUD to share with Federal, State or local government agencies any information that it obtains during the verification process. The commenter stated that information concerning citizenship or eligible immigration status obtained by HAs and project owners during the verification process should not be used for any purpose other than to determine eligibility for assistance.

Information contained in the HUD systems of records is subject to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). Information gathered by HAs or private owners is not. However, any information gathered by these entities could be subject to State or local privacy laws. The 1988 proposed rule purported to list all the sources to which the information could be released and the purposes for which the information could be used. HUD has concluded that a rule cannot anticipate all the possibilities in which such evidence may be compelled to be released by HUD or the project owner or HA under applicable law, and the 1994 proposed rule removes the list of circumstances in which evidence of eligible status may be released. (Section VI.A.7 of this preamble describes how

the 1994 proposed rule addresses this issue.)

With respect to the privacy issue, HUD has determined that the project owner, like HUD, should bear no obligation to control what an agency (to which the project owner or HUD was required to release evidence of eligible immigration status) does with this evidence. Therefore, the 1994 proposed rule provides that neither HUD nor the responsible entity is responsible for the further use or transmission of the information released in accordance to applicable law.

7. Security of INS Data Base

A number of commenters mentioned that there is a serious potential for misuse of the INS data base, particularly when the data base is being accessed by private entities. They suggested that HUD include "enhanced protections" in the rule to safeguard the confidentiality of information obtained from the data base. Similarly, another commenter urged that authorized names or approval numbers for INS document verification be provided to owners and HAs.

With regard to the first comment, HUD points out that the INS already has protections built into the SAVE system to maintain the confidentiality of system information, particularly when information is being accessed by private individuals. In addition, HUD will provide the INS with the names and approval numbers of project owners or HA representatives who are authorized to access the SAVE system. The project owners and HA representatives may use information obtained from the INS and the applicant only in accordance with the verification consent form.

D. Documents of Eligible Status

Several commenters advocated recognition of an immigration judge's decision granting a suspension of deportation as evidence of lawful admission for permanent residence. Their reasoning was that the Form I-551, which ordinarily evidences lawful admission for permanent residence, is issued after the decision and backdated to the date of the decision but may not be available when an applicant or tenant needs to establish eligible immigration status.

The INS has informed HUD that the decision of an immigration judge to suspend deportation is not final when issued. The INS may review such a decision and reverse it. If the INS decides not to reverse the decision, or is unable to act within the required review period, a Form I-551 is issued

and the decision becomes final. Therefore, while a copy of the decision itself is not evidence of final INS action conferring eligible status, the Form I-551 is. The 1994 proposed rule does not include a decision to suspend deportation in the list of acceptable documentation of eligible immigration status, since it is not evidence of final INS action. However, if an applicant or tenant has only the judge's order suspending deportation at the time of application or recertification of income, he or she can appeal to the INS to obtain a final determination of immigration status and a Form I-551.

The Department of Agriculture contacted HUD about its inclusion of Form I-688A in the list of documents evidencing eligible immigration status. Since the housing programs operated by the Department of Agriculture are to follow the same strictures concerning eligible noncitizens (with the exception of farm workers' housing) as apply to HUD programs, the inquiry was whether Form I-688A is evidence of a grant of eligible status under HUD programs, or whether it is merely evidence that an individual has applied for eligible status. After consulting with the INS, HUD determined that it is the latter. Therefore, the I-688A has been removed from the list of documents that evidence eligible immigration status in the 1994 proposed rule.

In the 1994 proposed rule, other changes were made to the list of immigration documents that appeared in the 1988 proposed rule. These changes were made in response to a 1993 letter from the INS, which provided information concerning the current status of various identification documents (i.e., current form numbers, the annotation on cards, etc.), and HUD will further consult the INS on applicable immigration documents before issuance of the final rule.

E. Verification of Eligible Immigration Status

1. General

One commenter asked HUD to specifically state in the rule that eligibility determinations by HAs may not be relied upon by third persons as evidence of citizenship or immigration status. HUD has not included the requested language in this 1994 proposed rule because HUD has no authority to either require or prohibit persons to rely on HA eligibility determinations as evidence of citizenship or eligible immigration status.

2. Verification Based Solely on INS Documents

Several commenters objected to the requirement in the 1988 proposed rule that the responsible entity obtain from the applicant or tenant either an INS document that contains a photograph, or an additional document with a photograph, to ensure the alien's identity. These commenters noted that neither IRCA nor the 1987 Housing Act requires an individual to submit a photograph when the INS document submitted does not contain one.

The 1994 proposed rule requires only the submission of the INS immigration document in whatever form that document may be in (i.e., whether it contains a photograph or does not contain a photograph).

3. No Denial or Termination of Assistance Pending Verification Process

Three commenters asserted that the 1988 proposed rule would have implemented section 121 of IRCA " * * * in a manner that violates many of section 121's protections for the public, and without a well-developed plan with the INS for processing verification requests and for reimbursement." The commenters expressed concern that INS records may be unreliable, verification could take several months and produce erroneous results, and the consequences would be that eligible persons would have assistance denied or terminated.

The 1994 proposed rule closely tracks the statutory protections found in 42 U.S.C. 1436a (d)(4)(A)(ii) and (d)(4)(B)(ii). These statutory sections require HUD to provide a "reasonable opportunity" to submit documents, and to appeal to the INS. The 1994 proposed rule requires that a responsible entity not deny admission to an otherwise eligible applicant to a covered program solely on the basis of immigration status, when such assistance is available, or terminate assistance to a tenant, during the "reasonable opportunity" to submit immigration documents, or pending the INS verification process, or the INS appeal. Under this expansive interpretation, an applicant or tenant would not be penalized for any delay in verifying eligible immigration status, irrespective of the cause for the delay.

However, for applicants, the protections against "delay" in providing assistance only extend through the INS appeal process. The statute does not provide protection for an applicant against delay in providing assistance during the pendency of the informal hearing process. While the statute

provides that during the pendency of the informal hearing process, assistance may not be denied or terminated (42 U.S.C. 1436a(d)(6)(D)), the statute drops reference to "delay."

Three commenters noted that the proposed rule failed to establish a timetable for owners to submit documents to the INS for verification. They contended that delays in the submission of immigration documents to the INS could jeopardize a person's eligibility for assistance or continued assistance, and thereby violate the statutory mandate that assistance not be delayed, denied, or terminated as a result of the verification process. These commenters urged HUD to include in the rule a timetable for the submission and processing of documentation.

The 1994 proposed rule adopts this suggestion although protections provided by 42 U.S.C. 1436a (d)(4)(A)(ii) and (d)(4)(B)(ii), as discussed above and incorporated in the rule, renders the issue largely moot. As discussed above, a responsible entity must admit an otherwise eligible applicant to an available unit during the period provided to submit immigration documents, or pending the INS verification, or INS appeal process. Thus, even if an owner delays the submission to the INS of an applicant's immigration documents, the delay will not affect the applicant's ability to obtain assistance if the applicant is otherwise eligible, and if assistance is available. Nevertheless, the 1994 proposed rule requires that a responsible entity submit to the INS no later than 10 days following the date of submission copies of immigration documents that it obtains from applicants and tenants.

HUD has refrained from establishing a specific time period for processing immigration documents, because this can vary greatly depending upon the circumstances. However, for the same reasons discussed above, the failure to establish a processing deadline will not affect a person's eligibility for assistance or continued assistance if the person is otherwise eligible for assistance.

4. Purpose of Secondary Verification

One commenter asked whether secondary verification would have to be instituted whenever the primary verification process is unable to confirm eligible immigration status, including instances where the primary system verifies ineligible status.

Assistance to an applicant or tenant may never be denied or terminated solely on the basis of the primary verification system's determination of ineligibility. The 1994 proposed rule

provides that a responsible entity must institute secondary verification whenever primary verification is either unable to confirm eligible status, or when it verifies ineligible immigration status. The only instance in which primary verification would be used without the benefit of secondary verification is when the primary system verifies eligible immigration status.

A number of commenters asserted that the 1988 proposed rule improperly characterized the INS secondary verification process as an appeal. They cited the General Accounting Office's October 1987 Report on SAVE, in which the INS stated that "no denial of benefits may be based solely on primary verification." These commenters contend that secondary verification is not an appeal, but a necessary step because of inadequacies of the INS primary verification system.

HUD has consulted with the INS concerning IRCA's reference to an appeals process, and the INS agrees with the commenters that secondary verification may not substitute for the appeals process under 42 U.S.C. 1436a(d)(4)(A)(i). Further, the INS confirmed that secondary verification is a necessary step to the denial or termination of assistance to an individual, and that the INS appeals process cannot be initiated until after secondary verification establishes that the individual is not an eligible alien. The 1994 proposed rule therefore removes the reference to an "appeal" that accompanied the "secondary verification" heading in the applicable regulatory sections.

5. Appealing Secondary Verification of Ineligible Status

The 1994 proposed rule includes a discussion of the procedures for initiating the INS appeal once secondary verification establishes ineligible status. Under these procedures, the responsible entity must notify the applicant or tenant of the INS determination of ineligibility, and of the individual's right to appeal to the INS the verification decision, to submit additional documentation or a written explanation in support of the appeal, or to request an informal hearing. The responsible entity must submit photocopies of these documents to the appropriate INS district director, together with a copy of INS Form G-845S (used to process the secondary verification request) and a cover letter identifying the package as an appeal of the INS determination of ineligibility. The INS will issue a decision on the appeal within 30 days from the date of

its receipt of the documents. If the INS is unable to respond within this time period, it will notify the applicant or tenant and indicate the reasons for the delay. Pending the outcome of the INS appeal, an otherwise eligible applicant must be provided with housing assistance, if such assistance is available, and assistance to a tenant may not be interrupted.

6. The SAVE System

A few commenters claimed that the 1988 proposed rule's provisions on the SAVE verification procedures seemed premature, since it appeared that the necessary coordination with the INS had not yet been completed. They asked HUD to make clear that a rule would not take effect until the SAVE process is fully operational.

HUD has been working closely with the INS to implement the SAVE system for its covered programs, and fully expects to have all of the necessary coordination completed before the effective date of a final rule implementing section 214. In addition, HUD plans a delayed effective date for its final rule. The delay will provide for a period that is sufficient for project owners and HAS to undergo training on the SAVE system and become proficient in its use. As a result, HUD fully expects all necessary coordination with the INS on the use of the SAVE system to be completed before the effective date of the final rule implementing section 214.

Other commenters claimed that the 1988 proposed rule failed to provide the detailed information necessary to implement SAVE such as how requests for verification would be transmitted to the INS, who would bear responsibility for lost INS documents, or what line item of the "statement of profit or loss" in HUD Form 92410 should include the relevant administrative costs.

The procedures for the SAVE system are established by the INS, and HUD is required to use these procedures. Therefore, elaboration of the SAVE procedures is not a matter to be established by HUD through rulemaking. The INS has a handbook governing the procedure, and HUD will develop supplementary instructions that will assist responsible entities in following the SAVE procedures. HUD expects to issue detailed guidance well in advance of the effective date of a final rule.

F. Reasonable Opportunity to Establish Eligible Status—No Denial or Termination of Assistance during Reasonable Opportunity Period

Several commenters strongly objected to HUD's interpretation in the 1988

proposed rule of 42 U.S.C. 1436a(d)(4)(A)(ii) and (d)(4)(B)(ii). These statutory sections state that HUD must provide individuals with "a reasonable opportunity" to submit immigration documents for verification with the INS, and that pending this period HUD may not "delay, deny, reduce, or terminate (an) individual's eligibility for financial assistance on the basis of the individual's immigration status."

In the 1988 proposed rule, HUD maintained that so long as the responsible entity continued to process an applicant for purposes of establishing eligibility for financial assistance, and placed the applicant's name on a waiting list once eligibility (aside from eligible immigration status) was established, it was complying with the requirements of IRCA. HUD reasoned that under this procedure the applicant's "eligibility for financial assistance" would not be delayed pending the secondary verification, even though assistance would not actually be provided until eligible immigration status was verified with the INS.

The commenters argued that delaying assistance because of immigration verification violates IRCA's prohibition against delaying assistance during the reasonable opportunity to submit immigration documents, or pending the INS verification or INS appeal. They further claimed that the distinction drawn by HUD in the preamble to the 1988 proposed rule between delaying eligibility and delaying financial assistance violates IRCA as soon as an applicant reaches the top of the waiting list. The commenters instead advocated admitting applicants based upon their written declarations of eligibility, and later evicting them if secondary verification establishes that the tenant is an ineligible alien.

As discussed under section VII.E.3 of this preamble, HUD has reconsidered its interpretation of 42 U.S.C. 1436a(d)(4)(A)(ii) and (d)(4)(B)(ii). The 1994 proposed rule provides that an otherwise eligible applicant must be admitted to a housing assistance program, if such assistance is available, during the reasonable opportunity to submit immigration documents, pending the INS primary or secondary verification of immigration status, or pending the conclusions of the INS appeal process. Again, however, as discussed earlier in this preamble, the statute does not provide identical protection to an applicant during the informal hearing process. Although assistance may not be denied pending the conclusion of the informal hearing

process, assistance to an applicant may be delayed.

With regard to tenants, the 1994 proposed rule provides assistance may not be terminated during the reasonable opportunity to submit immigration documents, pending the INS primary or secondary verification, or pending the conclusion of the INS appeal process, or pending the conclusion of the informal hearing process.

G. Proration of Assistance Permitted

Several commenters disagreed with HUD's analysis in the preamble to the 1988 proposed rule (53 FR 41046-47) that IRCA's prohibitions against delaying, denying, reducing or terminating assistance pending verification also preclude the proration of assistance (i.e., permitting a family with ineligible family members to continue to receive assistance, based only on the eligible members). The commenters insisted that this language was intended solely to protect individuals against the loss of benefits during INS verification of immigration status, and should not be used by HUD to prohibit the proration of assistance.

As discussed earlier in this preamble, HUD has revised its position on the issue of proration of assistance. HUD agrees with the commenters that the statutory language is insufficient to support the prohibition of proration of assistance. The 1994 proposed rule provides for proration of assistance for applicants and tenants. Again, HUD specifically requests comment on the issue of proration of assistance, on the formulas for prorating assistance as set forth in the proposed rule, and welcomes suggestions and recommendations on how these formulas could be improved or made simpler.

H. Changing Units or Housing Programs

One commenter asked HUD to revise the provision in the 1988 proposed rule that would require a responsible entity to verify a tenant's immigration status as a condition of transferring from one unit to another, or from one housing assistance program to another. The commenter stated that there may be instances in which the tenant family has to transfer through no fault of its own during the term of the lease, and HAS should have the discretion to continue assistance under such circumstances for a minimum of one year.

HUD agrees that a tenant who transfers from one unit to another within the same housing project should not be required to verify eligible immigration status since that tenant would be merely seeking to continue an

existing subsidy, and the 1994 proposed rule adopts this change. In the case of public housing, even a transfer from one project to another would be continuation of the existing subsidy and therefore not involve an "admission," which would require verification of eligible immigration status, unless the move was from the jurisdiction of one HA to another HA.

With regard to transfers from one subsidy program to another or from one housing project to another, immigration status is verified when HUD regulations require that the tenant be treated like any other applicant attempting to receive a new form of housing assistance. HUD's position is not dependent upon whether the change is voluntary or involuntary, but rather if the change renders the tenant a new applicant under HUD's regulations. For example, if a family moved from one section 236 project to another, the move would be considered a new admission, because each project is separately owned and operated and the family would be required to satisfy admission criteria of the management of the project to which it was moving. Therefore, the family would be asked to submit information about citizenship or eligible immigration status along with income eligibility information.

I. Hearings

1. Administrative Burden

One commenter claimed that the hearing requirements contained in the 1988 proposed rule would place a tremendous administrative burden upon HAs, and would result in overloading its existing hearing officers with potentially "hundreds of ineligible alien determinations." The commenter maintained that this would delay proceedings against truly undesirable residents, such as those involved in drug transactions. Another commenter suggested that HAs should respond to the increased administrative burden by delaying the ineligibility determination hearings until more serious cases are heard, or by developing some other priority system.

HUD believes that these commenters have overestimated the number of hearings that will be requested by persons as a result of ineligibility determinations under this rule. As noted earlier in this preamble, HUD believes that the majority of applicants and tenants will be citizens and assert citizenship. Additionally, HUD expects that it is unlikely that a noncitizen who has been confirmed by the INS verification system and appeals process to be ineligible for assistance will go to

the trouble of requesting a hearing to contest the final INS decision. Consequently, HUD expects the administrative burden imposed upon HAs and project owners as a result of providing these hearings to be minimal.

2. Expansion of Procedural Protections in Hearing Process

One commenter questioned the legal sufficiency of the 1988 proposed rule's informal hearings on the denial and termination of assistance.

HUD believes that the hearing process provided under the 1988 proposed rule was legally sufficient, and complied with the requirements of the 1987 Act. The 1988 proposed rule met the minimum statutory requirements for a hearing. Under 42 U.S.C. 1436a(d)(6), HUD is required to make available to an individual who has been determined to be an ineligible noncitizen " * * * the applicable fair hearing process." The section lists the minimum statutory criteria needed to comport with due process requirements, which include:

(1) Written notice of the determination to deny or terminate benefits, and of the opportunity for a hearing to discuss the determination; (2) a hearing before an impartial hearing officer; and (3) written notification by the responsible entity of the decision of the hearing officer.

The 1994 proposed rule adds certain other due process components to the informal hearing process. These additional components are those provided by HAs and project owners for termination of tenancy (e.g., see 24 CFR 905.340, and 24 CFR 966.56). HUD believes that the type of hearing provided for termination of tenancy also should be available to applicants who are denied assistance on the basis of ineligible immigration status.

3. Timeframes for Requesting Hearings and Issuing Decisions

Four commenters objected to the 1988 proposed rule's 14-day period for requesting a hearing, claiming that the period is too brief since it would run from the date on the notice, and not from the date of receipt. They urged HUD instead to grant a hearing whenever reasonable cause is shown for a belated hearing request, or whenever there is only nominal prejudice to the responsible entity. Another commenter asked HUD to extend the period for requesting a hearing from 14 to 30 days.

While HUD has not entirely adopted either of these suggestions in the 1994 proposed rule, the 1994 proposed rule provides that a hearing must be requested within 14 days of the date of mailing the written notice of ineligibility or the INS appeals

decisions (established by the date of postmark) or the date of personal delivery of the notice (established by date of actual delivery) to the applicant or tenant. In addition, the 1994 proposed rule requires the responsible entity to grant an extension for requesting a hearing upon good cause shown by the applicant or tenant.

Other commenters objected to the requirement that responsible entities must provide an applicant or tenant with a written final decision regarding the decision to deny or terminate benefits within five days of the informal hearing. They claimed that this five-day limit does not provide a responsible entity with sufficient time to investigate and verify additional documentation that may have been submitted by the applicant or tenant at the hearing. HUD agrees with these commenters, and the 1994 proposed rule provides that the responsible entity must provide its written decision within 14 days of the hearing date.

4. Hearing Officers

Several commenters expressed concern about the qualifications of hearing officers under the 1988 proposed rule. The commenters cited the United States Supreme Court's decisions in *Schweiker v. McClure*, 456 U.S. 188 (1982) and *Matthews v. Eldredge*, 424 U.S. 319 (1976) in support of their claims that the requirements for hearing officers contained in the 1988 proposed rule are constitutionally deficient.

Specifically, a number of commenters asserted that under the standards established in *McClure*, a project owner who wants his or her employee to qualify as a hearing officer must first ensure that the employee has knowledge of the SAVE program, immigration law, and relevant program information.

HUD disagrees with this interpretation of the *McClure* case. In *McClure*, the Supreme Court focused on the second of the three factors cited in *Matthews*, which considers the risk of an erroneous decision and the probable value, if any, of additional or substitute due process safeguards. The Court then noted that in that case the Department of Health and Human Services by regulation required its carriers to select as a hearing officer:

[A]n attorney or other qualified individual with the ability to conduct formal hearings and with a general understanding of medical matters and terminology. The hearing officer must have a thorough knowledge of the Medicare program and the statutory authority and regulations upon which it is based, as well as rulings, policy statements, and

general instructions pertinent to the Medicare Bureau." (id. at 1188).

The Supreme Court found that because the HHS regulation ensured the qualifications of hearing officers, the record did not support the appellee's claims that additional due process safeguards would reduce the risk of erroneous deprivation of benefits.

However, it is inaccurate to point to the HHS regulatory standards on the qualification of Medicaid hearing officers as establishing the minimum constitutional standards needed to comply with due process. Moreover, contrary to the suggestion of commenters, it is unnecessary for HUD to require under its rule implementing section 214 that hearing officers have substantive knowledge of immigration law. The INS has undisputed expertise in this area, and under the rule any applicant or tenant who is faced with the denial or termination of benefits because of ineligible immigration status is guaranteed an opportunity to directly appeal to the INS the ineligibility determination. As a result, it would be duplicative and unnecessary to require hearing officers to have in-depth knowledge of immigration law.

Two commenters contended that the regulatory sections in the 1988 proposed rule which permitted a hearing to be held before an officer or employee of the owner so long as he or she did not make the initial decision of ineligibility, violates the 1987 Act's requirement of an impartial hearing officer. Another commenter claimed that the informal hearing established in the 1988 proposed rule failed to satisfy statutory and constitutional requirements, since both the initial decision and the decision following the hearing are issued by the owner, and not the owner's designated representative.

HUD disagrees with these comments. Both the 1988 and 1994 proposed rules provide that an individual who has received a letter denying or terminating assistance may request an informal hearing at which he or she can meet with any person designated by the owner * * * other than a person who made or approved the decision under review, or other than a person who is a subordinate of the person who made or approved the decision under review. HUD believes that this language comports with due process requirements for impartiality and, as a result, the provision remains unchanged in the 1994 proposed rule.

Another commenter suggested that the rule provide for hearing officers to be bilingual, or to provide the applicant or tenant with interpreters when circumstances require.

The 1994 proposed rule does not require hearing officers to be bilingual. With respect to interpreters, the 1994 proposed rule provides that an applicant or tenant is entitled to have an interpreter present at the denial or termination hearing, at his or her own expense, or at the owner's expense, as may be agreed upon by the parties. The owner may already have in his employ a person who speaks the language of the applicant or tenant, and is willing to have this person serve as an interpreter. Alternatively, the applicant or tenant may prefer to select their own interpreter.

5. Record of Hearing

Two commenters claimed that it was essential to the fair hearing procedure that the responsible entity maintain a record of the hearing for judicial review.

The informal hearing process does not require that a record be generated and maintained, and HUD declines to impose such requirement in this rule. The 1994 proposed rule provides for the responsible entity to allow an audiotape of the hearing, but no transcript is required to be made that would meet court standards and facilitate judicial review. In addition, and in accordance with HUD practice in the administration of many of its programs, the 1994 proposed rule requires that documents used by the responsible entity in processing an application or verification of eligibility of a tenant be maintained for a period of time.

J. Notices

A number of commenters requested that the notice of denial or termination of assistance include a brief statement of the reasons for the denial or termination, and an explanation of any documents found to be missing or inadequate. In addition, four commenters asked that the rule be revised to require the responsible entity to inform applicants and tenants not only of the right to obtain a hearing, but also of the procedures for initiating the hearing and the INS appeal. HUD agrees with both of these suggestions and has adopted these changes in the 1994 proposed rule.

Other commenters asked that all notices issued under the rule to applicants and tenants be required to be bilingual or multilingual, as necessary. As discussed in section VI.A.12 of this preamble, the 1994 proposed rule imposes a duty on the responsible entity to provide, where feasible, documents or notices in a language that is understood by the applicant or tenant if the applicant or tenant is not proficient in English.

K. Removal of Resumption of Assistance and Retention of Assistance Provisions

Four commenters claimed that HUD's position on the resumption of assistance to tenants after required evidence is submitted is unduly harsh. The commenters referred to the preamble of the 1988 proposed rule, in which HUD stated that after financial assistance for a tenant is terminated, assistance would not resume unless all of the required evidence was submitted by the tenant to the owner, " * * * and resumption of assistance is authorized in accordance with HUD requirements." (HUD indicated in the 1988 proposed rule that these requirements would be described in greater detail in program handbooks.) The commenters maintained that assistance should always be restored to an eligible family when necessary to prevent homelessness, or when a delay in the submission of documentation is caused by circumstances beyond the control of the tenant.

One commenter stated that resuming assistance to a family after assistance has been terminated can be programmatically burdensome, since HA units are typically fully leased and there are waiting lists. This commenter urged HUD to provide HAs, in advance of the implementation of the final rule, with the handbook requirements on the resumption of assistance so that necessary procedures can be developed.

Another commenter objected to HUD's statement in the preamble of the rule that program handbooks would contain the requirements governing resumption of assistance. The commenter claimed that these requirements should be published in the final rule and not in a program handbook.

On further consideration of this issue, HUD has determined that once assistance to a tenant has been terminated for ineligible immigration status, the tenant should be treated the same as if the assistance were terminated for any other reason. No special procedure needs to be developed for purposes of this rule.

Similarly, the 1988 regulatory provision concerning "Retention of Financial Assistance" has been removed. This provision prohibited a responsible entity from receiving or retaining financial assistance paid for the benefit of a tenant admitted for participation in a program when required evidence of eligible status has not been submitted or verified by the INS in accordance with the regulations. This prohibition applies whether a responsible entity admitted a person who has ineligible immigration status,

or who is ineligible on some other basis (e.g., the person's income makes them ineligible for assistance).

L. Extensions; Requirement to Grant Upon Good Cause; and Grant or Denial to be in Writing

Numerous comments were received on the 1988 proposed rule's provisions on the extension of time for tenants to submit immigration documents. (See section VII.F of this preamble concerning reasonable opportunity to submit documents of eligible status by both applicants and tenants.)

One commenter stated that while the 1988 proposed rule permitted a tenant under certain circumstances to obtain an extension of time for the submission of immigration documents, the 1988 rule failed to consider the financial burden this requirement imposes upon HAs. In order to implement this provision, the commenter claimed that housing authorities would have to develop systems to record extensions, and to monitor tenant compliance, and the rule should provide reimbursement for these expenses.

While HUD agrees that recording tenant extensions and monitoring compliance may impose a certain financial cost to responsible entities, HUD believes that this cost will be minimal. Again, HUD believes that most tenants will have eligible status, and tenants who are eligible for assistance will not need to request an extension of time to submit immigration documents, but will have the documents readily available. As discussed under section VII.F of this preamble, the 1994 proposed rule provides that an extension be granted to applicants and tenants upon good cause shown.

One commenter argued that in the 1988 proposed rule HUD unfairly required a responsible entity to document in writing the decision to grant an extension, but failed to impose a similar requirement on the decision to deny an extension. The commenter claimed that the same standards that apply to the decision to grant an extension should also apply to the denial of an extension.

The 1994 proposed rule provides for the granting or denial of an extension to be in writing, and if the extension is denied, to state the reasons for the denial.

M. Preservation of Mixed Families and Other Families

1. Proration of Assistance

The preservation of families provision in the 1994 proposed rule includes proration of assistance, as discussed

earlier in this preamble. Proration of assistance is available to a mixed family (a family with members with eligible citizenship/immigration status, and those without eligible immigration status), other than a family receiving continued assistance or other than a family for which termination of assistance is temporarily deferred.

2. Continued Assistance and Deferral of Termination of Assistance—Generally

Section 1436a(c)(1) (42 U.S.C. 1436a(c)(1)) provides that if assistance is to be terminated to a family that was receiving assistance when the 1987 Act was enacted, after a final finding of ineligibility, special relief may be provided under certain circumstances:

[T]he public housing agency or other local governmental entity involved (in the case of public housing or assistance under section 8 of the United States Housing Act of 1937) or the Secretary of Housing and Urban Development (in the case of any other financial assistance) may, in its discretion, take one of the following actions:

(A) Permit the continued provision of financial assistance, if necessary to avoid the division of a family in which the head of household or spouse is a citizen of the United States, a national of the United States, or an alien resident of the United States described in [section 1436a(a)(1)–(6)]. For purposes of this paragraph, the term "family" means a head of household, any spouse, any parents of the head of household, any parents of the spouse, and any children of the head of household or spouse.

(B) Defer the termination of financial assistance, if necessary to permit the orderly transition of the individual and any family members involved to other affordable housing. Any deferral under this subparagraph shall be for a 6-month period and may be renewed by the public housing agency or other entity involved for an aggregate period of 3 years. At the beginning of each deferral period, the public housing agency or other entity involved shall inform the individual and the family members of their ineligibility for financial assistance and offer them other assistance in finding other affordable housing.

With respect to continued assistance, these provisions require a project owner (including a mortgagee) to consider permitting a family to continue to receive assistance in either of two situations. If the head of household or spouse is a citizen or national, or has eligible immigration status, and continued assistance is necessary to avoid division of the family, the assistance is to be continued indefinitely.

Deferral of termination of assistance is available to a mixed family that qualifies for prorated assistance (and does not qualify for continued assistance) but decides not to accept

prorated assistance, and the responsible entity allows the family time to find other suitable housing. If granted, the deferral period shall be for an initial period of six months. The deferral may be renewed for additional periods so long as the total period does not exceed three years.

3. Eligibility for These Forms of Relief

Although the language of the statute would only have afforded relief to families receiving assistance on February 5, 1988, the 1994 proposed rule provides, as did the 1988 proposed rule, that such relief will be afforded to families receiving assistance at the time the restrictions on immigration status are imposed. Since the restrictions are not imposed until the effective date of the final rule, the 1994 proposed rule uses the effective date of the final rule as the critical date for eligibility for these forms of special relief.

4. Decision to Provide Continued Assistance

a. Project owner discretion. Several commenters objected to the discretion given project owners under the 1988 proposed rule to determine whether a family containing at least one ineligible person could continue to receive assistance. They stated that the statute authorizes HUD to exercise this discretion, not a private owner. The commenters expressed concern that private owners would abuse this discretion, resulting in increased evictions, divisions of families, and homelessness.

The 1994 proposed rule provides that if the qualifying conditions are found to exist, the project owner must provide continued assistance to a family.

A few commenters objected to the provision of the 1988 proposed rule that permitted project owners to deny special relief to a tenant who is receiving "only minimal financial assistance" if the project owner determines that the tenant could afford to continue occupancy without assistance. The commenters stated that this provision is not authorized by the statute, and that decisions about minimal assistance and affordability are subjective and must be made by the tenant rather than the project owner. The 1994 proposed rule does not contain this provision.

b. HA Discretion. Similar to the concern expressed about the likelihood of a project owner not granting continued assistance when the qualifying conditions are satisfied, was the concern expressed by three commenters that the 1988 proposed rule authorized HAs to not even consider

whether to provide continued assistance to tenants in occupancy. These commenters stated that implicit in the statutory authority given to HAs to grant this type of relief to families is the duty to consider it.

Unlike the statutory language with respect to programs administered by project owners, which gives the discretion to provide special relief to HUD, the language applicable to HAs grants the discretion directly to the HAs. The 1994 proposed rule requires HAs to establish a policy and the criteria to be followed in determining whether to grant a family this type of assistance. The rule notes that the statute establishes certain criteria applicable to continued assistance and this criteria must be included in the HA's policy guidance.

c. Persons Eligible for Continued Assistance. A number of commenters took issue with the limit on the type of family to whom continued assistance is made available. The statute, however, prescribes the definition of the "family group" that is to be preserved: Head of household, any spouse, any parents of the head of household, any parents of the spouse, and any children of the head of household or spouse. The list has been carefully drawn to include not only common children of the head of household and spouse but also any other children either of them may have. Other relatives not having the prescribed relationship to the head of household or spouse (such as an aunt or uncle) who may have been living in the household and who have eligible status may be just as integral members of the family, but the Congress has not included them in the list of persons to be protected.

5. Deferral of Termination of Assistance

a. Discretion to Provide this Type of Relief. The statute permits HUD (in the case of project owners) or the HA to defer termination of assistance in certain circumstances. For project owners, the 1994 proposed rule requires project owners to grant this type of relief if a family meets the qualifying conditions. For HAs, the 1994 proposed rule permits HAs to determine whether this type of relief will be provided, but requires the HA, in establishing its standards, to be guided by the standards set forth in the rule implementing Section 214.

b. Length of the Deferral Period. The statute also requires that the length of time of any deferral must be six months. The statute provides that deferrals may be renewed to total as long as 36 months. Commenters objected to the 1988 proposed rule's provisions that

merely restated these periods. One commenter stated that 36 months exceeded a reasonable period, arguing in favor of a six month limit, and that a long deferral period unfairly diverts Federal housing assistance from eligible applicants. The other objector stated that an HA should have the discretion to renew deferrals for 12-month periods, to coincide with the annual recertification date.

The 1994 proposed rule, similar to the 1988 proposed rule, provides, consistent with Section 214, for the possibility of allowing subsequent deferrals and that these deferral periods may aggregate to as long a time as 36 months. Each deferral is to be based on an examination of the ability of the family to find alternative housing. Since some housing markets are very tight, HUD believes that owners should have the flexibility permitted by the statute to allow families already occupying assisted housing to remain until they are able to locate other suitable housing.

Two commenters raised the issue of whether deferral of termination of assistance would be available to persons with ineligible immigration status. The commenters appeared to believe that to obtain such relief, the "family" must have children.

Temporary deferral of termination of assistance is not limited to families with children. An ineligible individual residing in Federally assisted housing could qualify for a deferral of termination of assistance if the individual could demonstrate that reasonable attempts to locate other suitable housing were unsuccessful. Recognizing that barrier-free housing suitable for mobility-impaired individuals is not readily available in the private market, it is likely that such an individual could make the necessary showing. (More permanent relief, in the form of continuation of assistance, might also be possible for a disabled person who is a member of a multi-person family that meets the special family definition, e.g., a family consisting of a disabled undocumented alien and a citizen spouse.)

The 1988 proposed rule provided that, with respect to a tenant whose termination of assistance has been deferred once, an owner must make a determination of the availability of affordable housing and a decision about whether to extend the deferral of termination of assistance in sufficient time that the tenant can be notified at least 60 days before the expiration of the deferral period of whether termination will be deferred again.

A few commenters stated that this notice: (1) Must be given in writing at

least 60 days before the expiration of the deferral period; (2) must be given in accordance with formal notice procedures (stating the reasons for any decision not to extend the deferral period, which must be based on relevant factors); and (3) must include an offer of a hearing.

HUD agrees that adequate notice must be given before the expiration of the deferral in all cases, and the 1994 proposed rule adopts this suggestion.

6. Availability of Alternative Housing

Under the deferral of termination of assistance provisions, what is important to an ineligible tenant is the type of evidence necessary to demonstrate that "reasonable efforts" have been made to find "affordable housing" of "appropriate size". Several commenters wanted HUD to provide specific guidelines for these terms to assure that decisions are not arbitrary. Commenter suggestions with respect to "affordable housing" were that this term must refer to housing for which the rent does not exceed that amount that would be paid in accordance with section 3(a) of the 1937 Act for a unit in the public housing program, and housing that is required to meet HUD's Section 8 Housing Quality Standards. Another commenter suggested that this term should refer to housing located in the same community as that in which the tenant is currently residing, and that "appropriate size" be established with reference to HUD housing programs.

If "affordable housing" and "appropriate size" of unit were defined as suggested by the commenters, it is likely that the only housing that would satisfy the test would be HUD-assisted housing. In many markets, housing assisted by HUD under the 1937 Act is the only resource available to poor families that meets those specifications, and, therefore, the test of the availability of other affordable housing would have little meaning. Consequently, HUD declines to define the "affordable housing" alternative in the terms suggested.

However, HUD agrees that some guidance on the subject is needed, and the 1994 proposed rule provides guidance. The rule provides that other affordable housing refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

N. Protection From Liability

One commenter noted that although the 1988 proposed rule protected from liability both project owners and

mortgagees who comply with the rule's verification requirements, only mortgagees are affirmatively sanctioned under the rule for noncompliance with the verification procedures. (See § 235.13(g) of 1988 proposed rule, and § 235.13(d) of 1994 proposed rule.) The commenter asked HUD to extend similar sanctions under part 200 to all project owners.

HUD has reviewed "invalid certification" language applicable to mortgagees, and notes that under that provision, a mortgagee in the section 235 program who falsely certifies to HUD that it has verified a mortgagor's citizenship or immigration documents, must repay to HUD the full amount of assistance payments made on behalf of the mortgagor. The provision also prohibits any additional assistance payments from being made on the mortgagor's behalf.

One commenter stated that while the 1988 proposed rule provides HAs with flexibility in implementation, it also increases their potential liability, and asked that the rule be revised to reduce this exposure. Another commenter asked that HAs be indemnified for any wrongful determinations of eligibility.

HUD has not adopted either of these suggestions, since responsible entities that follow the statutory verification and due process requirements are protected from liability under both the 1987 Act and IRCA. Under section 1436a(e) (added by IRCA), HUD is prohibited from taking:

* * * any compliance, disallowance, penalty, or other regulatory action against an entity with respect to any error in the entity's determination to make an individual eligible for financial assistance based on citizenship or immigration status * * * (if such eligibility is based upon the responsible entity's complying with the verification and other procedural due process requirements mandated under IRCA.)

And, section 1436a(f)(1), added by the 1987 Act, provides that:

Notwithstanding any other provision of law, no agency or official of a State or local government shall have any liability for the design or implementation of the Federal verification system * * * if the implementation by the State or local agency or official is in accordance with Federal rules and regulations.

Because a responsible entity that follows the verification and due process requirements established in the final rule is statutorily protected from liability, HUD has not revised the requirements in the 1994 proposed rule to include any additional protections.

O. Reexamination of Income

Two commenters argued that the requirement for annual verification of the immigration status of any tenant family containing one or more non-citizen members is an unnecessary burden for project owners, HAs, and tenants. The commenters that immigration status rarely changes, and that any additional burden encountered because of an applicant's lack of citizenship might result in discrimination by project owners against all noncitizens.

HUD agrees that the burden of requiring an annual recertification and verification of immigration status of all noncitizen members of tenant families outweighs any benefit to be obtained, and the 1994 proposed rule revises the reexamination provisions to restrict the requirement for submission of a declaration (and documentation and verification of immigration status, where an alien is involved) to new individuals joining the household—other than by birth to one of the occupants.

P. Miscellaneous

1. Cost

Several of the commenters on the 1988 proposed rule complained that the requirement that the immigration status of all applicants be documented and verified under these procedures which include the offer of hearings at several points would be expensive and time-consuming. One commenter estimated that it would need to hire 56 additional housing assistants, at a cost of \$2 million, as well as conduct training of its employees, at a cost of \$250,000, and spend \$800,000 on notifying applicants of the requirements. Several HA commenters suggested that HUD reimburse them for additional staff time. Another commenter speculated that some landlords would withdraw from participation in HUD programs rather than put up with the extra burdens and costs of the new requirement.

HUD is aware that the verification procedure prescribed by IRCA is not without cost. The Federal government will incur the cost of the computerized verification system (SAVE) operated by the INS. The cost of operating that system will not be billed to the HA or project owner accessing the system but to HUD, for each inquiry made to the system. For HAs and project owners in most areas of the country, the cost of the verification system will not be substantial, because most applicants and tenants will certify that they are citizens. For HAs and project owners located in the parts of the country where

the concentration of noncitizen residents is greatest, there will be greater impact. However, the additional cost will be only a small, incremental change in the overall cost of processing applications and reexaminations.

One small HA advocated that HUD at least provide grants to small HAs who must computerize to accomplish the required verification. HUD sees no reason that any HA would need to computerize in order to implement these requirements. All that is necessary to access the SAVE system is a touch-tone telephone.

2. Implementation Timing

HAs indicated that the rule should not be implemented until the INS verification program is fully operational and readily available for their use. As stated earlier in this preamble, HUD is in full agreement with that desire. The SAVE system is operational. Funds have been budgeted for billing the cost of SAVE access for HUD programs to HUD. After the publication of the final rule, arrangements will be made to issue identifying codes to the many administrators of HUD-assisted housing.

3. Other Changes

A number of the sections in the 1994 proposed rule have been revised and restructured for ease of understanding and clarity of complex provisions.

In the 1994 proposed rule, HUD has changed the minimum retention period for documents from 3 years to 5 years. This makes the retention period coincide with the statute of limitations for criminal prosecution and the ongoing needs for computer matching to verify tenant income. The five-year retention requirement does not impose a burden on HAs and private project owners, because HAs and project owners currently retain the records concerning the initial certification, regular recertification and interim recertification for at least five years.

VIII. Other Matters

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action. Any changes made in this proposed rule as a result of that review are clearly identified in the docket file for this proposed rule, which is available for public inspection in the Office of HUD's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 215

Grant Programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 235

Condominiums, Cooperatives, Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 247

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 812

Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 850

Grant programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless.

Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 900

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Homeownership, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 912

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

Accordingly, title 24 of the Code of Federal Regulations, parts 200, 215, 235, 236, 247, 812, 859, 880, 881, 882, 883, 884, 886, 887, 900, 904, 905, 912 and 960 would be amended as follows:

PART 200—INTRODUCTION

1. The authority citation for part 200 would be revised to read as follows:

Authority: 12 U.S.C. 1701-715z-18; 42 U.S.C. 1436a and 3535(d).

2. A new subpart G, consisting of §§ 200.180 through 200.192, would be added to read as follows:

Subpart G—Restrictions on Assistance to Noncitizens

Sec.

- 200.180 Applicability.
- 200.180a Requirements concerning documents.
- 200.181 Definitions.
- 200.182 General provisions.
- 200.183 Submission of evidence of citizenship or eligible immigration status.
- 200.184 Documents of eligible immigration status.
- 200.185 Verification of eligible immigration status.
- 200.186 Delay, denial, reduction or termination of assistance.
- 200.187 Preservation of mixed families and other families.
- 200.188 Proration of assistance.
- 200.189 Prohibition of assistance to noncitizen students.
- 200.190 Compliance with nondiscrimination requirements.
- 200.191 Protection from liability for project owners, State and local government agencies and officials.
- 200.192 Liability of ineligible tenants for reimbursement of benefits.

Subpart G—Restrictions on Assistance to Noncitizens

§ 200.180 Applicability.

(a) *Covered programs/assistance.* This subpart implements the statutory restrictions on providing financial assistance to benefit individuals who are not in eligible status with respect to citizenship or noncitizen immigration status. This subpart is applicable to financial assistance provided under:

(1) *Section 235 Program assistance.* Section 235 of the National Housing Act (12 U.S.C. 1715-z) (the Section 235 Program), and for which the implementing regulations are codified in 24 CFR part 235;

(2) *Section 236 Program assistance (below market rent only).* Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program), and for which the implementing regulations are codified in 24 CFR part 236, subpart D; or

(3) *Rent Supplement Program assistance.* Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program), and for which the implementing regulations are codified in 24 CFR part 215.

(b) *When financial assistance is considered paid.* Covered financial assistance is considered to be provided

(or paid), and the restrictions on providing covered financial assistance to noncitizens with ineligible immigration status are applicable as follows:

(1) *Payment under Section 235 Program.* Financial assistance is considered to be paid under the Section 235 program on behalf of a mortgagor when:

(i) The dwelling unit is subject to a mortgage insured under section 235 of the National Housing Act (and part 235 of this chapter); and

(ii) Assistance payments are made to the mortgagee on behalf of the mortgagor under a contract between the mortgagee and the Secretary in accordance with section 235(b) of the National Housing Act, unless those assistance payments are pro-rated in accordance with § 200.188.

(2) *Payment under Section 236 Program.* Financial assistance is considered to be paid under the Section 236 program on behalf of a tenant or cooperative unit purchaser when:

(i) The project is subject to a mortgage insured or the project is assisted under section 236 of the National Housing Act (and part 236 of this chapter) for which interest reduction payments are paid under a contract between the mortgagee and the Secretary; and

(ii) The monthly rental charge paid to the owner for the dwelling unit is less than the HUD-approved market rent, whether or not rental assistance payments are also paid under a contract in accordance with section 236(f)(2) and part 236, subpart D, of this chapter, unless those assistance payments are prorated in accordance with § 200.188.

(3) *Payment under Rent Supplement Program.* Financial assistance is considered to be paid under the Rent Supplement program administered under section 101 of the Housing and Urban Development Act of 1965 when rent supplement payments are paid under a contract between the project owner and the Secretary in accordance with that section and part 215 of this chapter, unless those assistance payments are prorated in accordance with § 200.188.

(c) *Covered individuals and entities—*

(1) *Covered individuals/persons and families.* The provisions of this subpart apply to both applicants for assistance and persons already receiving assistance covered under this subpart (i.e., tenants, homebuyers, cooperative members; see definition of "tenant" in § 200.181). Unless the context clearly indicates otherwise, the terms "individual," "person" or "family," or the plural of these terms, as used in this subpart apply to both an applicant and a tenant,

or an applicant family or a tenant family.

(2) *Covered entities.* The provisions of this subpart apply to both project owners (as defined in § 200.181) and mortgagees under the Section 235 homeownership program. Unless the context clearly indicates otherwise, the term "project owner" as used in this subpart includes mortgagee.

(d) *Administration of restrictions on providing assistance.* Project owners shall administer the restrictions on providing assistance to noncitizens with ineligible immigration status in accordance with the requirements of this subpart.

§ 200.180a Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart requires the project owner to provide to an individual, or requires the project owner to obtain the signature of an individual, the project owner, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 200.181 Definitions.

Assisted dwelling unit means a dwelling unit for which financial assistance is considered to be paid, as determined in accordance with § 200.180.

Child means a member of the family, other than the family head or spouse, who is under 18 years of age.

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible immigration status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See § 200.186(b).)

Family. Except as may be otherwise specified in this subpart, the term "family" for purposes of this subpart shall have the same meaning as provided in the definition section of the regulations for each of the following programs: the Section 235 Program, Section 236 Program, and the Rent Supplement Program. (See, respectively, 24 CFR 235.5, 24 CFR 236.2, 24 CFR 215.1).

Financial assistance or covered financial assistance. See § 200.180.

Head of household means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

HUD means the Department of Housing and Urban Development.

INS means the U.S. Immigration and Naturalization Service.

Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen means a person who is neither a citizen nor national of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit. For purposes of this subpart, this term includes the mortgagee, in the case of a Section 235 mortgage.

Section 214 means section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the six statutory categories of eligible immigration status.

Tenant means for the Rent Supplement program and the section 236 program, an individual or a family renting an assisted dwelling unit or occupying such a dwelling unit as a cooperative member. For purposes of simplifying the language in this subpart to include the section 235 homeownership program, the term tenant will also be used to include a homebuyer, where appropriate.

§ 200.182 General provisions.

(a) *Restrictions on assistance.* Financial assistance under the programs covered by this subpart is restricted to:

(1) *Citizens*, or
(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) [immigrants]. (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), [special agricultural worker], who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence

in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) [refugee status]; pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) [asylum status]; or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) [parole status];

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) [threat to life or freedom]; or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) [amnesty granted under INA 245A].

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in § 200.187. A family without any eligible members and receiving assistance on [insert the effective date of the final rule] may be eligible for temporary deferral of termination of assistance as provided in § 200.187.

§ 200.183 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a program covered by this subpart is contingent upon a family's submission to the project owner of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise

the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 200.187 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the project owner.

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a covered program on [insert the effect date of the final rule], the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) The INS documents listed in § 200.184; and

(iii) A signed verification form.

(c) *Declaration.* (1) For each family member, the family must submit to the project owner a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) *Verification consent form—(1) Who signs.* Each noncitizen who declares eligible immigration status must sign a verification consent form as follows.

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by project owner.* The verification consent form shall provide that evidence of eligible immigration status may be released by the project owner without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD, as required by HUD;

(ii) The INS; and, if applicable;

(iii) Another Federal agency, or a State or local government agency in

accordance with Federal, State or local law that requires the release of the evidence to that agency.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend that they have eligible status.* If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for prorated assistance under § 200.188, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family must, however, identify to the project owner, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of section 214—(1) When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible status, as provided by paragraph (e) of this section, shall be given by the project owner as follows:

(i) *Applicant's notice.* Notification of the requirement to submit evidence of eligible status shall be given to each applicant at the time of application for assistance. Applicants whose applications are pending on [insert the effective date of the final rule] shall be notified of the requirement to submit evidence of eligible status as soon as possible after [insert the effective date of the final rule].

(ii) *Tenant's notice.* Notification of the requirement to submit evidence of eligible status shall be given to each tenant at the time of, and together with, the project owner's notice of regular reexamination of tenant income, but not later than one year following [insert the effective date of the final rule].

(iii) *Timing of mortgagor's notice.* A mortgagor receiving section 235 assistance must be notified of the requirement to submit evidence of eligible status in accordance with § 235.13(b)(2).

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 200.186 concerning INS appeal, and informal hearing process by the project owner) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of § 200.187.

(g) *When evidence of eligible status is required to be submitted.* The project owner shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, project owners must ensure that evidence of eligible status is submitted not later than the date the project owner anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 200.185(a)).

(2) *Tenants.* For tenants (i.e., persons already receiving the benefit of assistance in a covered program on [insert the effective date of the final rule]), evidence of eligible status is required to be submitted as follows:

(i) For financial assistance in the form of rent supplement payments or section 236 basic rent tenancy or rental assistance payments, the tenant shall, in accordance with the provisions of §§ 215.55(a) and 236.80(a) of this chapter, submit the required evidence at the first regular reexamination after [insert the effective date of the final rule].

(ii) For financial assistance in the form of section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with § 235.13(c) of this chapter.

(3) *New occupants of assisted units.* For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at

the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a program covered by this subpart, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the project owner for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status—(1) When extension must be granted.* The project owner shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 200.183(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence; and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The project owner's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The project owner's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or to establish eligible status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the project owner shall proceed to deny, prorate or terminate assistance,

or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 200.186 and 200.187.

§ 200.184 Documents of eligible immigration status.

(a) *General.* A project owner shall request and review original documents of eligible immigration status. The project owner shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 200.185.

(1) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I-94, Arrival-Departure Record, with one of the following annotations:

(i) "Admitted as Refugee Pursuant to section 207";

(ii) "Section 208" or "Asylum";

(iii) "Section 243(h)" or "Deportation stayed by Attorney General";

(iv) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(3) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application filed before October 1, 1990);

(iii) A court decision granting withholding or deportation; or

(iv) A letter from an INS asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(4) Form I-688, Temporary Resident Card, which must be annotated "section 245A" or "section 210";

(5) Form I-688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined to constitute

acceptable evidence of eligible immigration status, they will be announced by HUD in a notice published in the Federal Register.

§ 200.185 Verification of eligible immigration status.

(a) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the project owner simultaneously with verification of other aspects of eligibility for assistance or continued eligibility for assistance under a covered program. The project owner shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification.*—(1) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the project owner through the INS automated system (INS Systematic Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification.*—(1) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The project owner must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance covered by this subpart.

(2) *Secondary verification initiated by project owner.* Secondary verification is initiated by the project owner forwarding photocopies of the original INS documents listed in § 200.184 (front and back), attached to the INS document verification request form G-845S (Document Verification Request), to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the project owner shall issue to the family the notice described in § 200.186(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 200.186(d)(4)).

(d) *Exemption from liability for INS verification.* The project owner shall not

be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 200.186 Delay, denial, reduction or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restrictions on delay, denial, reduction or termination of assistance.*—(1) *Restrictions on reduction, denial or termination of assistance.* Assistance to an applicant shall not be reduced or denied, and assistance to a tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under § 200.186(e) has not been concluded;

(v) For a tenant, the informal hearing process under § 200.186(f) has not been concluded.

(2) *Restrictions on denial or termination.* Assistance to an applicant shall not be denied, and assistance to a tenant shall not be terminated, on the basis of ineligible immigration status of a family member if:

(i) Assistance is prorated in accordance with § 200.188;

(ii) Assistance for a mixed family is continued in accordance with § 200.187; or

(iii) Deferral of termination of assistance is granted in accordance with § 200.187.

(3) *When delay of assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance.*—(1) *General.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 200.183(g) or by the expiration of any extension granted in accordance with § 200.183(h); or

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(iii) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(iv) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(2) *Termination of assisted occupancy.* For termination of assisted occupancy, see paragraph (i) of this section.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under § 200.188;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 200.187;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the project owner either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

(e) *Appeal by applicant to the INS.*—

(1) *Submission of request for appeal to project owner.* Upon receipt of notification by the project owner that INS secondary verification failed to confirm eligible immigration status, the family may request an appeal to the INS by communicating that request to the project owner within 14 days of the date the project owner mails or delivers the

notice under paragraph (d) of this section.

(2) *Extension of time to request an appeal.* The project owner shall extend the period of time for requesting an appeal (for a specified period) upon good cause shown.

(3) *Forwarding the appeal to INS.* If the family requests an appeal to the INS, the project owner shall forward to the designated INS office any additional documentation or written explanation provided by the family in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G-845S is available from the local INS Office.)

(4) *Decision by INS.*—(i) *When decision will be issued.* The INS will issue to the project owner a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the project owner of the reasons for the delay, and the project owner will inform the family of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the project owner receives the INS decision, the project owner shall notify the family of the INS determination, of the reasons for the determination, and of the family's right to request an informal hearing on the PHA's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(5) *No delay, denial, reduction, or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

(f) *Informal hearing.*—(1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the project owner provide a hearing. This request must be made either within 14 days of the date the project owner mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The project owner shall extend

the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* A family who submits a timely request for a hearing with the project owner shall have an opportunity for:

(i) *Hearing before an impartial individual.* The family shall be provided a hearing before any person(s) designated by the project owner (including an officer or employee of the project owner), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(ii) *Examination of evidence.* The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any documents in the possession of the project owner pertaining to the family's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(iii) *Presentation of evidence and arguments in support of eligible status.* The family shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(iv) *Controverting evidence of the project owner.* The family shall be provided the opportunity to controvert evidence relied upon by the project owner and to confront and cross-examine all witnesses on whose testimony or information the project owner relies;

(v) *Representation.* The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf;

(vi) *Interpretive services.* The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family or project owner, as may be agreed upon by both parties; and

(vii) *Hearing to be recorded.* The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the project owner).

(4) *Hearing decision.* The project owner shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the

informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The project owner shall retain for a minimum of 5 years the following documents that may have been submitted to the project owner by the family, or provided to the project owner as part of the INS appeal or the informal hearing process:

- (1) The application for financial assistance;
- (2) The form completed by the family for income re-examination;
- (3) Photocopies of any original documents (front and back), including original INS documents;
- (4) The signed verification consent form;
- (5) The INS verification results;
- (6) The request for an INS appeal;
- (7) The final INS determination;
- (8) The request for an informal hearing; and
- (9) The final hearing decision.

(i) *Termination of assisted occupancy.* Assisted occupancy is terminated by:

(1) If permitted under the lease, the project owner notifying the tenant that because of the termination of assisted occupancy the tenant is required to pay the HUD-approved market rent for the dwelling unit.

(2) The project owner and tenant entering into a new lease without financial assistance.

(3) The project owner evicting the tenant. An owner may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued, in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the owner to terminate the tenancy and to evict the tenant must be in accordance with 24 CFR part 247 and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

§ 200.167 Preservation of mixed families and other families.

(a) *Assistance available for mixed families.*—(1) *Assistance available for tenant mixed families.* For a mixed

family assisted under a program by this subpart on [insert the effective date of the final rule], one of the following three types of assistance may be available to the family:

(i) Continued assistance (see paragraph (b) of this section);

(ii) Prorated assistance (see § 200.188);

or

(iii) Temporary deferral of termination of assistance (see paragraph (c) of this section).

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in § 200.188.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a program covered by this subpart on [insert the effective date of the final rule] and who have no members with eligible immigration status, the project owner may grant the family temporary deferral of termination of assistance.

(b) *Continued assistance.* A mixed family shall receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a program covered by this subpart on [insert the effective date of the final rule];

(2) The family's head of household or spouse has eligible immigration status as described in § 200.182; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(c) *Temporary deferral of termination of assistance—(1) Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family shall be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family

pays for rent, including utilities, plus 25 percent.

(2) *Conditions for granting temporary deferral of termination of assistance.*

The project owner shall grant a temporary deferral of termination of assistance to a mixed family if one of the following conditions is met:

(i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing agency, the city government, local newspapers, rental agencies and the owner);

(ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or

(iii) The Comprehensive Housing Affordability Strategy (CHAS), as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(4) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the project owner must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(5) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the project owner must:

(i) Make a determination of the availability of affordable housing of appropriate size based on the vacancy rate for affordable housing of appropriate size in the housing market for the area in which the project is located, the CHAS (if applicable), the owner's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing. (Affordable housing will be determined to be available if the vacancy rate is five percent or greater, or if the CHAS (if applicable), the owner's knowledge and

the tenant's evidence indicate that other affordable housing is available) and

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; or

(iii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(d) *Notification of decision on family preservation assistance.* A project owner shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

§ 200.188 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 200.187(b), or other than a family for which termination of assistance is temporarily deferred under § 200.187(c).

(b) *Method for prorating assistance.* For each of the three types of assistance covered by this subpart, the project owner shall prorate the family's assistance as follows:

(1) *Proration under Rent Supplement Program.* If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household.

(2) *Proration under Section 235 Program.* If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the

number of eligible persons in the household;

(3) *Proration under Section 236 Program without the benefit of additional assistance.* If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) *Proration under Section 236 Program with the benefit of additional assistance.* If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

§ 200.189 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 200.187 and 200.188, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 200.190 Compliance with nondiscrimination requirements.

The project owner shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Fair Housing Act (42 U.S.C. 3601-3619), and the regulations implementing these statutes, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 200.191 Protection from liability for project owners, State and local government agencies and officials.

(a) *Protection from liability for project owners.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a project owner with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the project owner established eligibility based upon verification of

eligible immigration status through the verification system described in § 200.185;

(2) Because the project owner was required to provide an opportunity for the family to submit evidence in accordance with § 200.183;

(3) Because the project owner was required to wait for completion of INS verification of immigration status in accordance with § 200.185;

(4) Because the project owner was required to wait for completion of the INS appeal process provided in accordance with § 200.186(e); or

(5) Because the project owner was required to provide an informal hearing in accordance with § 200.186(f).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in § 200.185 and the informal hearings provided under § 200.186, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

§ 200.192 Liability of ineligible tenants for reimbursement of benefits.

Where a tenant has received the benefit of HUD financial assistance to which the tenant was not entitled because the tenant intentionally misrepresented "eligible status" (as defined in § 200.182), the ineligible tenant is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the project owner is encouraged to refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

PART 215—RENT SUPPLEMENT PAYMENTS

3. The authority citation for part 215 would continue to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

4. In § 215.20, paragraph (b)(2) would be amended by adding a new sentence at the end to read as follows:

§ 215.20 Qualified tenant.

* * * * *

(b) * * *

(2) * * * For restrictions on financial assistance to noncitizens with ineligible immigration status, see part 200, subpart G, of this chapter.

* * * * *

5. In § 215.25, paragraph (a)(1) would be revised to read as follows:

§ 215.25 Determination of eligibility.

(a)(1) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant applications for assistance. The requirements of part 200, subpart G, of this chapter govern the submission and verification of citizenship information and eligible immigration status for applicants, and the procedures for denial or proration of assistance based upon a failure to establish eligible immigration status.

6. Section 215.55 would be amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding two sentences at the end of paragraph (c), to read as follows:

§ 215.55 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [insert the effective date of the final rule], the owner shall follow the requirements of part 200, subpart G, of this chapter concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 200, subpart G, of this chapter, concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(b) * * * At any interim reexamination after [insert the effective date of the final rule] when a new family member has been added, the owner shall follow the requirements of part 200, subpart G, of this chapter, concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination of assistance.* * * * Assistance also may be terminated in accordance with any requirements of the lease or with HUD requirements. The procedures of part 200, subpart G, of this chapter, apply when termination is based upon a determination that the tenant does not have eligible immigration status.

7. A new § 215.80 would be added to read as follows:

§ 215.80 Determination of eligible immigration status of applicants and tenants; protection from liability.

(a) *Housing owner's obligation to make determination.* A housing owner

shall obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of part 200, subpart G, of this chapter.

(b) *Protection from liability.* HUD will not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination that an individual is eligible for financial assistance based upon citizenship or eligible immigration status, as provided in § 200.189 of this chapter.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

8. The authority citation for part 235 would continue to read as follows:

Authority: 12 U.S.C. 1715b, and 1715z; 42 U.S.C. 3535(d).

9. Section 235.2 would be amended by adding a new paragraph (f) to read as follows:

§ 235.2 Basic program outline.

(f) Evidence of citizenship or eligible immigration status shall be submitted by the applicant or mortgagor and verified in accordance with part 200, subpart G of this chapter and § 235.13.

10. Section 235.10 would be amended by adding a new paragraph (c)(2)(iii) and by adding a sentence at the end of paragraph (e), to read as follows:

§ 235.10 Eligible mortgagors.

(c) * * *

(iii) A new member is added to the family in which case evidence of citizenship or eligible immigration status also shall be submitted, in accordance with part 200, subpart G, of this chapter.

(e) * * * Eligibility for assistance under this subpart also requires citizenship or eligible immigration status, as determined in accordance with part 200, subpart G, of this chapter, except that citizenship or eligible immigration status shall not be required of a mortgagor whose assistance contract was executed before [insert the effective date of the final rule] and remains unchanged after that date. (See § 235.13(c).)

11. A new § 235.13 would be added to read as follows:

§ 235.13 Special requirements concerning citizenship or eligible immigration status.

(a) *General.* Except as may be supplemented by the provisions of this section, the requirements of 24 CFR part 200, subpart G, concerning restrictions on the use of assisted housing by noncitizens with ineligible immigration status are applicable to mortgagees and mortgagors covered by the Section 235 Program with the exception of mortgagors:

(1) Whose assistance contracts were executed before [insert the effective date of the final rule] and remain unchanged after that date; or

(2) Who refinance their section 235 mortgages, which were executed before [insert effective date of final rule] and whose assistance contracts were unchanged after that date, with mortgages insured under section 235(r) of the National Housing Act (12 U.S.C. 1715z).

(b) *Notification of requirements to submit evidence of eligible status—(1) Notice to applicants.* A mortgagee shall notify applicants, including applicants whose names are on a waiting list on [insert the effective date of the final rule], that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of eligible citizenship and immigration status as required under 24 CFR part 200, subpart G.

(2) *Notice to mortgagors.* A mortgagee also shall notify mortgagors (except Section 235(r) mortgagors) whose contracts are executed after [insert the effective date of the final rule] that continued financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of eligible status required in 24 CFR part 200, subpart G. This notice requirement also shall apply to mortgagors whose contracts are revised, at the request of the mortgagor, after [insert the effective date of the final rule].

(c) *Submission of evidence of eligible status—(1) When evidence of eligible immigration status is to be submitted.* A mortgagee shall obtain evidence concerning an applicant or mortgagor's citizenship or eligible immigration status, as required by 24 CFR part 200, subpart G, at the following times:

(i) Application for assistance; and
(ii) The first recertification of family income and composition conducted after [insert the effective date of the final rule], in accordance with § 235.10 or § 235.350. The requirements of this section are not applicable to mortgagors whose assistance contracts were executed before [insert the effective date of the final rule] and remain unchanged

after that date, or to mortgagors who refinance their section 235 mortgages, which were executed before [insert the effective date of the final rule] and whose assistance contracts remain unchanged after such date, with mortgages insured under section 235(r) of the National Housing Act.

(2) *Extensions of time to submit evidence of eligible status.* The provisions of § 200.183(e) of this chapter, concerning extension of time within which to submit evidence of eligible status are applicable.

(d) *Certification by mortgagee—(1) General.* The mortgagee shall verify the evidence submitted in the case of an applicant or mortgagor declaring eligible immigration status, in accordance with the requirements of part 200, subpart G, of this chapter, and certify to the Secretary that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable) for all persons for whom the evidence is required. If the applicant or mortgagor's citizenship or eligible immigration status is not established as a result of the process required under 24 CFR part 200, subpart G, the mortgagee shall notify the applicant or mortgagor in accordance with the requirements of 24 CFR part 200, subpart G concerning notification of the possibility of denial or termination of assistance, and, if applicable, of additional assistance that may be available to the applicant or mortgagor.

(2) *Invalid certification.* (i) If the mortgagee has certified to the Secretary in accordance with paragraph (d)(1) of this section that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable), and the Secretary subsequently determines that the procedures required by this section and 24 CFR part 200, subpart G, were not followed, the following actions will be taken:

(A) The mortgagee will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part; and
(B) No additional assistance payments may be made on behalf of the mortgagor.
(ii) The Secretary may permit the resumption of assistance payments if all persons residing in the dwelling whose status was not determined to be eligible have moved from the dwelling unit, or their status has been determined to be eligible, in accordance with 24 CFR part 200, subpart G.

(iii) If the mortgagee has certified to the Secretary in accordance with paragraph (c)(1) of this section that the required information concerning

citizenship or eligible immigration status has been submitted and verified (if applicable), and the Secretary subsequently determines that the mortgagor's eligible status determination was based on fraudulent documents, or was otherwise defective, although the determination was made in accordance with required procedures, the following actions will be taken:

(A) The mortgagor will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part; and

(B) No additional assistance payments may be made on behalf of the mortgagor.

(iv) The Secretary's right to repayment from the mortgagor under paragraph (c)(2)(i) of this section shall not affect or limit the Secretary's right to refund of overpaid assistance payments from the mortgagee as provided in § 235.361(b).

(e) *Mortgage insurance commitments.* Commitments to insure mortgages under this part will not be issued or extended unless the mortgagee has made the certification required under paragraph (c) of this section.

(f) *Other related provisions.* See § 235.10 for eligibility requirements, specifically citizenship and eligible immigration status; § 235.350 for the mortgagor's required recertification, including provision of information concerning eligible immigration status; and generally part 200, subpart G, of this chapter, for the provisions on restrictions to providing assistance to noncitizens with ineligible immigration status.

12. In § 235.325, a new paragraph (c) would be added to read as follows:

§ 235.325 **Qualified cooperative members.**
* * * * *

(c) Eligibility as a cooperative member under this subpart also requires eligible status with respect to citizenship or eligible immigration status determined in accordance with 24 CFR part 200, subpart G. (See § 235.13.)

13. Section 235.350 would be amended by adding a new paragraph (a)(2)(iii) to read as follows:

§ 235.350 **Mortgagor's required recertification.**

(a) * * *

(2) * * *

(iii) A new member is added to the family who is not born in the United States (except for a mortgagor described in § 235.13(a) (1) or (2)).

14. In § 235.375, a new paragraph (b)(6) would be added to read as follows:

§ 235.375 **Termination, suspension, or reinstatement of the assistance payments contract.**

* * * * *

(b) * * *

(6) Failure to provide evidence of citizenship or eligible immigration status in accordance with 24 CFR part 200, subpart G:

(i) For a new member of the family, other than a child born in the United States, except with respect to a mortgagor described under § 235.13(a) (1) and (2);

(ii) At the first recertification of an assistance contract, except with respect to a mortgagor described in § 235.13(a) (1) and (2); or

(iii) Upon modification of an existing assistance contract.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

15. The authority citation for part 236 would continue to read as follows:

Authority: 12 U.S.C. 1715b and 1715z-1; 42 U.S.C. 3535(d).

16. In § 236.2, the definition of "qualified tenant" would be amended by adding a new paragraph (c) to read as follows:

§ 236.2 **Definitions.**

* * * * *

Qualified tenant. * * *

(c) For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 200, subpart G.

* * * * *

17. In § 236.70, paragraph (a)(1) would be revised to read as follows:

§ 236.70 **Occupancy requirements.**

(a)(1) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission. The requirements of 24 CFR part 200, subpart G, govern the submission and verification of information related to citizenship and eligible immigration status for those applicants who seek admission at a below market rent.

* * * * *

18. Section 236.80 would be amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding three sentences at the end of paragraph (c), to read as follows:

§ 236.80 **Reexamination of income.**

(a) * * * At the first regular reexamination after [insert the effective

date of the final rule], the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(b) * * * At any interim reexamination after [insert the effective date of the final rule] when there is a new family member, the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) * * * Assistance also may be terminated in accordance with any requirements of the lease or with HUD requirements. When termination is based upon a determination that the tenant does not have eligible immigration status, the procedures of 24 CFR part 200, subpart G, apply. The procedures include the provision of assistance to certain mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination.

19. In § 236.710, a new sentence would be added at the end of this section to read as follows:

§ 236.710 Qualified tenant.

* * * For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 200, subpart G.

20. In § 236.715, paragraph (a) would be revised to read as follows:

§ 236.715 Determination of eligibility.

(a) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant applications for assistance. The requirements of 24 CFR part 200, subpart G, govern the submission and verification of information related to citizenship and eligible immigration status for applicants, and the procedures for denial of assistance based upon a failure to establish eligible immigration status.

21. A new § 236.765 would be added to subpart D read as follows:

§ 236.765 Determination of eligible immigration status of applicants and tenants; protection from liability.

(a) *Housing owner's obligation to make determination.* A housing owner shall obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of 24 CFR part 200, subpart G.

(b) *Protection from liability.* HUD will not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination to make an individual eligible for financial assistance based upon citizenship or eligible immigration status, as provided in 24 CFR part 200, subpart G.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

22. The authority citation for part 247 would continue to read as follows:

Authority: 12 U.S.C. 1701s, 1715b, 1715l, and 1715z-1; 42 U.S.C. 1437a, 1437c, 1437f and 3535(d).

23. In § 247.3, paragraph (c)(3) would be revised to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

* * * * *

(c) * * *

(3) Failure of the tenant to supply on-time all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to submit required evidence of citizenship or eligible immigration status, in accordance with 24 CFR part 200, subpart G, failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 200, subpart T, or 24 CFR part 750 (as appropriate), or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 200, subpart V, or 24 CFR part 760 (as appropriate), or to knowingly provide incomplete or inaccurate information; and

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

24. The authority citation for part 812 would be revised to read as follows:

Authority: 42 U.S.C. 1436a, 1437a and 3535(d).

25. In § 812.1, paragraph (a) would be amended by removing the word "and"

following the semicolon in paragraph (a)(1); by removing the period at the end of paragraph (a)(2) and replacing with "and"; and by adding a new paragraph (a)(3), to read as follows:

§ 812.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance under the United States Housing Act of 1937 ("Act") (42 U.S.C. 1437) available for the benefit of noncitizens with ineligible immigration status.

* * * * *

26. Section 812.2 would be amended by adding definitions in alphabetical order for the terms "Child," "Citizen," "Evidence of citizenship or eligible immigration status," "HA," "Head of household," "HUD," "INS," "Mixed family," "National," "Noncitizen," and "Responsible entity," "Section 214" and "Section 214 covered programs" to read as follows:

§ 812.2 Definitions.

* * * * *

Child. A member of the family, other than the family head or spouse, who is under 18 years of age.

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status. (See § 812.6(b).)

* * * * *

HA. A housing authority—either a public housing agency or an Indian housing authority, or both.

* * * * *

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

HUD. The Department of Housing and Urban Development.

INS. The U.S. Immigration and Naturalization Service.

* * * * *

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen. A person who is neither a citizen nor national of the United States.

Responsible entity. The person or entity responsible for administering the

restrictions on providing assistance to noncitizens with ineligible immigration status:

(1) For the Section 8 Certificate, the Section 8 Housing Voucher, and the Section 8 Moderate Rehabilitation programs, the housing authority (HA) administering the program under an ACC with HUD.

(2) For all other Section 8 programs, the owner.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the six statutory categories of eligible immigration status.

Section 214 covered programs. Programs to which the restrictions imposed by section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437-440), section 235 or section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z-1) and section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

27. Part 812 would be amended by redesignating §§ 812.1 through 812.4 as subpart A, and by adding the subpart heading to read, "Subpart A—General," and by adding a new subpart B, consisting of §§ 812.5 through 812.15, to read as follows:

Subpart B—Restrictions on Assistance to Noncitizens

Sec.

812.5 General.

812.5a Requirements concerning documents.

812.6 Submission of evidence of citizenship or eligible immigration status.

812.7 Documents of eligible immigration status.

812.8 Verification of eligible immigration status.

812.9 Delay, denial or termination of assistance.

812.10 Preservation of mixed families and other families.

812.11 Proration of assistance.

812.12 Prohibition of assistance to noncitizen students.

812.13 Compliance with nondiscrimination requirements.

812.14 Protection from liability for responsible entities, State, local, and tribal government agencies and officials.

812.15 Liability of ineligible families for reimbursement of benefits.

Subpart B—Restrictions on Assistance to Noncitizens

§ 812.5 General.

(a) *Restrictions on assistance.* Assistance provided under a section 214 covered program is restricted to:

- (1) Citizens; or
- (2) Noncitizens who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) [immigrants]. (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), [special agricultural worker], who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) [refugee status]; pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) [asylum status]; or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) [parole status];

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) [threat to life or freedom]; or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) [amnesty granted under INA 245A].

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in § 812.10. A family without any eligible members and receiving assistance on [insert the effective date of the final rule] may be eligible for temporary deferral of termination of assistance as provided in § 812.10.

§ 812.5a Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that §§ 812.5 through 812.15 require a responsible entity to provide to an individual, or require that the responsible entity obtain the signature of the individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 812.6 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 812.10 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the responsible entity:

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older and who will be 62 years of age or older and receiving assistance under a section 214 covered program on [insert the effective date of the final rule], the evidence consists of:

- (i) A signed declaration of eligible immigration status; and
- (ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

- (i) A signed declaration of eligible immigration status;
- (ii) The INS documents listed in § 812.7; and
- (iii) A signed verification consent form.

(c) *Declaration.* For each family member, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(1) For each adult, the declaration must be signed by the adult.

(2) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(d) *Verification consent form—(1) Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by responsible entity.* The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

- (i) HUD as required by HUD;
- (ii) The INS; and, if applicable;
- (iii) Another Federal agency, or a

State or local government agency in accordance with Federal, State or local law that requires the release of the evidence to that agency.

(iv) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for

prorated assistance under § 812.11 despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family must, however, identify to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of section 214—(1) When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status, as allowed by paragraph (e) of this section, shall be given by the responsible entity as follows:

(i) *Applicant's notice.* Notification of the requirement to submit evidence of eligible status shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on [insert the effective date of the final rule] shall be notified of the requirements to submit evidence of eligible status as soon as possible after [insert the effective date of the final rule].

(ii) *Notice to families already receiving assistance.* For a family in occupancy on [insert the effective date of the final rule] notification of the requirement to submit evidence of eligible status shall be given to each at the time of, and together with, the responsible entity's notice of the first regular reexamination after that date, but not later than one year following [insert the effective date of the final rule].

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 812.9 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance

under the preservation of families provisions of § 812.10.

(g) *When evidence of eligible status is required to be submitted.* The responsible entity shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, the responsible entity must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 812.8(a)).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on [insert the effective date of the final rule], the required evidence shall be submitted at the first regular reexamination after [insert the effective date of the final rule], in accordance with program requirements. (See §§ 850.151, 880.603, 881.603, 882.212, 882.515, 883.704, 884.124, 886.124, 886.324, or 887.357 of this chapter.)

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the responsible entity for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status—(1) When extension must be granted.* The responsible entity shall extend the time provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 812.6(b) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and

prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the responsible entity shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 812.9 and 812.10 respectively. For all section 8 programs, denial or termination of assistance shall be in accordance with the procedures of § 812.9.

§ 812.7 Documents of eligible immigration status.

(a) *General.* A responsible entity shall request and review original documents of eligible immigration status. The responsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 812.8:

(1) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I-94, Arrival-Departure Record, with one of the following annotations:

(i) "Admitted as Refugee Pursuant to Section 207";

(ii) "Section 208" or "Asylum";

(iii) "Section 243(h)" or "Deportation stayed by Attorney General";

(iv) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(3) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application filed before October 1, 1990);

(iii) A court decision granting withholding or deportation; or

(iv) A letter from an INS asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(4) Form I-688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(5) Form I-688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined to constitute acceptable evidence of eligible immigration status, they will be announced by HUD in a notice published in the **Federal Register**.

§ 812.8 Verification of eligible immigration status.

(a) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the responsible entity simultaneously with verification of other aspects of eligibility for assistance under a Section 214 covered program. (See § 812.6(g).) The responsible entity shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification—(1) Automated verification system.* Primary verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If

the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification—(1) Manual search of INS records.*

Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The responsible entity must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(2) *Secondary verification initiated by responsible entity.* Secondary verification is initiated by the responsible entity forwarding photocopies of the original INS documents listed in § 812.7 (front and back), attached to the INS document verification request form G-845S (Document Verification Request), to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in § 812.9(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 812.9(d)(4)).

(d) *Exemption from liability for INS verification.* The responsible entity shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 812.9 Delay, denial, or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restrictions on delay, denial, or termination of assistance—(1) General.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under § 812.9(e) has not been concluded;

(v) For a tenant, the informal hearing process under § 812.9(f) has not been concluded;

(vi) Assistance is prorated in accordance with § 812.11;

(vii) Assistance for a mixed family is continued in accordance with § 812.10; or

(viii) Deferral of termination of assistance is granted in accordance with § 812.10.

(2) *When delay in assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the responsible entity informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(1) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 812.6(g) or by the expiration of any extension granted in accordance with § 812.6(h); or

(2) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(3) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(4) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under § 812.11;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 812.10;

(4) That the family has a right to request an appeal to the INS of the

results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the responsible entity informal hearing process.

(e) *Appeal to the INS—(1) Submission of request for appeal to responsible entity.* Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the family may request an appeal to the INS by communicating that request to the responsible entity within 14 days of the date the responsible entity mails or delivers the notice under paragraph (d) of this section.

(2) *Extension of time to request an appeal.* The responsible entity shall extend the period of time for requesting an appeal (for a specified period) upon good cause shown.

(3) *Forwarding the appeal to INS.* If the family requests an appeal to the INS, the responsible entity shall forward to the designated INS office any additional documentation or written explanation provided by the family in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G-845S is available from the local INS Office.)

(4) *Decision by INS—(i) When decision will be issued.* The INS will issue to the responsible entity a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the responsible entity of the reasons for the delay, and the responsible entity will inform the family of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the responsible entity receives the INS decision, the responsible entity shall notify the family of the INS

determination, of the reasons for the determination, and of the family's right to request an informal hearing on the responsible entity's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(5) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(f) *Informal hearing—(1) When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 14 days of the date the responsible entity mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The responsible entity shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.

(ii) For applicants, the procedures for the informal hearing before the responsible entity are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without

regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or responsible entity, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required, to be provided by the responsible entity); and

(H) *Hearing decision.* The responsible entity shall provide the family with a written final decision, based solely on the facts, presented at the hearing within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The responsible entity shall retain for a minimum of 5 years the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the INS appeal or the informal hearing process:

- (1) The application for financial assistance;
- (2) The form completed by the family for income re-examination;
- (3) Photocopies of any original documents (front and back), including original INS documents;
- (4) The signed verification consent form;
- (5) The INS verification results;
- (6) The request for an INS appeal;
- (7) The final INS determination;
- (8) The request for an informal hearing; and
- (9) The final informal hearing decision.

(i) *Termination of assisted occupancy.*

- (1) In the Section 8 programs other than

Section 8 Certificate, Housing Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by:

(i) If permitted under the lease, the project owner notifying the family that because of the termination of assisted occupancy, the family is required to pay the HUD-approved market rent for the dwelling unit.

(ii) The project owner and family entering into a new lease without Section 8 assistance.

(iii) The project owner evicting the family. While the family continues in occupancy of the unit, the project owner may continue assistance payments in accordance with the Housing Assistance Payments contract if judicial action to terminate the tenancy and evict the family is promptly initiated and diligently pursued by the project owner in accordance with the terms of the lease. Action by the project owner to terminate the tenancy and to evict the family shall be in accordance with HUD regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

(2) In the Section 8 Certificate, Housing Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by terminating assistance payments. (See provisions of this section concerning termination of assistance.) The HA shall not make any additional assistance payments to the project owner after the required procedures specified in this section have been completed. In addition, the HA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

§ 812.10 Preservation of mixed families and other families.

(a) *Assistance available for mixed families—(1) Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on [insert the effective date of the final rule], one of the following three types of assistance may be available to the family:

- (i) Continued assistance (see paragraph (c) of this section);
- (ii) Prorated assistance (see § 812.11); or
- (iii) Temporary deferral of termination of assistance (see paragraph (d) of this section).

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families

applying for assistance as provided in § 812.11.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on the [insert the effective date of the final rule] and who have no members with eligible immigration status, the responsible entity may grant the family temporary deferral of termination of assistance.

(b) *Discretion afforded to provide family preservation assistance—(1) Project owners.* With respect to assistance administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the three forms of assistance for preservation of the family. HUD is exercising its discretion by specifying the standards in this section under which a project owner must provide one of the three types of assistance described in paragraph (a) of this section to a family.

(2) *HAs.* With respect to an HA acting as a contract administrator of a certificate (including project-based certificate), housing voucher, or Moderate Rehabilitation program (as opposed to an HA owner), the HA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of these forms of assistance. The HA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the HA must incorporate the statutory criteria, which are set forth in paragraphs (c) and (d) of this section.

(c) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a Section 214 covered program on [insert the effective date of the final rule];

(2) The family's head of household or spouse has eligible immigration status as described in § 812.5; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(d) *Temporary deferral of termination of assistance—(1) Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated

assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(3) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(4) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the responsible entity must:

(i) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the CHAS (if applicable; the CHAS refers to the Comprehensive Housing Affordability Strategy, described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; and

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; or

(iii) Notify the tenant family in writing, at least 60 days in advance of

the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(e) *Notification of decision on family preservation assistance.* A responsible entity shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights. (For HAs administering Certificate or Housing Voucher Programs, see §§ 882.216 or 887.405 of this chapter.)

§ 812.11 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 812.10(c), or other than a family for which termination of assistance is temporarily deferred under § 812.10(d).

(b) *Method of prorating assistance—*
(1) *Section 8 assistance other than Section 8 voucher assistance.* For Section 8 assistance other than assistance provided under the Section 8 Voucher Program, the HA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine gross rent for the unit. (Gross rent is contract rent plus any allowance for tenant paid utilities).

(ii) *Step 2.* Determine total tenant payment in accordance with 24 CFR 813.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status).

(iii) *Step 3.* Subtract amount determined in Step 2 from amount determined in Step 1.

(iv) *Step 4.* Multiply the amount determined in Step 3 by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status, and

(B) The denominator is the total number of family members.

(v) *Prorated housing assistance.* The amount determined in Step 4 is the prorated housing assistance payment for a mixed family.

(vi) *No effect on contract rent.* Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.

(2) *Section 8 Voucher assistance.* For assistance under the Section 8 Voucher Program, the HA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine the amount of the pre-proration voucher housing assistance payment in accordance with 24 CFR 887.353. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Multiply the amount determined in Step 1 by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status, and

(B) The denominator is the total number of family members.

(iii) *Prorated housing assistance.* The amount determined in Step 2 is the prorated housing assistance payment for a mixed family.

(iv) *No effect on rent to owner.* Proration of the voucher housing assistance payment does not affect rent to the owner. The family must pay as rent the portion of rent not covered by the prorated housing assistance payment.

§ 812.12 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 812.10 and 812.11, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make

such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 812.13 Compliance with nondiscrimination requirements.

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Fair Housing Act (42 U.S.C. 3601-3619), and the regulations implementing these statutes, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 812.14 Protection from liability for responsible entities, State, local, and tribal government agencies and officials.

(a) *Protection from liability for responsible entities.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a responsible entity with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the responsible entity established eligibility based upon verification of eligible immigration status through the verification system described in § 812.8;

(2) Because the responsible entity was required to provide an opportunity for the family to submit evidence in accordance with § 812.6;

(3) Because the responsible entity was required to wait for completion of INS verification of immigration status in accordance with § 812.8;

(4) Because the responsible entity was required to wait for completion of the INS appeal process provided in accordance with § 812.9(e); or

(5) Because the responsible entity was required to provide an informal hearing in accordance with § 812.9(f).

(b) *Protection from liability for State, local and tribal government agencies and officials.* State, local and tribal government agencies and officials shall not be liable for the design or implementation of the verification system described in § 812.8, and the informal hearings provided under § 812.9(f), as long as the implementation by the State, local or tribal government agency or official is in accordance with prescribed HUD rules and requirements.

§ 812.15 Liability of ineligible families for reimbursement of benefits.

Where a family has received the benefit of HUD financial assistance to which it was not entitled because the family intentionally misrepresented eligible status, the ineligible family is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

PART 850—HOUSING DEVELOPMENT GRANTS

28. The authority citation for part 850 would continue to read as follows:

Authority: 42 U.S.C. 1437o and 3535(d).

29. Section 850.151 would be revised by adding one sentence at the beginning of paragraph (c), by adding two sentences at the end of paragraph (f)(1), and by adding a new paragraph (f)(3), to read as follows:

§ 850.151 Project restrictions.

(c) *Tenant selection.* The owner shall determine the eligibility of applicants for lower income units in accordance with the requirements of 24 CFR parts 812 and 813, including the provisions of these parts concerning citizenship or eligible immigration status and income limits, and certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status). * * *

(f) * * *
(1) * * * At the first regular reexamination after [insert the effective date of the final rule], the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or

eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

* * * * *
(3) For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions related to certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions related to deferral of termination of assistance.
* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

30. The authority citation for part 880 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611-13619.

31. In § 880.504, a new paragraph (e) would be added, to read as follows:

§ 880.504 Leasing to eligible families.

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

32. In § 880.601, paragraph (b) would be revised to read as follows:

§ 880.601 Responsibilities of owner.

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with § 880.613, selection of tenants, obtaining

and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

33. Section 880.603 would be amended by revising the introductory text of paragraph (b), by adding a sentence at the end of paragraph (b)(3), by adding two sentences at the end of paragraph (c)(1), and by adding one sentence at the end of paragraph (c)(2) and paragraph (c)(3), to read as follows:

§ 880.603 Selection and admission of assisted tenants.

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with 24 CFR part 813, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 812, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR parts 812 and 813, and to select families for admission to the program, which includes giving a Federal selection preference in accordance with § 880.613.

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions related to certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

(1) * * * At the first regular reexamination after *[insert the effective date of the final rule]*, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular

reexamination, the owner shall follow the requirements of 24 CFR part 812 and verify the immigration status of any new family member.

(2) * * * At any interim reexamination after *[insert the effective date of the final rule]* when a new family member has been added, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of the citizenship or eligible immigration status of any new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

34. Section 880.607 would be amended by redesignating the first sentence following the paragraph heading in paragraph (b)(3) as paragraph (b)(3)(i); by redesignating the existing paragraphs (b)(3)(i) and (b)(3)(ii) as (b)(3)(i)(A) and (b)(3)(i)(B), respectively; by redesignating and revising the undesignated paragraph in (b)(3) as (b)(3)(ii) and by adding a new paragraph (c)(4) to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

(b) * * *
(3) * * *
(ii) Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly providing incomplete or inaccurate information, shall constitute a substantial violation of the lease.

(c) * * *
(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures, see 24 CFR part 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without

eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

35. The authority citation for part 881 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611-13619.

36. In § 881.504, a new paragraph (e) would be added to read as follows:

§ 881.504 Leasing to eligible families.

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning certain assistance to mixed families, and deferral of termination of assistance.

37. In § 881.601, paragraph (b) would be revised to read as follows:

§ 881.601 Responsibilities of owner.

(b) *Management and maintenance.* The owner is responsible for all management functions (including determining eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with § 880.613, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

38. Section 881.603 would be amended by revising the introductory text of paragraph (b), by adding one sentence at the end of paragraph (b)(3), by adding two sentences at the end of paragraph (c)(1), and by adding one sentence at the end of paragraphs (c)(2) and (c)(3), to read as follows:

§ 881.603 Selection and admission of assisted tenants.

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with 24 CFR part 813, and evidence related to citizenship and eligible immigration status in accordance with 24 part 812 to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR parts 812 and 813 and parts 750 and 760 of chapter VII, and to select families for admission to the program, which includes giving a federal selection preference in accordance with § 881.613.

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR part 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

(c) * * *
(1) * * * At the first regular reexamination after *[insert the effective date of the final rule]*, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(2) * * * At any interim reexamination after *[insert the effective date of the final rule]* when a new family member has been added, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible

immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

39. In § 881.607, the second sentence of paragraph (b)(3)(ii) would be revised, and a new paragraph (c)(4) would be added, to read as follows:

§ 881.607 Termination of tenancy and modification of lease.

(b) * * *
(3) * * * Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly providing incomplete or inaccurate information, shall constitute a substantial violation of the lease.

(c) * * *
(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including the informal hearing procedures, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

40. The authority citation for part 882 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d). Subpart H is also issued under authority of 42 U.S.C. 11401.

41. In § 882.116, paragraph (c) would be revised to read as follows:

§ 882.116 Responsibilities of the PHA.

(c) Receipt and review of applications for participation; selection of applicants; verification of family income and other

facts relating to eligibility (including citizenship or eligible immigration status as provided by 24 CFR part 812) and amount of assistance; and maintenance of a waiting list.

42. In § 882.118, paragraph (a)(1) would be revised to read as follows:

§ 882.118 Obligations of the family.

(a) * * *
(1) Supply such certification, release, information or documentation as the PHA or HUD determine to be necessary, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), submission of Social Security Numbers and verifying documentation (as provided by 24 CFR part 750), submission of signed consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), and submissions required for an annual or interim reexamination of family income and composition.

43. In § 882.209, paragraph (a)(2) would be revised to read as follows:

§ 882.209 Selection and participation.

(a) * * *
(2)(i) The PHA shall determine whether an applicant for participation:
(A) Qualifies as a family;
(B) Is income eligible; and
(C) Is a citizen or is in eligible immigration status as determined in accordance with 24 CFR part 812.
(ii) The family shall submit any certification, release, information, or documentation as the PHA or HUD determines to be necessary (see the requirements in 24 CFR parts 750, 760, 812, and 813).

44. In § 882.210, a new paragraph (f) would be added to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

(f) The family's obligations as stated in § 882.118 include submission of required evidence of citizenship or eligible immigration status. For a statement of circumstances in which the PHA shall deny or terminate housing assistance payments because a family member is not a U.S. citizen or does not establish eligible immigration status, and the applicable informal hearing procedures, see § 882.216(b) and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible

immigration status, and those without eligible immigration status) in lieu of denial or termination of assistance, and for provisions concerning deferral of termination of assistance.

45. Section 882.212 would be amended by adding two sentences at the end of paragraph (a), and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.212 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after *[insert the effective date of the final rule]*, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member (except a child born in the United States).

(b) * * * At any interim reexamination after *[insert the effective date of the final rule]* when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of housing assistance payments when the PHA determines that a member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

46. Section 882.216 would be amended by adding a new paragraph (a)(5) and new paragraphs (b)(1)(v) and (b)(8), to read as follows:

§ 882.216 Informal review or hearing.

(a) * * *

(5) The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

(b) * * *

(1) * * *

(v) A determination that the participant does not qualify under the

PHA's policy for granting special relief under 24 CFR 812.10.

(8) The informal hearing provisions for the termination of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

47. In § 882.514, paragraph (f) would be amended by adding one sentence at the end, to read as follows:

§ 882.514 Family participation.

(f) * * * The informal hearing requirements for denial and termination of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

48. Section 882.515 would be amended by adding two sentences at the end of paragraph (a), and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.515 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after *[insert the effective date of this rule]*, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of immigration status of any new family member.

(b) * * * At any interim reexamination after *[insert the effective date of the final rule]* when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9 and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

48a. Section 882.808 would be amended by adding two sentences at the end of paragraph (i)(1), one sentence at the end of paragraph (i)(2), and a sentence at the end of paragraph (l), to read as follows:

§ 882.808 Management.

(i) * * *

(1) * * * At the first regular reexamination after *[insert the effective date of the final rule]*, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of immigration status of any new family member.

(2) * * * At any interim reexamination after *[insert the effective date of the final rule]* when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(l) * * * For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, or for provisions concerning deferral of termination of assistance.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

49. The authority citation for part 883 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

50. In § 883.101, the last sentence of paragraph (c) would be revised to read as follows:

§ 883.101 General.

(c) * * * Eligible families are families, as defined in 24 CFR part 812, whose incomes qualify them for assistance in accordance with 24 CFR part 813, and who are otherwise eligible under these parts.

51. In § 883.605, a new paragraph (e) would be added, to read as follows:

§ 883.605 Leasing to eligible families.

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

52. In § 883.702, the section heading and paragraph (b) would be revised to read as follows:

§ 883.702 Responsibilities of the owner.

(b) *Management and maintenance.* The owner is responsible for all management functions (including determination of the eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with § 883.714, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

53. Section 883.704 would be amended by adding one sentence at the end of paragraph (b)(3), two sentences at the end of paragraph (c)(1), and one sentence at the end of paragraphs (c)(2), and (c)(3), to read as follows:

§ 883.704 Selection and admission of tenants.

(b) * * *
(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also see 24 CFR 812.10 for provisions

concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

(c) * * *
(1) * * * At the first regular reexamination after *[insert the effective date of the final rule]*, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning the verification of the immigration status of any new family member.

(2) * * * At any interim reexamination after *[insert the effective date of the rule]* when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

54. In § 883.708, the second sentence of paragraph (b)(3)(ii) beginning with "Failure of * * *" would be revised, and a new paragraph (c)(4) would be added, to read as follows:

§ 883.708 Termination of tenancy and modification of lease.

(b) * * *
(3) * * *
(ii) * * * Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly provide incomplete or inaccurate information, shall constitute

a substantial violation of the lease.

(c) * * *
(4) For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal hearing requirements, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

55. The authority citation for part 884 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

56. In § 884.118, paragraph (a)(3) would be revised to read as follows:

§ 884.118 Responsibilities of the owner.

(a) * * *
(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 884.226, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

57. In section 884.214, paragraph (b)(1) would be revised and a new paragraph (b)(8) would be added, to read as follows:

§ 884.214 Marketing.

(b) *Eligibility, selection and admission of families.* (1) The owner is responsible for determination of eligibility of applicants in accordance with the

procedures of 24 CFR part 812, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with § 884.226), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with schedules and criteria established by HUD.

* * * * *

(8) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

58. In § 884.216, a new sentence is added at the end of the paragraph to read as follows:

§ 884.216 Termination of tenancy.

* * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal hearing requirements, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

59. Section 884.218 would be amended by adding two sentences at the end of paragraph (a), one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 884.218 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [insert the effective date of the final rule], the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after [Insert the effective date of this rule] when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing

evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

60. In § 884.223, a new paragraph (e) would be added to read as follows:

§ 884.223 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.9 of this chapter because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

61. The authority citation for part 886 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-1619.

62. In § 886.119, the section heading and paragraph (a)(3) would be revised to read as follows:

§ 886.119 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 886.132, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of

wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

63. In § 886.121, paragraph (b) would be revised and a new paragraph (c) would be added, to read as follows:

§ 886.121 Marketing.

* * * * *

(b) The Owner shall comply with the applicable provisions of the Contract, this subpart, and the procedures of 24 CFR part 812 in taking applications, selecting families, and all related determinations.

(c) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

64. Section 886.124 would be amended by adding two sentences at the end of paragraph (a), one sentence at the end of paragraphs (b) and (c) to read as follows:

§ 886.124 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [insert the effective date of the final rule], the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after [insert the effective date of the final rule] when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9 and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration

status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

65. Section 886.128 would be revised to read as follows:

§ 886.128 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 parts 247 and 812 shall apply. The provisions of 24 CFR 812.10 concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

66. In § 886.129, a new paragraph (e) would be added, to read as follows:

§ 886.129 Leasing to eligible families.

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

67. In § 886.318, paragraph (a)(3) would be revised to read as follows:

§ 886.318 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 886.337, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies

(as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

68. In § 886.321, the first two sentences of paragraph (b)(1) would be revised and a new paragraph (b)(7) would be added, to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for determining the eligibility of applicants for tenancy (including compliance with the procedures of 24 CFR part 812 on evidence of citizenship or eligible immigration status), selection of families from among those determined to be eligible (including provision of Federal preferences in accordance with § 886.337), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with the Gross Rent and the Total Tenant Payment computed in accordance with 24 CFR part 813. * * *

(7) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

69. Section 886.324 would be amended by adding two sentences at the end of paragraph (a), one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 886.324 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [insert the effective date of the final rule], the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after [insert the effective date of the final rule] when there is a new family member, the owner shall

follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

70. Section 886.328 would be revised to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR parts 247 and 812 shall apply. The provisions of 24 CFR 812.10 concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

71. In § 886.329, a new paragraph (e) would be added to read as follows:

§ 886.329 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

PART 887—HOUSING VOUCHERS

72. The authority citation for part 887 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

73. In § 887.105, paragraph (b)(5) would be revised to read as follows:

§ 887.105 PHA responsibilities.

* * * * *

(b) * * *
(5) Determine the amount of, and make, the housing assistance payment (see § 887.353); obtain and verify evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 812; reexamine the family income and family size and composition, at least annually, and redetermine the amount of the housing assistance payment as a result of an adjustment by the PHA of any applicable payment standard or utility allowance (see §§ 887.355 through 887.359); adjust the amount of the housing assistance payment as a result of an adjustment by the PHA of any applicable payment standard or utility allowance (see §§ 887.353 and 887.361); and

* * * * *

74. In § 887.355, paragraph (b) would be redesignated as paragraph (c), and a new paragraph (b) would be added, to read as follows:

§ 887.355 Regular reexamination of family income and composition.

* * * * *

(b) At the first regular reexamination after [insert the effective date of the final rule], the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

* * * * *

75. Section 887.357 would be amended by adding a new sentence at the end, to read as follows:

§ 887.357 Interim reexamination of family income and composition.

* * * At any interim reexamination after [insert the effective date of the final rule] that involves the addition of a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

76. In § 887.401, paragraph (a)(1) would be revised, to read as follows:

§ 887.401 Family responsibilities.

(a) A family shall:
(1) Supply any certification, release, information, or documentation that the PHA or HUD determines to be necessary in the administration of the program,

including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), disclosure and verification of Social Security Numbers (as provided by 24 CFR part 750), signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), and other information required for use by the PHA in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements;

* * * * *

77. In § 887.403, paragraphs (d) and (e) would be redesignated as paragraphs (e) and (f), and a new paragraph (d) would be added, to read as follows:

§ 887.403 Grounds for PHA denial or termination of assistance.

* * * * *

(d) The family's obligations as stated in § 887.401 include submission of required evidence of citizenship or eligible immigration status. For a statement of circumstances in which the PHA shall deny or terminate assistance because of a family member's inability to establish citizenship or eligible immigration status, and the applicable informal hearing procedures, see 24 CFR 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial or termination of assistance, and for provisions concerning deferral of termination of assistance.

78. Section 887.405 would be amended by adding a new paragraph (a)(4) and new paragraphs (b)(1)(iv) and (b)(8), to read as follows:

§ 887.405 Informal review or hearing.

(a) * * *

(4) The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

(b) * * *

(1) * * *

(iv) A determination that the participant does not qualify under the PHA's policy for granting special assistance under 24 CFR 812.10.

* * * * *

(8) The informal hearing provisions for the termination of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

PART 900—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

79. The authority citation for part 900 would continue to read as follows:

Authority: 42 U.S.C. 1410(b) and 3535(d).

80. In § 900.102, the first sentence of paragraph (g) would be revised to read as follows:

§ 900.102 Definitions.

* * * * *

(g) *Eligible families.* Those families determined by the LHA to meet the requirements for admission into housing assisted under this part in accordance with 24 CFR parts 912 and 913 and other pertinent requirements. * * *

* * * * *

81. Section 900.202 would be amended by adding a new sentence to the end of paragraph (d)(3), and by redesignating existing paragraphs (g) and (h) as paragraphs (h) and (i) respectively, and by adding a new paragraph (g), to read as follows:

§ 900.202 Project operation.

* * * * *

(d) * * *

(3) * * * For provisions related to denial of assistance because of a failure to establish citizenship or eligible immigration status, the requirements of 24 CFR 960.207 and 24 CFR part 912 shall apply.

* * * * *

(g) *Termination of assistance.* For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, the requirements of 24 CFR parts 912 and 966 shall apply.

* * * * *

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

82. The authority citation for part 904 would be revised to read as follows:

Authority: 42 U.S.C. 1437-1437ee and 3535(d).

83. In § 904.104, the first sentence of paragraph (b)(1) and paragraph (g)(2) would be revised, to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(b) *Eligibility and standards for admission.* (1) Homebuyers shall be lower income families that are determined to be eligible for admission in accordance with the provisions of 24 CFR parts 912 and 913, which prescribe income definitions, income limits, and

restrictions concerning citizenship or eligible immigration status. * * *

(g) * * *

(2) Applicants who are not selected for a specific Turnkey III development shall be notified in accordance with HUD-approved procedure. The notice shall state:

(i) The reason for the applicant's rejection (including a nonrecommendation by the recommending committee unless the applicant has previously been so notified by the committee);

(ii) That the applicant will be given an informal hearing on such determination, regardless of the reason for the rejection, if the applicant makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice; and

(iii) For denial of assistance for failure to establish citizenship or eligible immigration status, the applicant may request, in addition to the informal hearing, an appeal to the INS, in accordance with 24 CFR 912.9.

84. In § 904.107, paragraphs (j)(2) and (m)(1) would be revised to read as follows:

§ 904.107 Responsibilities of homebuyer.

(j) * * *

(2) For purposes of determining eligibility of an applicant (see 24 CFR parts 912 and 913, as well as this part) and the amount of Homebuyer payments under paragraph (j)(1) of this section, the LHA shall examine the family's income and composition and follow the procedures required by 24 CFR part 912 for determining citizenship or eligible immigration status before initial occupancy.

Thereafter, for the purposes stated above and to determine whether a Homebuyer is required to purchase the home under § 904.104(h)(1), the LHA shall reexamine the Homebuyer's income and composition regularly, at least once every 12 months, and shall undertake such further determination and verification of citizenship or eligible immigration status as required by 24 CFR part 912. The Homebuyer shall comply with the LHA's policy regarding required interim reporting of changes in the family's income and composition. If the LHA receives information from the family or other source concerning a change in the family income or other circumstances between regularly scheduled reexaminations, the LHA, upon consultation with the family and verification of the information (in

accordance with 24 CFR parts 912 and 913 of this chapter) shall promptly make any adjustments determined to be appropriate in the Homebuyer payment amount or take appropriate action concerning the addition of a family member who is not a citizen with eligible immigration status. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment and Tenant Rent must be verified.

(m) *Termination by LHA.* (1) In the event the homebuyer breaches the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by misrepresenting or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition (including the failure to submit any required evidence of citizenship or eligible immigration status, as provided by 24 CFR part 912; the failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; or the failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760), or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement. No termination under this paragraph may occur less than 30 days after the LHA gives the homebuyer notice of its intention to do so, in accordance with paragraph (m)(3) of this section. For termination of assistance for failure to establish citizenship or eligible immigration status under 24 CFR part 912, the requirements of 24 CFR parts 912 and 966 shall apply.

PART 905—INDIAN HOUSING PROGRAMS

85. The authority citation for part 905 would continue to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

86. Section 905.102 would be amended by adding definitions in alphabetical order for the terms "Child," "Citizen," "Evidence of citizenship or eligible immigration status," "Head of household," "INS," "Mixed family," "National," "Noncitizen," "Section 214," and "Section 214 covered program," to read as follows:

§ 905.102 Definitions.

Child. A member of the family, other than the family head or a spouse, who is under 18 years of age.

Citizen. A citizen or national of the United States.

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status (see § 905.310(e)).

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

INS. The U.S. Immigration and Naturalization Service.

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen. A person who is neither a citizen nor national of the United States.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the six statutory categories of eligible immigration status.

Section 214 covered programs. Programs to which the restrictions imposed by section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437-440), section 235 or section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z-1) and section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

87. Section 905.310 would be added to read as follows:

§ 905.310 Restrictions on assistance to noncitizens.

(a) *Requirements concerning documents.* For any notice or document (decision, declaration, consent form,

etc.) that this section requires an IHA to provide to an individual, or requires that the IHA obtain the signature of the individual, the IHA, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

(b) *Restrictions on assistance.* Assistance provided under a section 214 covered program is restricted to:

(1) *Citizens;* or
 (2) *Noncitizens who have eligible immigration status in one of the following categories:*
 (i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) [immigrants]. (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), [special agricultural worker], who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) [refugee status]; pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) [asylum status]; or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) [parole status];

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding

deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) [threat to life or freedom]; or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) [amnesty granted under INA 245A].

(c) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (b) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in paragraph (r) of this section. A family without any eligible members and receiving assistance on [insert the effective date of the final rule] may be eligible for temporary deferral of termination of assistance as provided in paragraph (r) of this section.

(d) *Exemption of certain homebuyers from restrictions of this section.* A homebuyer who executed a Homeownership Opportunity Agreement under the Turnkey III program or who executed a Mutual Help and Occupancy Agreement under the Mutual Help Homeownership program before [insert the effective date of the final rule] is not subject to this citizenship or eligible immigration status requirement for continued participation in the program.

(e) *Submission of evidence of citizenship or eligible immigration status.*

(1) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the IHA of the documents described in paragraph (e)(2) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the members may exercise the election not to contend to have eligible immigration status as provided in paragraph (f) of this section, and the provisions of paragraph (r) of this section shall apply.

(2) *Evidence of citizenship or eligible immigration status.* Each family, regardless of age, must submit the following evidence to the IHA:

(i) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(ii) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on [insert the effective date of the final rule], the evidence consists of:

(A) A signed declaration of eligible immigration status; and
 (B) Proof of age document.

(iii) For all other noncitizens, the evidence consists of:

(A) A signed declaration of eligible immigration status;

(B) The INS documents listed in paragraph (k)(2) of this section; and
 (C) A signed verification consent form.

(3) *Declaration.* For each family member, the family must submit to the IHA a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(4) *Verification consent form—(i) Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(A) For each adult, the form must be signed by the adult.

(B) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(ii) *Notice of release of evidence by IHA.* The verification consent form shall provide that evidence of eligible immigration status may be released by the IHA, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(A) HUD as required by HUD;

(B) The INS; and, if applicable,

(C) Another Federal agency, or a State or local government agency in accordance with Federal, State or local law that requires the release of the evidence to that agency.

(iii) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(f) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for

prorated assistance under paragraph (s) of this section despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family must, however, identify to the IHA, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(g) *Notification of requirements of Section 214*—(1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status, as allowed by paragraph (f) of this section, shall be given by the IHA as follows:

(i) *Applicant's notice.* Notification of the requirement to submit evidence of eligible status shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on [insert the effective date of the final rule] shall be notified of the requirements to submit evidence of eligible status as soon as possible after [insert the effective date of the final rule].

(ii) *Notice to families already receiving assistance.* For a family in occupancy on [insert the effective date of the final rule], notification of the requirement to submit evidence of eligible status shall be given to each at the time of, and together with, the IHA's notice of the first regular reexamination after that date, but not later than one year following [insert the effective date of the final rule].

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section; and

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (h) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see paragraph (n) of this section concerning INS appeal, and paragraph (o) of this section concerning IHA informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families

provisions of paragraph (r) of this section.

(h) *When evidence of eligible status is required to be submitted.* The IHA shall require evidence of eligible status to be submitted at the times specified in paragraph (h) of this section subject to any extension granted in accordance with paragraph (i) of this section.

(1) *Applicants.* For applicants, the IHA must ensure that evidence of eligible status is submitted not later than the date the IHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see paragraph (l) of this section).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on [insert the effective date of the final rule], the required evidence shall be submitted at the first regular reexamination after [insert the effective date of the final rule], in accordance with program requirements.

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the IHA for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status one time during continuously assisted occupancy under any covered program.

(i) *Extensions of time to submit evidence of eligible status*—(1) *When extension must be granted.* The IHA shall extend the time, provided in paragraph (h) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under paragraph (e)(3) of this section certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of

time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The IHA's determination of the length of the extension needed, shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The IHA's decision to grant or deny an extension as provided in paragraph (i)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(j) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (i) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the IHA shall proceed to deny, prorated or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of paragraph (m) of this section or paragraph (r) of this section.

(k) *Documents of eligible immigration status*—(1) *General.* An IHA shall request and review original documents of eligible immigration status. The IHA shall retain photocopies of the documents for its own records and return the original documents to the family.

(2) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with paragraph (l) of this section.

(i) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);

(ii) Form I-94, Arrival-Departure Record, with one of the following annotations:

(A) "Admitted as Refugee Pursuant to Section 207";

(B) "Section 208" or "Asylum";

(C) "Section 243(h)" or "Deportation stayed by Attorney General";

(D) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(iii) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(A) A final court decision granting asylum (but only if no appeal is taken);

(B) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application filed before October 1, 1990);

(C) A court decision granting withholding or deportation; or

(D) A letter from an INS asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(iv) Form I-688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(v) Form I-688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(vi) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(vii) If other documents are determined to constitute acceptable evidence of eligible immigration status, they will be announced by HUD in a notice published in the Federal Register.

(1) *Verification of eligible immigration status.* (1) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the IHA simultaneously with verification of other aspects of eligibility for assistance under a section 214 covered program. (See paragraph (h) of this section.) The IHA shall verify eligible immigration status in accordance with the INS procedures described in this section.

(2) *Primary verification.* (i) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the IHA through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(ii) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(3) *Secondary verification.* (i) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The IHA must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies

immigration status that is ineligible for assistance under a covered section 214 covered program.

(ii) *Secondary verification initiated by IHA.* Secondary verification is initiated by the IHA forwarding photocopies of the original INS documents listed in paragraph (k)(2) of this section (front and back), attached to the INS document verification request form G-845S (Document Verification Request), to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(iii) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the IHA shall issue to the family the notice described in paragraph (m)(4) of this section, which includes notification of appeal to the INS of the INS finding on immigration status (see paragraph (m)(4)(iv) of this section).

(4) *Exemption from liability for INS verification.* The IHA shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

(m) *Delay, denial, or termination of assistance.* (1) *Restrictions on delay, denial, or termination of assistance.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under paragraph (n) of this section has not been concluded;

(v) For a tenant, the IHA hearing process under paragraph (o) of this section has not been concluded;

(vi) Assistance is prorated in accordance with paragraph (s) of this section;

(vii) Assistance for a mixed family is continued in accordance with paragraph (r) of this section; or

(viii) Deferral of termination of assistance is granted in accordance with paragraph (r) of this section.

(2) *When delay of assistance to applicant is permissible.* Assistance to an applicant may be delayed after the

conclusion of the INS appeal process, but not denied until the conclusion of the IHA informal hearing process, if an informal hearing is requested by the family.

(3) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in paragraph (h) of this section, or by the expiration of any extension granted in accordance with paragraph (i) of this section; or

(ii) The evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(iii) The family does not pursue INS appeal (as provided in paragraph (n) of this section) or IHA informal hearing rights (as provided in paragraph (o) of this section); or

(iv) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(4) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(i) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(ii) That the family may be eligible for proration of assistance as provided in paragraph (s) of this section;

(iii) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provisions in paragraph (r) of this section;

(iv) That the family has a right to request an appeal to the INS of the results of the secondary verification of immigration status, and to submit additional documentation or a written explanation in support of the appeal, in accordance with the procedures of paragraph (n) of this section;

(v) That the family has a right to request an informal hearing with the IHA either upon completion of the INS appeal or in lieu of the INS appeal, as provided in paragraph (n) of this section;

(vi) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be

delayed during the pendency of the IHA informal hearing process.

(n) *Appeal to the INS*—(1) *Submission of request for appeal to IHA*. Upon receipt of notification by the IHA that INS secondary verification failed to confirm eligible immigration status, the family may request an appeal to the INS by communicating that request to the IHA within 14 days of the date the IHA mails or delivers the notice under paragraph (m)(4) of this section.

(2) *Extension of time to request an appeal*. The IHA shall extend the period of time for requesting an appeal (for a specified period) upon good cause shown.

(3) *Forwarding the appeal to INS*. If the family requests an appeal to the INS, the IHA shall forward to the designated INS office any additional documentation or written explanation provided by the family in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G-845S is available from the local INS Office.)

(4) *Decision by INS*—(i) *When decision will be issued*. The INS will issue to the IHA a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the IHA of the reasons for the delay, and the IHA will inform the family of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures*. When the IHA receives the INS decision, the IHA shall notify the family of the INS determination, of the reasons for the determination, and of the family's right to request an informal hearing on the IHA's ineligibility determination in accordance with the procedures of paragraph (o) of this section.

(5) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS*. Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(o) *Informal hearing*—(1) *When request for hearing is to be made*. After notification of the INS decision, or in lieu of request of appeal to the INS, the family may request that the IHA provide a hearing. This request must be made either within 14 days of the date the

IHA mails or delivers the notice under paragraph (m)(4) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (n)(4) of this section (established by the date of postmark).

(2) *Extension of time to request hearing*. The IHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures*. (i) For tenants, the procedures for the hearing before the IHA are set forth in § 905.340.

(ii) For applicants, the procedures for the informal hearing before the IHA are as follows:

(A) *Hearing before an impartial individual*. The applicant shall be provided a hearing before any person(s) designated by the IHA (including an officer or employee of the IHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence*. The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the IHA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status*. The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner*. The applicant shall be provided the opportunity to controvert evidence relied upon by the IHA and to confront and cross-examine all witnesses on whose testimony or information the IHA relies;

(E) *Representation*. The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services*. The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or the IHA, as may be agreed upon by both parties;

(G) *Hearing to be recorded*. The applicant shall be entitled to have the hearing recorded by audiotape (a

transcript of the hearing may, but is not required to, be provided by the IHA); and

(H) *Hearing decision*. The IHA shall provide the applicant with a written final decision, based solely on the facts presented at the hearing within 14 days of the date of the informal hearing. The decision shall state basis for the decision.

(p) *Judicial relief*. A decision against a family member under the INS appeal process or the IHA informal hearing process does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(q) *Retention of documents*. The IHA shall retain for a minimum of 5 years the following documents that may have been submitted to the IHA by the family or provided to the IHA as part of the INS appeal or the IHA informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an IHA informal hearing; and

(9) The final hearing decision.

(r) *Preservation of mixed families and other families*. (1) *Assistance available for mixed families*. (i) *Assistance available for tenant mixed families*. For a mixed family assisted under a section 214 covered program on [insert the effective date of the final rule], one of the following three types of assistance may be available to the family:

(A) Continued assistance (see paragraph (r)(2) of this section);

(B) Prorated assistance (see paragraph (s) of this section); or

(C) Temporary deferral of termination of assistance (see paragraph (r)(3) of this section).

(ii) *Assistance available for applicant mixed families*. Prorated assistance is also available for mixed families applying for assistance, as provided in paragraph (s) of this section.

(iii) *Assistance available to other families in occupancy*. For families receiving assistance under a Section 214 covered program on the [insert the effective date of the final rule] and who have no members with eligible immigration status, the IHA may grant the family temporary deferral of termination of assistance.

(2) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

- (i) The family was receiving assistance under a section 214 covered program on [insert the effective date of the final rule];
- (ii) The family's head of household or spouse has eligible immigration status as described in paragraph (b)(2) of this section; and
- (iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(3) *Temporary deferral of termination of assistance.* (i) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(ii) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(iii) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the IHA must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(iv) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the IHA must:

- (A) Make a determination of the availability of affordable housing of

appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the CHAS (if applicable; CHAS refers to the Comprehensive Housing Affordability Strategy described in 24 CFR part 91), the IHA's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; and

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; or

(C) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(v) *Notification of decision on family preservation assistance.* An IHA shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the tenant family of any appeal rights.

(s) *Proration of assistance.* (1) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under paragraph (r)(2) of this section, or other than a family for which termination of assistance is temporarily deferred under paragraph (r)(3) of this section.

(2) *Method of prorating assistance.* The IHA shall prorate the family's assistance by:

(i) *Step 1.* Determining total tenant payment in accordance with § 905.325 (annual income includes income of all family members, including any family member who has not established eligible immigration status).

(ii) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "Indian housing maximum rent" applicable to the unit or the housing authority. ("Indian housing maximum rent" shall be determined by HUD using the 95th percentile rent for the housing authority.) The result is the maximum subsidy for which the family could

qualify if all members were eligible ("family maximum subsidy").

(iii) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy".

(iv) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(v) *Step 5.* The product of steps 1-4, as set forth in paragraph (s)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

(t) *Prohibition of assistance to noncitizen students.* (1) *General.* The provisions of this section permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (t)(2) of this section, or the family of the noncitizen student, as described in paragraph (t)(3) of this section.

(2) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

- (i) Has a residence in a foreign country that the person has no intention of abandoning;
- (ii) Is a bona fide student qualified to pursue a full course of study; and
- (iii) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(3) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (t)(1) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such

student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

(u) *Protection from liability for IHAs, State, Tribal, and local government agencies and officials.* (1) *Protection from liability for IHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against an IHA with respect to any error in its determination of eligibility for assistance based on citizenship or immigration status:

(i) if the IHA established eligibility based upon verification of eligible immigration status through the verification system described in paragraph (l) of this section;

(ii) Because the IHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with paragraphs (h) and (i) of this section;

(iii) Because the IHA was required to wait for completion of INS verification of immigration status in accordance with paragraph (l) of this section;

(iv) Because the IHA was required to wait for completion of the INS appeal process provided in accordance with paragraph (n) of this section; or

(v) Because the IHA was required to provide an informal hearing in accordance with paragraph (o) of this section.

(2) *Protection from liability for State, Tribal and local government agencies and officials.* State, Tribal, and local government agencies and officials shall not be liable for the design or implementation of the verification system described in paragraph (l) of this section and the IHA informal hearing provided under paragraph (o) of this section, so long as the implementation by the State, Tribal, or local government agency or official is in accordance with prescribed HUD rules and requirements.

88. Section 905.315 would be amended by redesignating paragraphs (a)(i) and (a)(ii) as (a)(1) and (a)(2), respectively; by redesignating existing paragraphs (a)(2) and (a)(3) as paragraphs (b) and (c) respectively; and by adding a new paragraph (d), to read as follows:

§ 905.315 Initial determination, verification, and reexamination of family income and composition.

(d) *Implementation of verification of citizenship or eligible immigration status.* The IHA shall follow the procedures required by § 905.310 for determining citizenship or eligible

immigration status before initial occupancy, and, for tenants admitted before [insert the effective date of the final rule], at the first reexamination of family income and composition after that date. Thereafter, at the annual reexaminations of family income and composition, the IHA shall follow the requirements of § 905.310 concerning verification of the immigration status of any new family member. The family shall comply with the IHA's policy regarding required interim reporting of changes in the family's income and composition. If the IHA is informed of a change in the family income or other circumstances between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information, shall promptly make any adjustments appropriate in the rent or Homebuyer payment amount or take appropriate action concerning the addition of a family member who is a noncitizen with ineligible immigration status.

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

89. The authority citation for part 912 would be revised to read as follows:

Authority: 42 U.S.C. 1436a, 1437a, and 3535(d)

90. Section 912.1 would be amended by changing the period at the end of paragraph (a)(2) to a semicolon and adding the word "and" following the semicolon; and by adding a new paragraph (a)(3), to read as follows:

§ 912.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance under the United States Housing Act of 1937 ("Act") (42 U.S.C. 1437 *et seq.*) available for the benefit of noncitizens with ineligible immigration status.

91. Section 912.2 would be amended by inserting definitions in alphabetical order for the terms "Child," "Citizen," "Evidence of citizenship or eligible immigration status," "Head of household," "HUD," "Mixed family," "National," "Noncitizen," "Section 214," and "Section 214 covered program," to read as follows:

§ 912.2 Definitions.

Child. A member of the family, other than the family head or a spouse, who is under 18 years of age.

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status. (See § 912.6(b).)

* * * * *

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent. HUD, The Department of Housing and Urban Development.

* * * * *

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen. A person who is neither a citizen nor national of the United States.

* * * * *

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the six statutory categories of eligible immigration status.

Section 214 covered programs. Programs to which the restrictions imposed by section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437-1440), section 235 or section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z-1) and section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

92. Part 912 would be amended by redesignating §§ 912.1 through 912.4 as subpart A, and by adding the subpart heading to read, "Subpart A—General", and by adding a new subpart B consisting of §§ 912.5 through 912.14, to read as follows:

Subpart B—Restrictions on Assistance to Noncitizens

Sec.

912.5 General.

912.5a Requirements concerning documents.

912.6 Submission of evidence of citizenship or eligible immigration status.

912.7 Documents of eligible immigration status.

912.8 Verification of eligible immigration status.

912.9 Delay, denial, or termination of assistance.

- 912.10 Preservation of mixed families and other families.
- 912.11 Proration of assistance.
- 912.12 Prohibition of assistance to noncitizen students.
- 912.13 Compliance with nondiscrimination requirements.
- 912.14 Protection from liability for PHAs, State, local, and tribal government agencies and officials.

Subpart B—Restrictions on Assistance to Noncitizens

§ 912.5 General.

(a) *Restrictions on assistance.* Assistance provided under a section 214 covered program is restricted to:

- (1) *Citizens*, or
- (2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) [immigrants]. (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161) [special agricultural worker], who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) [refugee status]; pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) [asylum status]; or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) [parole status];

(v) A noncitizen who is lawfully present in the United States as a result

of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) [threat to life or freedom]; or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) [amnesty granted under INA 245A].

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in § 912.10. A family without any eligible members and receiving assistance on [insert the effective date of the final rule] may be eligible for temporary deferral of termination of assistance as provided in § 912.10.

§ 912.5a Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that §§ 912.5 through 912.14 require a PHA to provide to an individual, or require that the PHA obtain the signature of the individual, the PHA, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 912.6 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a section 214 covered program is contingent upon a family's submission to the PHA of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 912.10 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the PHA:

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a section 214 covered program on

[insert the effective date of the final rule], the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) The INS documents listed in § 912.7; and

(iii) A signed verification consent form.

(c) *Declaration.* For each family member, the family must submit to the PHA a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status:

(1) For each adult, the declaration must be signed by the adult.

(2) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(d) *Verification consent form.* (1) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by PHA.* The verification consent form shall provide that evidence of eligible immigration status may be released by the PHA, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD as required by HUD;

(ii) The INS; and, if applicable;

(iii) Another Federal agency, or a State or local government agency in accordance with Federal, State or local law that requires the release of the evidence to that agency.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their

citizenship or eligible immigration status, the family may be considered for prorated assistance under § 912.11 despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family must, however, identify to PHA the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of section 214.* (1) *Timing of notice.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status, as allowed by paragraph (e) of this section, shall be given by the PHA as follows:

(i) *Applicant's notice.* Notification of the requirement to submit evidence of eligible status shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on [insert the effective date of the final rule] shall be notified of the requirements to submit evidence of eligible status as soon as possible after [insert the effective date of the final rule].

(ii) *Notice to families already receiving assistance.* For a family in occupancy on [insert the effective date of the final rule], notification of the requirement to submit evidence of eligible status shall be given to each at the time of, and together with, the PHA's notice of the first regular reexamination after that date, but not later than one year following [insert the effective date of the final rule].

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section; and

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 912.9 concerning INS appeal, and PHA informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance

under the preservation of families provisions of § 912.10.

(g) *When evidence of eligible status is required to be submitted.* The PHA shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, the PHA must ensure that evidence of eligible status is submitted not later than the date the PHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 912.8(a)).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on [insert the effective date of the final rule], the required evidence shall be submitted at the first regular reexamination after [insert the effective date of the final rule], in accordance with program requirements.

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the PHA for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status.* (1) *When extension must be granted.* The PHA shall extend the time provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 912.6(b) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided

should be sufficient to allow the family the time to obtain the evidence needed. The PHA's determination of the length of the extension needed, shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The PHA's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the PHA shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 912.9 and 912.10 respectively.

§ 912.7 Documents of eligible immigration status.

(a) *General.* A PHA shall request and review original documents of eligible immigration status. The PHA shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 912.8:

(1) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I-94, Arrival-Departure Record, with one of the following annotations:

(i) "Admitted as Refugee Pursuant to Section 207";

(ii) "Section 208" or "Asylum";

(iii) "Section 243(h)" or "Deportation stayed by Attorney General";

(iv) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(3) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is

filed on or after October 1, 1990) or from an INS district director granting asylum (if application filed before October 1, 1990);

(iii) A court decision granting withholding or deportation; or

(iv) A letter from an INS asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(4) Form I-688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(5) Form I-688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined to constitute acceptable evidence of eligible immigration status, they will be announced by HUD in a notice published in the Federal Register.

§ 912.8 Verification of eligible immigration status.

(a) *When verification is to occur.*

Verification of eligible immigration status shall be conducted by the PHA simultaneously with verification of other aspects of eligibility for assistance under a Section 214 covered program. (See § 912.6(g).) The PHA shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification.* (1)

Automated verification system. Primary verification of the immigration status of the person is conducted by the PHA through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification.* (1) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The PHA must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if

the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(2) *Secondary verification initiated by PHA.* Secondary verification is initiated by the PHA forwarding photocopies of the original INS documents listed in § 912.7 (front and back), attached to the INS document verification request form G-845S (Document Verification Request), to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the IHA shall issue to the family the notice described in § 912.9(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 912.9(d)(4)).

(d) *Exemption from liability for INS verification.* The PHA shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 912.9 Delay, denial, or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restrictions on delay, denial, or termination of assistance.* (1) *General.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under § 912.9(e) has not been concluded;

(v) For a tenant, the PHA hearing process under § 912.9(f) has not been concluded;

(vi) Assistance is prorated in accordance with § 912.11;

(vii) Assistance for a mixed family is continued in accordance with § 912.10; or

(viii) Deferral of termination of assistance is granted in accordance with § 912.10.

(2) *When delay of assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the PHA informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(1) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 912.6(g) or by the expiration of any extension granted in accordance with § 912.6(h); or

(2) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(3) The family does not pursue INS appeal or PHA informal hearing rights as provided in this section; or

(4) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That they may be eligible for proration of assistance as provided under § 912.11;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 912.10;

(4) The family has a right to request an appeal to the INS of the results of the secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) The family has a right to request an informal hearing with the PHA either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the PHA informal hearing process.

(e) *Appeal to the INS.* (1) *Submission of request for appeal to PHA.* Upon receipt of notification by the PHA that INS secondary verification failed to confirm eligible immigration status, the family may request an appeal to the INS by communicating that request to the PHA within 14 days of the date the PHA mails or delivers the notice under paragraph (d) of this section.

(2) *Extension of time to request an appeal.* The PHA shall extend the period of time for requesting an appeal (for a specified period) upon good cause shown.

(3) *Forwarding the appeal to INS.* If the family requests an appeal to the INS, the PHA shall forward to the designated INS office any additional documentation or written explanation provided by the family in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results.

(4) *Decision by INS.* (i) *When decision will be issued.* The INS will issue to the PHA a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the PHA of the reasons for the delay, and the PHA will inform the family of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the PHA receives the INS decision, the PHA shall notify the family of the INS determination, of the reasons for the determination, and of the family's right to request an informal hearing on the PHA's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(5) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(f) *Informal hearing.* (1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the PHA provide a hearing. This request must be made either within 14 days of the date the PHA mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this

section (established by the date of postmark).

(2) *Extension of time to request hearing.* The PHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the PHA are set forth in 24 CFR part 966.

(ii) For applicants, the procedures for the informal hearing before the PHA are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the PHA (including an officer or employee of the PHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The PHA shall be provided the opportunity to examine and copy at the applicant's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the PHA and to confront and cross-examine all witnesses on whose testimony or information the PHA relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or PHA, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to be provided by the PHA); and

(H) *Hearing decision.* The PHA shall provide the applicant with a written final decision, based solely on the facts presented at the hearing within 14 days of the date of the informal hearing.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The PHA shall retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the INS appeal or the PHA informal hearing process:

- (1) The application for financial assistance;
- (2) The form completed by the family for income re-examination;
- (3) Photocopies of any original documents (front and back), including original INS documents;
- (4) The signed verification consent form;
- (5) The INS verification results;
- (6) The request for an INS appeal;
- (7) The final INS determination;
- (8) The request for a PHA informal hearing; and
- (9) The final PHA hearing decision.

§ 912.10 Preservation of mixed families and other families.

(a) *Assistance available for mixed families.* (1) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on [insert the effective date of the final rule], one of the following three types of assistance may be available to the family:

- (i) Continued assistance (see paragraph (b) of this section);
- (ii) Prorated assistance (see § 912.11); or

(iii) Temporary deferral of termination of assistance (see paragraph (c) of this section).

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in § 912.11.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on the [insert the effective date of the final rule] and who have no members with eligible immigration status, the PHA may grant the family temporary deferral of termination of assistance.

(b) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a Section 214 covered program on [insert the effective date of the final rule];

(2) The family's head of household or spouse has eligible immigration status as described in § 912.5; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(c) *Temporary deferral of termination of assistance.* (1) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(3) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the PHA must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(4) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the PHA must:

(i) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the CHAS

(if applicable), the PHA's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; and

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; or

(iii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(d) *Notification of decision on family preservation assistance.* A PHA shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

§ 912.11 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 912.10(b), or other than a family for which termination of assistance is temporarily deferred under § 912.10(c).

(b) *Method of prorating assistance.* The PHA shall prorate the family's assistance by:

(1) *Step 1.* Determining total tenant payment in accordance with 24 CFR 913.107(a) (annual income includes income of all family members, including any family member who has not established eligible immigration status).

(2) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "public housing maximum rent" applicable to the unit or the housing authority. (Public housing maximum rent shall be determined by HUD using the 95th percentile rent for the housing authority.) The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

(3) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has

citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy."

(4) *Step 4.* Multiplying the member maximum subsidy by the number of "eligible" family members.

(5) *Step 5.* The product of steps 1-4, as set forth in paragraph (b)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

§ 912.12 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 912.10 and 912.11, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 912.13 Compliance with nondiscrimination requirements.

The PHA shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Fair Housing Act (42 U.S.C. 3601-3619), and the regulations implementing these statutes, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 912.14 Protection from liability for PHAs, State, local, and tribal government agencies and officials.

(a) *Protection from liability for PHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a PHA with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the PHA established eligibility based upon verification of eligible immigration status through the verification system described in § 912.8;

(2) Because the PHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with § 912.6;

(3) Because the PHA was required to wait for completion of INS verification of immigration status in accordance with § 912.8;

(4) Because the PHA was required to wait for completion of the INS appeal process provided in accordance with § 912.9(e); or

(5) Because the PHA was required to provide an informal hearing in accordance with § 912.9(f) or 24 CFR part 966.

(b) *Protection from liability for State, local and tribal government agencies and officials.* State, local and tribal government agencies and officials shall

not be liable for the design or implementation of the verification system described in § 912.8, and the informal hearings provided under § 912.9(f) and 24 CFR part 966, as long as the implementation by the State, local or tribal government agency or official is in accordance with prescribed HUD rules and requirements.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

93. The authority citation for part 960 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

94. In § 960.204, paragraphs (a) and (d)(4) would be revised to read as follows:

§ 960.204 PHA tenant selection policies.

(a) In addition to policies and regulations including preferences and priorities established by the PHA for eligibility and admission to its public housing projects pursuant to the Act, the ACC, and parts 912 and 913 of this chapter, each PHA shall adopt and implement policies and procedures embodying standards and criteria for tenant selection which take into consideration the needs of individual families for public housing and the statutory purpose in developing and operating socially and financially sound public housing projects that provide a decent home and a suitable living environment and foster economic and social diversity in the tenant body as a whole.

* * * * *

(d) * * *

(4) Provide for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of citizenship and eligible immigration status under 24 CFR part 912.

* * * * *

95. In § 960.206, paragraph (a) would be revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each

applicant. (See parts 912 and 913 of this chapter, and 24 CFR parts 750 and 760.) Information relative to the acceptance or rejection of an applicant or the grant or denial of a Federal preference under § 960.211 must be documented and placed in the applicant's file.

* * * * *

96. Section 960.209 would be amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 960.209 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [insert the effective date of the final rule], the PHA shall follow the requirements of 24 CFR part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 912 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after [insert the effective date of the final rule] when there is a new family member, the PHA shall follow the requirements of 24 CFR part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination.* For provisions requiring termination of participation for failure to establish citizenship or eligible immigration status, see 24 CFR part 912.9, and also 24 CFR 912.10 for provisions concerning assistance to certain mixed families (families whose members include those with citizenship and eligible immigration status and those without eligible immigration status) in lieu of termination of assistance.

Dated: August 3, 1994.

Henry G. Cisneros,
Secretary.

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Environmental Protection Agency
Federal Register

Part III

**Environmental
Protection Agency**

40 CFR Parts 35, 49, 50 and 81
Indian Tribes: Air Quality Planning and
Management; Proposed Rule

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Parts 35, 49, 50, and 81
[OAR-FRL-5024-1]
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AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act directs EPA to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian Tribes in the same manner as States. For those provisions specified, a Tribe may develop and implement one or more of its own air quality programs under the Act. This proposed rule sets forth the CAA provisions for which it is appropriate to treat Indian Tribes in the same manner as States, establishes the requirements that Indian Tribes must meet if they choose to seek such treatment, and provides for awards of Federal financial assistance to Tribes. EPA requests public comments on all aspects of today's proposal.

DATES: Comments on this proposed rule must be received on or before November 23, 1994.

ADDRESSES: Comments must be mailed (in duplicate, if possible) to the EPA Air Docket Office (6102), Attn: Air Docket No. A-93-3087, room M1500, 401 M St., SW., Washington, DC 20460. Copies of the comments and supporting documents, contained in Docket No. A-93-3087, are available for public inspection and review Monday through Friday from 8 a.m.—4 p.m., except legal holidays. Starting October 1, 1994, dockets will be available for inspection from 8 a.m.—5:30 p.m., except legal holidays. A reasonable charge may be assessed for photocopying of materials.

Comments and data may also be submitted electronically by any of three different mechanisms: by sending electronic mail (e-mail) to: Docket-OPPTS@epamail.epa.gov; by sending a "Subscribe" message to listserv@unixmail.rtpnc.epa.gov and once subscribed, send your comments to RIN-2060-AE95; or through the EPA Electronic Bulletin Board by dialing 202-488-3671, enter selection "DMAIL," user name "BB-USER" or 919-541-4642, enter selection "MAIL," user name "BB-USER." Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form should be identified by

the docket number A-93-3087. Electronic comments on this proposed rule, but not the record, may be viewed or new comments filed online at any Federal Depository Library. Additional information on electronic submissions can be found in Part VII of this document.

FOR FURTHER INFORMATION CONTACT: Christina Parker, Office of Air and Radiation (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at (202) 260-6584.

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I. Background of the Proposed Rule
A. Development of the Proposed Rule

This notice describes proposed regulatory changes to implement section 301(d) of the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.* (the "Act" or "CAA"). Section 301(d) requires EPA to promulgate regulations that provide for Indian Tribes, if they so choose, to assume responsibility for the development and implementation of CAA programs on lands within the exterior boundaries of their reservations or other areas within their jurisdiction. This Tribal authority will apply to all CAA programs which the EPA Administrator determines to be appropriate in taking final action on this proposal. An Indian Tribe that takes responsibility for a CAA program under this rule would essentially be treated in the same way as a State would be treated for that program, with any exceptions noted in this rule and discussed below in this preamble.

1. Federal/EPA Indian Policy

In developing this proposed rule, EPA has acted on the principles expressed in existing Federal policy statements

regarding Indian Tribes. On January 24, 1983, the President issued a Federal Indian Policy stressing two related themes: (1) that the Federal government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal governments on a "government-to-government" basis. Presidential support was reaffirmed in an April 1, 1993 statement.

On November 8, 1984, in response to the 1983 Federal statement, EPA adopted a policy statement and implementing guidance addressing the administration of EPA environmental programs on Indian reservations. EPA's policy is "to give special consideration to Tribal interests in making Agency policy, and to ensure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands." EPA committed to pursue certain principles to meet this objective, including the following:

EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.

* * * * *

In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

See November 8, 1984 "EPA Policy for the Administration of Environmental Programs on Indian Reservations" at p. 2. EPA Administrator Carol M. Browner reaffirmed the 1984 policy in a Memorandum issued on March 14, 1994.

2. Consultation With Tribal Representatives

In addition, EPA has consulted with Tribal representatives in developing this proposed rule. EPA discussed preliminary issues associated with the proposed rule at the "First National Tribal Conference on Environmental Management" held in Cherokee, North Carolina in May 1992 and the "Second National Tribal Conference on Environmental Management" in Cherokee held in May 1994.

In the Fall of 1992, EPA met with Tribal representatives at three outreach meetings in Chicago, Denver and San

Francisco. These meetings included a discussion of issues raised by this proposed rule as well as EPA's efforts to assist Tribes in obtaining training in air quality management. Overall, representatives of approximately 70 different Tribes attended. In September 1993, EPA discussed a draft of this proposed rule with representatives of approximately 40 Tribes at a seminar sponsored by EPA and the Office of Native American Programs at Northern Arizona University and a subsequent meeting with representatives of State and local governments sponsored by the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials. EPA has also consulted with Tribal and State representatives periodically throughout the development of the proposed rule.

EPA received comments both during and following the Tribal and State outreach meetings. EPA has considered these comments in developing today's proposed rule. To the extent any such commenters have concerns that have not been adequately addressed by today's proposal, they should submit formal written comments to EPA in response to today's action. Any such comments must be received by the deadline indicated at the outset of today's notice and submitted to the EPA address specified above.

B. General Structure of the CAA

In order to fully understand this proposal, a basic understanding of the structure of the CAA and its division of responsibilities between EPA and the States is necessary. Such a description is set forth below. In addition, a brief description of some of the many programs contained in the CAA is set forth in Addendum A, as an introduction and guidance to Tribes wishing to develop their own CAA programs. Reading Addendum A in conjunction with today's proposed action will also facilitate the reader's understanding of the discussion that follows.

The CAA is implemented in two basic ways. The principal method is through a cooperative partnership between the States and EPA. While this partnership can take several shapes, generally EPA issues national standards or Federal requirements and the States assume primary responsibility for implementing these requirements. However, as a prerequisite to assuming implementation responsibility, States must submit their programs to EPA and must demonstrate that their programs meet minimum Federal CAA requirements. Among these

requirements is the mandate that States demonstrate that they have adequate legal authority and resources to implement the programs.

If a State program is approved or if the authority to implement a Federal program is delegated to a State, EPA maintains an ongoing oversight role to ensure that the program is adequately enforced and implemented and to provide technical and policy assistance. An important aspect of EPA's oversight role is that EPA retains legal authority to bring an enforcement action against a source violating a CAA program implemented by the States. Thus, if a State fails to adequately enforce CAA requirements, EPA can step in and ensure that they are followed.

An example of this cooperative Federal/State arrangement is provided by Title V of the Act, 42 U.S.C. 7661-7661e, which contains requirements for an operating permit program. Generally, the program requires that certain sources of air pollution obtain permits which contain all of the requirements under the Act applicable to such sources. EPA has issued rules specifying the minimum requirements for State permit programs. 57 FR 32250 (July 21, 1992). States are required to develop programs consistent with minimum Federal requirements and to submit those programs to EPA for approval. In those instances when State programs are approved by EPA, the approved States will be primarily responsible for implementing these provisions of the CAA. EPA will maintain an active oversight role to provide necessary assistance and to ensure that the EPA-approved State programs continue to be implemented consistent with minimum Federal requirements.

In the second, less common form of CAA implementation, EPA is primarily responsible both for setting standards or interpreting the requirements of the Act and for implementing the Federal requirements that are established. Under this approach, the Act provides little formal role for States.¹ In general, this approach is reserved for programs requiring a high degree of uniformity in their implementation.

Title VI of the Act, which provides for the phase-out of certain substances that deplete stratospheric ozone, is one such program, since it affects products sold throughout interstate commerce. 42 U.S.C. 7671-7671q. Title VI is both a Federally established and Federally

¹ States nevertheless often actively participate in federal rulemakings and policy development even if the CAA does not call for primary implementation by the States. EPA similarly encourages Tribes to participate actively in EPA's rulemakings and policy development.

managed program. EPA is charged with issuing the rules to implement the phase-out. Through, for example, reporting requirements and enforcement, EPA also ensures that the restrictions in production and consumption of ozone-depleting substances that are called for by the Act are, in fact, met.

Section 301(d)(2) of the Act authorizes EPA to issue regulations specifying those provisions of the Act "for which it is appropriate to treat Indian tribes as States." 42 U.S.C. section 7601(d)(2). Thus, the CAA programs where States have a formal implementation role will be the programs that are directly affected by today's proposed action. Conversely, those programs that are established and implemented primarily by EPA will largely be unaffected by today's proposal.

C. Description of Section 301(d) of the CAA

Section 301(d)(1) of the CAA authorizes EPA to "treat Indian tribes as States" under the Act, so that Tribes may develop and implement CAA programs in the same manner as States within Tribal reservations or in other areas subject to Tribal jurisdiction.² For a Tribe to be eligible for such treatment it must be Federally recognized (see section 302(r)) and must meet the three criteria set forth in section 301(d)(2)(A)-(C). Briefly, these criteria consist of: (1) a showing of an adequate governing body; (2) that is capable of implementing the particular requirements of the CAA and applicable regulations for which the Tribe is seeking program approval; and (3) within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction. The precise criteria are set forth in today's proposed rule and are described in detail in Part III.A. below, together with EPA's proposal as to how this eligibility determination should be made.

At the same time, the Act recognizes that it may not be appropriate or feasible in all instances to treat Tribes and States identically. Accordingly, EPA is required under section 301(d)(2) of the Act to promulgate regulations "specifying those provisions of [the CAA] for which it is appropriate to treat Indian tribes as States." Tribes that satisfy the criteria discussed above are

² For convenience of expression, portions of this rule refer only to Tribal programs within reservations. However, these references should not be interpreted to limit Tribal programs solely to lands within reservation boundaries since the CAA acknowledges that tribes may possess authority over off-reservation lands." See Part II.A, below.

eligible to implement those provisions specified by EPA if the minimum Federal requirements set out in the provisions have been met. In general, EPA is proposing that Tribes be eligible to implement the same provisions as States, with some exceptions, as set forth in today's proposed rule and discussed in Part III.B. below.

In addition, section 301(d)(3) of the Act gives EPA the discretion to promulgate regulations establishing the elements of Tribal implementation plans ("TIPs") and procedures for approval or disapproval of those plans or portions thereof. See Addendum A, "Title I" discussion. These regulations would be implemented in conjunction with section 110(o) of the Act, which provides that any TIP that is submitted to EPA under section 301(d) shall be reviewed in accordance with the provisions for review of State implementation plans ("SIPs") set out in section 110, except as otherwise provided by this regulation. Once effective, the TIP would be applicable to all areas located within the exterior boundaries of the reservation. See section 110(o). In today's action, EPA is proposing TIP regulations and procedures, as well as procedures for the review of other Tribal air programs ("TAPs"). These procedures are discussed further in Part III.C. below.

Finally, section 301(d) of the Act makes provision for EPA to furnish grant and contract assistance to Tribes. See section 301(d)(1), (5) of the CAA. The grant provisions proposed today are described in Part IV of this preamble.

II. Jurisdictional Issues

A. Delegation or Grant of CAA Authority to Tribes

It is a settled point of law that Congress may, by statute, expressly delegate Federal authority to a Tribe. *United States v. Mazurie*, 419 U.S. 544, 554 (1975). See also *South Dakota v. Bourland*, 113 S. Ct. 2309, 2319-20 (1993); *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408, 426-28 (1989) (White, J., for four Justice plurality). Such a delegation or grant of authority can provide a Federal statutory source of Tribal authority over designated areas, whether or not the Tribe's inherent authority would extend to all such areas. It is EPA's proposed interpretation of the CAA that the Act grants, to Tribes approved by EPA to administer CAA programs in the same manner as States, authority over all air resources within the exterior boundaries of a reservation for such programs. This grant of authority by Congress would

enable such Tribes to address conduct on all lands, including non-Indian owned fee lands, within the exterior boundaries of a reservation. Thus, this proposed interpretation relates to the potential scope of regulatory jurisdiction that may be exercised by eligible Tribes under EPA-approved Tribal Clean Air Act programs (hereafter "approved" Tribes).³

The Agency recognizes that a Tribe will generally have inherent sovereign authority over air resources within the exterior boundaries of its reservation. As stated in *Mazurie*, the sovereign authority of Indian Tribes extends "over both their members and their territory." 419 U.S. at 557. Thus, Tribes generally have extensive authority to regulate activities on lands that are held by the United States in trust for the Tribe. See *Montana v. United States*, 450 U.S. 544, 557 (1981). Furthermore, a Tribe "may * * * retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the * * * health or welfare of the tribe." *Montana*, 450 U.S. at 566. However, a Tribe's inherent authority must be determined on a case-by-case basis, considering whether the conduct being regulated has a direct effect on the health or welfare of the Tribe substantial enough to support the Tribe's jurisdiction over non-Indians. See *Brendale*, 492 U.S. 408; see also 56 FR 64876 at 64877-64879 (Dec. 12, 1991).⁴ Such a determination is not necessary with a direct grant of statutory authority.⁵

EPA's proposed position that the CAA constitutes a statutory grant of

³ As indicated in Part III.B.4, in some instances qualifying Tribes may have a role in CAA implementation without having to make an entire program submittal.

⁴ In proposing to interpret the CAA as granting approved Tribes authority over all air resources within the exterior boundaries of a reservation, EPA recognizes that its approach under some of the other statutes it administers relies on a Tribe's inherent authority.

⁵ Even without this proposed direct grant of authority, Indian Tribes would very likely have inherent authority over all activities within reservation boundaries that are subject to CAA regulation. The high mobility of air pollutants, resulting area-wide effects, and the seriousness of such impacts, would all tend to support Tribal inherent authority; as noted below, these factors also underscore the desirability of cohesive air quality management of all air pollution sources within reservation boundaries including those air pollution-related activities on fee lands within reservation boundaries. See, e.g., *Bourland*, 113 S. Ct. at 2320 (reaffirming the *Montana* "exceptions to" the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe") (citation omitted) (1993); see also, e.g., CAA section 101(a)(2), 42 U.S.C. section 7401(a)(2); H.R. Rep. No. 490, 101st Cong., 2d Sess. (1990); S. Rep. No. 228, 101st Cong., 1st Sess. (1989).

jurisdictional authority to Tribes is consistent with the language of the Act, which authorizes EPA to treat a Tribe as a State for the regulation of "air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction."⁶ Section 301(d)(2)(B) (emphasis added). EPA believes that this statutory provision, viewed within the overall framework of the CAA, reflects a territorial view of Tribal jurisdiction and authorizes a Tribal role for all air resources within the exterior boundaries of Indian reservations without distinguishing among various categories of on-reservation land. EPA believes a territorial approach to air quality regulation best advances rational, sound air quality management. Air pollutants disperse over areas several and sometimes even hundreds of miles from their source of origin, as dictated by the physical and chemical properties of the pollutants at issue and the prevailing winds and other meteorological conditions. The high mobility of air pollutants, resulting areawide effects and the seriousness of such impacts, underscores the undesirability of fragmented air quality management within reservations.

Moreover, language contained in two other provisions of the CAA, which expressly recognizes Tribal authority over all areas within the exterior boundaries of the reservation provides particularly compelling evidence that Congress intended to adopt this territorial approach. One such provision is in the CAA program governing the amount of incremental air quality deterioration allowed in "clean air" areas. Section 164(c) of the CAA provides that "[l]ands within the exterior boundaries of reservations of federally recognized Indian Tribes may be redesignated [with regard to the prevention of significant deterioration of air quality] only by the appropriate Indian governing body."

In addition, section 110(o) of the CAA provides that upon approval by EPA, Tribal Implementation Plans (TIPs) "shall become applicable to all areas * * * located within the exterior

boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation." Section 110(o) of the Act recognizes that approved Tribes will exercise authority over all areas within the exterior boundaries of a reservation for purposes of TIPs. TIPs, in turn, are the administrative tools for implementing the requirements under Title I of the CAA necessary to assure attainment and maintenance of the national ambient air quality standards (NAAQS), one of the central CAA programs. Significant regulatory entanglement and inefficiencies could result if Tribes have jurisdiction over such plans pursuant to section 110(o) of the Act, but are not found to have jurisdiction within reservation boundaries over non-TIP CAA programs. For example, a stationary source located on an area of a reservation over which the Tribe was found to lack inherent authority would be subject to the Tribal Implementation Plan provisions imposing NAAQS-related requirements, but might be determined to be subject to State regulation for some other CAA program. This entanglement could potentially subject a source to differing local regulatory authorities, possibly with conflicting goals and approaches, and potentially duplicative or inconsistent reporting, monitoring and other regulatory requirements. There is no evidence that Congress intended to create such complex jurisdictional entanglements. These entanglements are reasonably avoided by interpreting the CAA as granting to approved Tribes regulatory authority over all air resources within a reservation.

Further, a grant of authority to Tribes for NAAQS-related purposes alone would conflict with the implementation of the operating permit program called for by Title V of the Act. Title V explicitly prohibits partial State permit programs unless, at a minimum, such a program "ensures compliance with * * * [a]ll requirements of [Title] I * * * applicable to sources required to have a permit." Section 502(f) (emphasis added); see also section 502(b)(5)(A) (requires permitting authorities "to have adequate authority to * * * assure compliance by sources required to have a permit under this title with each applicable standard, regulation, or requirement under this Act") (emphasis added) and section 504(a) (each permit issued under Title V "shall include * * * conditions as are necessary to assure compliance with the applicable requirements of this [Act], including the requirements of the

applicable implementation plan"). Since States could not unilaterally "ensure compliance with * * * [a]ll requirements of [Title] I" within Indian reservations because Tribes are granted authority over implementation plans under section 110(o), it appears that States could not, in fact, submit Title V permit programs for Indian reservations that would conform with section 502(f) or other provisions of Title V.

A basic rule of statutory construction is to avoid interpreting a statute in a manner that would nullify or render meaningless a statutory provision.⁷ Because section 110(o) confers on approved Tribes the authority to administer Title I programs on Indian reservations, the provision of Title V requiring that a permit program must at a minimum ensure compliance with the applicable requirements of Title I cannot be met by States seeking authority to implement a Title V program within the boundaries of a reservation. These provisions can reasonably be harmonized by construing the Act as generally granting approved Tribes CAA regulatory authority over all air resources within the exterior boundaries of their reservations. Thus, this statutory structure further supports EPA's proposed interpretation of the CAA as granting approved Tribes authority within reservation boundaries.

Accordingly, in light of the statutory language and the overall statutory scheme⁸, EPA proposes to exercise the rulemaking authority entrusted to it by Congress to conclude that the CAA grants approved Tribes authority over all air resources within the exterior boundaries of a reservation. See generally *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-45 (1984).⁹

⁷ See *U.S. v. Nordic Village, Inc.*, 112 S.Ct. 1011, 1015 (1992) (rejecting an interpretation that "violates the settled rule that a statute must, if possible, be construed in a fashion that every word has some operative effect") (citation omitted); *Boise Cascade Corp. v. U.S. EPA*, 942 F.2d 1427, 1432 (9th Cir. 1992) ("[u]nder accepted canons of statutory interpretation, we must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous") (citations omitted).

⁸ This proposed interpretation of the CAA as generally delegating jurisdictional authority to approved Tribes is also supported by the legislative history, which provides some additional evidence of Congressional attention to this issue: "the Act constitutes an express delegation of power to Indian tribes to administer and enforce the Clean Air Act in Indian lands" (citation to *Brendale* omitted). S. Rep. No. 228, 101st Cong., 1st Sess. 79 (1989).

⁹ Further, it is a well-established principle of statutory construction that statutes should be construed liberally in favor of Indians, with ambiguous provisions interpreted in ways that benefit tribes. See *County of Yakima v.*

⁶ As indicated above, EPA interprets the second clause of this provision as meaning that Tribes may also assert jurisdiction over air resources that are not within the boundaries of their reservations. However, EPA has not interpreted this clause as a direct grant of jurisdictional authority to Tribes with respect to such off-reservation air resources. Rather, where a Tribe submits a program asserting jurisdiction over air resources outside the boundaries of a reservation, EPA will require a demonstration of the factual and legal basis for the Tribe's inherent authority over such resources, consistent with relevant principles of Federal Indian law.

Based on recent Supreme Court case law, EPA has construed the term "reservation" to incorporate trust land that has been validly set apart for use by a Tribe, even though that land has not been formally designated as a "reservation." See 56 FR at 64,881 (Dec. 12, 1991); see also *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 111 S.Ct. 905, 910 (1991). EPA will be guided by relevant case law in interpreting the scope of "reservation" under the CAA.

Section 301(d)(2)(B) of the CAA also provides that a Tribe may be treated in the same manner as a State for functions regarding air resources "within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction" (emphasis added). The emphasized language envisions potential Tribal jurisdiction under the CAA over areas that lie outside the exterior boundaries of a reservation, upon a fact-based showing of a Tribe's inherent authority over sources located on such lands. Thus, this provision authorizes an eligible Tribe to develop and implement Tribal air quality programs on off-reservation lands that are determined to be within the Tribe's inherent jurisdiction. Accordingly, for purposes of this rule, EPA proposes to conclude that an eligible Tribe may be able to implement its air quality programs on off-reservation lands up to the limits of "Indian country," as defined in 18 U.S.C. section 1151, provided the Tribe can adequately demonstrate authority to regulate air quality on the off-reservation lands in question under general principles of Indian law.

In sum, EPA is proposing to interpret the CAA as granting approved Tribes regulatory authority over all air resources within the exterior boundaries of their reservations. Thus, no independent fact-based showing of inherent Tribal jurisdiction will be required for air resources located within such reservation boundaries. EPA recognizes that "other" off-reservation areas may fall within Tribal jurisdiction. EPA is proposing to interpret the CAA as providing no blanket grant of Federal authority for such areas. Thus, for off-reservation areas, a Tribe must demonstrate that it has inherent authority over sources it seeks to

regulate under general principles of Indian law.

B. Federal Authority and Protection of Tribal Air Resources

The CAA authorizes EPA to protect air quality throughout Indian country. EPA intends to use this authority to remedy and prevent gaps in CAA protection for Tribal air resources. EPA's authority to provide this CAA protection is based in part on the general purpose of the Act, which is national in scope. As stated in section 101(b)(1) of the Act, Congress intended to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" (emphasis added). It seems clear that Congress intended for the CAA to be a "general statute applying to all persons to include Indians and their property interests." *Phillips Petroleum Co. v. United States E.P.A.*, 803 F.2d 545, 556 (10th Cir. 1986) (holding that the Safe Drinking Water Act applied to Indian Tribes and lands by virtue of being a nationally applicable statute; see generally *id.* at 553-58).

Section 301(a) of the Act delegates to EPA broad authority to issue such regulations as are necessary to carry out the functions of the Act. Further, several provisions of the Act call for Federal issuance of a program where, for example, a State fails to adopt a program, adopts an inadequate program or fails to adequately implement a required program. *E.g.*, sections 110(c) and 502 (d), (e), (i) of the Act. It follows that Congress intended that EPA would similarly have broad legal authority in instances when Tribes choose not to develop a program, fail to adopt an adequate program or fail to adequately implement an air program authorized under section 301(d). In addition, section 301(d)(4) of the CAA empowers the Administrator to directly administer CAA requirements so as to achieve the appropriate purpose, where Tribal implementation of CAA requirements is inappropriate or administratively infeasible. These provisions evince Congressional intent to authorize EPA to directly implement CAA programs where Tribes fail to submit approvable programs or lack authority to do so.

In fact, EPA is currently providing Federal support for CAA protection within reservations. For example, EPA administers the permit program governing review of proposed new and modified major stationary sources of air pollution ("new source review" or "NSR") on Reservations and other areas in Indian country (hereafter "Tribal lands"). There are several reasons for

this emphasis in the exercise of EPA's authority.

Many Tribal lands have air quality that presently meets the national ambient air quality standards ("NAAQS"), and the central concern is to prevent the relatively clean air from significantly deteriorating. Thus, EPA has ensured that major sources seeking to locate on Tribal lands obtain the Prevention of Significant Deterioration ("PSD") permit required under the CAA's NSR program. In broad overview, this program imposes limitations on the ambient air quality impact of new or modified major stationary sources and requires the application of best available control technology on such sources. See section 165 of the Act. Similarly, in those circumstances where the air quality on Tribal lands currently is worse than the NAAQS, EPA's administration of the nonattainment NSR program prevents the air quality from further deteriorating by ensuring that a proposed major source implements the most stringent control technology (the "lowest achievable emission rate" as defined in section 171(3)) and offsets its emissions by obtaining emissions reductions from nearby sources. Section 173 of the Act.

Owners and operators that construct air pollution sources on Tribal lands without first obtaining the proper permit from EPA expose themselves to Federal enforcement action and citizen suits. For example, section 165 of the Act, 42 U.S.C. 7475, prohibits the construction of a major emitting facility that does not have a PSD permit. Section 173, 42 U.S.C. 7503, contains a similar requirement for new and modified major stationary sources in nonattainment areas. Sections 113 and 167, 42 U.S.C. 7413 & 7467, authorize EPA to take enforcement action (including, in certain instances, criminal action) against an owner or operator that is in violation of the requirement to obtain a preconstruction permit that meets the requirements of the Act. Furthermore, section 304 of the Act, 42 U.S.C. 7604, authorizes any person to bring a "citizen suit" in U.S. district court against an owner or operator who constructs any new or modified major stationary source without a PSD permit or nonattainment NSR permit that meets the Act's requirements.

EPA also currently provides technical and financial support to Tribes that have initiated the process of developing Tribal air programs. For example, some EPA Regional Offices are currently providing such assistance to Tribes that have air quality that is worse than the NAAQS. The objective is to assist the

Confederated Tribes and Bands of the Yakima Indian Nation, 112 S.Ct. 683, 693 (1992). In addition, statutes should be interpreted so as to comport with tribal sovereignty and the federal policy of encouraging tribal independence. See *Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, 846 (1982).

Tribes in developing a strategy for controlling emissions from existing sources that will bring the area back into attainment with the NAAQS. Because EPA has not finalized today's rule authorizing Tribes to submit Federal CAA programs to EPA for approval, some EPA Regions are now working with Tribes to develop programs that will be promulgated and administered by EPA until this rule is finalized and a Tribal program is approved.¹⁰ Where air quality problems have already been identified, it is EPA's policy to proceed expeditiously, in conjunction with Tribes, to address such problems.

In addition, as described in Part I.B, there are some programs that are solely Federal programs (e.g. Phase I of the Acid Rain Program and Title VI of the Act, which provides for the phase-out of certain substances that deplete stratospheric ozone). Such programs apply to sources located on Tribal lands in the same manner as sources on lands subject to State jurisdiction.

EPA views these efforts as an important and substantial first step in providing CAA protection of reservation air resources.

EPA also intends to develop an implementation strategy for achieving Federal CAA protection of air resources within Indian reservations. The strategy will be designed to prioritize EPA resources in support of this rule. It is EPA's policy to assist Tribes in developing comprehensive and effective air quality management programs to insure that Tribal air quality management programs will be implemented to the extent necessary on Indian reservations. EPA will do this by, among other things, providing technical advice and assistance to Indian Tribes on air quality issues. EPA intends to consult with Tribes to identify their particular needs for air program development assistance and to provide on-going assistance as necessary.

However, as it required many years to develop State and Federal programs to cover lands subject to State jurisdiction, so it will require time to develop Tribal and Federal programs to cover reservations and other lands subject to Tribal jurisdiction. As a first step in this process, EPA intends to draft a Plan for Reservation Air Program Implementation that will provide a strategy for developing reservation programs in accordance with this policy. The Plan will identify priority needs and include a strategy to address them by providing technical and grant

assistance for the development of air quality management programs. EPA will seek appropriate input from Tribal governments in developing the Plan.

C. Objective of Tribal Primacy and Self-Determination

Ultimately, of course, EPA would prefer to work with Tribes to have the Tribes develop and administer their own air quality management programs under the CAA, just as EPA works with States. This is the principal objective of the Federal financial assistance described in Part IV below.

While some Tribes may entirely develop their own CAA programs, other Tribes may consider forming Tribal consortia. Smaller Tribes in particular may wish to form consortia or create inter-Tribal agencies as ways to develop the necessary expertise to administer CAA programs in a cost-effective way. One of the advantages of forming a consortium of Tribes is that a Tribe may rely on the expertise and resources of the consortium in demonstrating that the Tribe is reasonably expected to be capable of carrying out the functions to be exercised, as described below.

Today's action also does not require Tribes to develop CAA programs wholly from scratch. For example, a Tribe may adopt or incorporate standards from an adjacent or similarly situated State, with appropriate revisions that would adapt the State standards to reservation conditions and Tribal policies. The use of such adaptations would enable Tribes to build on State experience and expertise, and might represent quicker and less costly ways to establish Tribal programs than developing Tribal programs independently. This technique of utilizing small-scaled adaptations of State programs would allow Tribes to build experience and expertise that could later be used to revise existing programs, if appropriate.

Tribes could also choose to negotiate a cooperative agreement with an adjoining State to jointly plan and administer CAA programs that are appropriately tailored to individual reservation conditions and Tribal policies. Such an agreement would be subject to the review and approval of the Administrator or her delegatee, if it is to be made part of an approvable Tribal air program under the CAA.

Aside from any formal arrangements between Tribes and States, EPA notes that the objective of this rule, and EPA's responsibility in overseeing the administration of the CAA, is to provide air quality protection. Therefore, EPA encourages all affected sovereigns to work cooperatively in informal capacities to protect the public health

and welfare from the serious health and welfare effects associated with air pollution.

III. Tribal CAA Programs

The discussion which follows addresses streamlined procedures that EPA is proposing to satisfy the eligibility requirements set out in section 301(d)(2) of the Act. These are proposed requirements that Tribes must meet in order to obtain approval to implement CAA programs. The discussion also identifies those provisions of the Act for which EPA is proposing to treat Indian Tribes in the same manner as States and those provisions for which EPA believes such treatment is infeasible or otherwise inappropriate.

One of EPA's central concerns is to encourage Tribes to develop and administer Clean Air Act programs on Tribal lands in the same way that States currently do on State lands. This concern is grounded in the objective of Tribal self-government as enunciated in both the Federal and the EPA Indian Policies. In order to facilitate this process, EPA is proposing to eliminate duplicative review and unnecessary delay during EPA's processing of Tribal program submittals. The eligibility determination process proposed in today's action is consistent with an EPA policy pronouncement that followed from EPA's review of the Tribal programs it administers under other environmental statutes. Further, EPA is proposing to accept "reasonably severable" Tribal air program submittals that meet the applicable requirements of the CAA. This will allow Tribes to identify and then immediately target their most important air quality issues without the corresponding burden of developing entire CAA programs. Further, it allows Tribes to develop incremental expertise that will facilitate development and expansion of further programs over time.

A. New Process for Determining Eligibility for CAA Programs

To be eligible to be treated in the same manner as a State for CAA programs, including financial assistance, an applicant must meet the definition of "tribe" in section 302(r) of the Act (i.e. it must be Federally recognized) and must satisfy the three criteria set forth in section 301(d)(2)(A)-(C) of the Act. These criteria are set out in today's proposed rule and concern the Tribe's governing body, its jurisdiction, and its capability to carry out the necessary functions under the Act.

¹⁰ Such an interim EPA-administered program would be displaced upon EPA's approval of a Tribal program addressing the same CAA requirements.

In general these same criteria are set forth under the Clean Water Act and the Safe Drinking Water Act. EPA has previously issued regulations implementing the criteria under those Acts. These regulations have come to be known as the "treatment as a state" ("TAS") process.¹¹ Approval under this process was required every time a Tribe sought to obtain an EPA grant or implement an EPA program on its reservation.

Because the "TAS" process proved to be quite burdensome to Tribes, EPA formed a working group to focus on ways of improving and simplifying the process. After considering the workgroup's recommendations, EPA announced a policy that is intended to streamline and simplify the process. Memorandum from F. Henry Habicht, the Deputy Administrator of EPA, to the Agency, dated November 10, 1992. EPA is proposing to implement this new policy in this rulemaking, and is calling the resulting new process the "eligibility" process. See also 56 FR 1380 (March 23, 1994) (proposing similar revision to Tribal approval process in Clean Water Act and Safe Drinking Water Act regulations).

Under the new eligibility process proposed in today's action, a Tribe does not need to go through a separate eligibility review every time it seeks approval for grant funding or to implement a specific program. Instead, a Tribe's eligibility may be determined at the same time that it seeks approval for a particular program. By making the eligibility determination a part of the program approval process, much of the delay and duplication inherent in the old sequential TAS process should be reduced, if not eliminated. In addition, EPA is proposing to simplify some of the demonstrations of eligibility that will be required under the Clean Air Act, as discussed below. Finally, after promulgation of this rule, EPA intends to facilitate development of Tribal applications by providing Tribes with a narrative checklist of the eligibility requirements described below.

1. Federally Recognized Tribe

A Tribe is defined in section 302(r) of the Act as follows:

¹¹ EPA recognizes that Tribes are sovereign nations with a unique legal status and a relationship to the Federal government that is significantly different from that of States. EPA believes that Congress did not intend to alter this when it authorized treatment of Tribes "as States" under the CAA. Rather, Congress intends to ensure that, to the extent appropriate and feasible, Tribes may assume a role in implementing the CAA on Tribal lands that is comparable to the role States have in implementing the CAA on State lands.

[A]ny Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

The requirement of Federal recognition is common to all statutes authorizing EPA to treat Tribes in a manner similar to that in which it treats States. Any Tribe that has been approved for "TAS" under any of the existing Water Act regulations or any other EPA program is Federally recognized. Moreover, once a Tribe has been found to be Federally recognized in the course of approval under any EPA-administered statute, or any provision of the CAA, it need only so state in the future. To facilitate review of Tribal applications, EPA therefore requests that Tribal applications inform EPA whether the Tribe has been approved for "TAS" under the old process or deemed eligible to receive funding or authorization for any EPA-administered environmental program under the revised process governing treatment of Tribes in the same manner as States.

Any other Tribe need only state that it appears on the list of Federally recognized Tribes that the Secretary of the Interior periodically publishes in the *Federal Register*. See 58 FR 54364 (Oct. 21, 1993). If the Tribe notifies EPA that it has been recognized but is not included on this list because the list has not been updated, EPA will verify the fact of recognition with the Department of the Interior ("DOI").

2. Substantial Governmental Duties and Powers

A Tribe also must show that it "has a governing body carrying out substantial governmental duties and powers." This requirement is also found in the Federal Water Pollution Control Act ("Clean Water Act") and the Public Health Service Act ("Safe Drinking Water Act"). See 33 U.S.C. 1377(e) & 42 U.S.C. section 300j-11(b). Accordingly, as discussed above, a Tribe that has had a submittal approved by EPA under either of these provisions has already established that it meets the governmental requirement and need not make this showing again. Similarly, a Tribe that has made this showing in the course of obtaining approval for a Clean Air Act program need not do so again. In either case, a Tribe may simply state that it has already been approved.

A Tribe that has not yet made its initial showing of "substantial governmental duties and powers" can do so by demonstrating that it has a governing body that is presently

carrying out substantial governmental functions. A Tribe will be able to make the required demonstration if it is currently performing governmental functions to promote the public health, safety, and welfare of its population within a defined area. Many Indian Tribal governments perform these functions. Examples of such functions include, but are not limited to, levying taxes, acquiring land by exercising the power of eminent domain, and police power. Such examples should be included in a narrative statement supporting the certification, which describes: (1) The form of the Tribal government, (2) the types of essential governmental functions currently performed, such as those listed above; and (3) the legal authorities for performing these functions (e.g. Tribal constitutions or codes). It should be relatively easy for Tribes to meet this requirement without submitting copies of specific documents unless requested to do so by EPA.

3. Jurisdiction Requirement

As discussed in section II.A above, EPA is proposing to interpret the CAA as granting or delegating certain Federal authority to approved Tribes over all air resources within the exterior boundaries of their reservations. Generally, therefore, the significant issue that remains in determining the extent of Tribal jurisdiction is the precise boundary of the reservation in question. Accordingly, a Tribal jurisdictional showing must identify, with clarity and precision, the exterior boundaries of the reservation. Consistent with the simplified review process, EPA is not proposing to specify particular supporting materials that the Tribe must provide. However, a Tribal submission will need to contain information adequate to demonstrate to EPA the location and limits of the reservation, which will usually include a map and a legal description of the area. EPA will determine the meaning of the term "reservation" as indicated previously.

Note that there may be less frequent instances when more complex legal and factual demonstrations must be made to establish jurisdiction. As indicated above, section 301(d)(2)(B) of the Act addresses jurisdiction over "air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction" (emphasis added). While EPA is proposing to construe the Act as delegating to Tribes authority over all air resources within the exterior boundaries of their reservations, the Agency will require a Tribe to demonstrate its inherent authority over any areas outside of the

exterior boundaries of the reservation before EPA will approve a Tribal program covering such areas. Where a Tribe seeks to develop and administer an air program on off-reservation lands, the Tribal submittal must be accompanied by appropriate legal and factual information which supports its inherent authority to regulate emission sources located on such lands.

Under the TAS process which EPA has implemented in the past, EPA would not determine that a Tribe had the requisite jurisdiction without first notifying appropriate "governmental entities," such as States, other Tribes and Federal land management agencies, of the Tribe's jurisdictional assertions. Those entities were then given an opportunity to comment on the Tribe's jurisdictional statement, and whenever a comment raised a "competing or conflicting claim," EPA could not approve the Tribal application without first consulting with DOI. Consistent with the revised eligibility policy, EPA is proposing to implement a more streamlined approach under the CAA.

The first time a Tribe submits an application to EPA under the CAA, EPA will, upon receipt of the application, notify all appropriate "governmental entities"¹² regarding the Tribe's assertion of jurisdiction. The precise content of EPA's notification of other governmental entities will depend on the geographic extent of the Tribe's jurisdictional assertion. Specifically, if a Tribe seeks only to implement a CAA program within the exterior boundaries of its reservation, EPA's notification of other governments will only specify the geographic boundaries of the reservation, as set forth in the Tribe's application. However, where a Tribe seeks to administer a CAA program on lands outside the exterior boundaries of a reservation, EPA will notify the appropriate governmental entities of the substance of and bases for the Tribe's assertion of inherent jurisdiction with respect to such off-reservation lands.

The appropriate governmental entities will have fifteen days following their receipt of EPA's notification to provide formal comments to EPA regarding any dispute they might have with the Tribe concerning the boundary of the reservation. Where a Tribe has asserted jurisdiction over off-reservation lands, and has included a more detailed jurisdictional statement in its application, appropriate governmental entities may request a one-time fifteen

day extension to the general fifteen day comment period. In all cases, comments from appropriate governmental entities must be offered in a timely manner, and must be limited to the Tribe's jurisdictional assertion. Where no timely comments are presented, EPA will conclude that there is no objection to the Tribal applicant's identified reservation boundaries (or, if relevant, its assertion of jurisdiction outside the reservation). Further, to raise a competing or conflicting claim, a commenter must clearly explain the substance, basis, and extent of its objections. Finally, where EPA receives timely notification of a dispute, it may obtain such additional information and documentation as it believes appropriate and may, at its option, consult with DOI.

Where EPA identifies a dispute and cannot confidently resolve it promptly, it will retain the option of limiting approval of a Tribal program to those areas that a Tribe has clearly shown are part of the reservation (or are otherwise within the Tribe's jurisdiction). This will allow EPA to approve the portion of a Tribal application that covers all undisputed areas, while withholding action on the portion of the application that addresses areas where a jurisdictional issue has not been satisfactorily resolved. However, this approach will be subject to any applicable statutory restrictions. See, e.g., section 110(k) of the Act (calls upon EPA to complete action on a SIP submittal within certain specified timeframes).

Once EPA has made a determination under the CAA or other EPA-administered environmental programs concerning the boundaries of a reservation, it will rely on that determination in evaluating all future applications from that Tribe under the CAA unless the application presents different legal issues. For example, once the Agency has arrived at a position concerning a reservation boundary dispute, it will not alter that position in the absence of significant new factual or legal information. Thus, as with the recognition and governmental requirements, there will generally be no need to provide EPA with additional demonstrations of jurisdiction, unless the Tribe is making a more expansive jurisdictional assertion in a subsequent submittal.

EPA believes that this new process for resolving questions of jurisdiction constitutes a significant improvement over the old TAS jurisdiction process. It will provide States with an opportunity to notify EPA of boundary disputes and enable EPA to obtain relevant

information as needed while minimizing delays in the process and focusing its inquiry on what is likely to be the principal relevant issue, namely, the geographic boundaries of the reservation.

4. Capability Requirement

Section 301(d)(2)(C) of the CAA provides that in determining Tribal eligibility the Administrator also must determine that the Tribe "is reasonably expected to be capable * * * of carrying out the functions to be exercised in a manner consistent with the terms and purposes of [the CAA] and all applicable regulations." A program-by-program inquiry into the question of capability is necessary since a Tribe may have capability to carry out certain activities but not others. Therefore, EPA may request that to establish capability a Tribe submit a narrative statement or other documents showing it is capable of administering the program for which it is seeking approval. The specific capabilities which must be described are set forth in today's proposed rule.

In evaluating a Tribe's demonstration of capability, EPA may consider the following factors:

- (1) The Tribe's previous management experience;
- (2) Existing environmental or public health programs administered by the Tribe;
- (3) The mechanism(s) in place for carrying out the executive, legislative, and judicial functions of the Tribal government;
- (4) The relationship between regulated entities and the administrative agency of the Tribal government that will be the regulator; and
- (5) The technical and administrative capabilities of the staff to administer and manage the program.

EPA recognizes that certain Tribes may not have substantial experience administering environmental programs. A lack of experience will not preclude a Tribe from demonstrating the required capability. Otherwise Tribes would be placed in the dilemma of being denied the opportunity to develop the requisite capability because they lack such capability. For this reason, today's proposed rule requires Tribes either to show that they have the necessary management and technical skills or to submit a plan detailing steps for acquiring those skills.

However, this flexibility does not change the requirement that to obtain approval for a particular program under the CAA the Tribe must submit a fully effective program that meets all the applicable statutory and regulatory requirements associated with the

¹²For purposes of the CAA rule, EPA is proposing to adopt the same definition of "governmental entities" as the Agency did in its December 1991 Water Quality Standards regulation. See 56 FR 64876 at 64884 (Dec. 12, 1991).

program in question. Because a Tribe may not want to go through the expense of developing such a program without first being assured of meeting the eligibility requirements, today's proposed rule provide that a Tribe may, at its option, ask for a preliminary finding on any or all of these requirements.

EPA's evaluation of capability will also consider the relationship between the existing or proposed Tribal agency that will implement the program in question and any potential regulated Tribal entities. It is not uncommon for a Tribe to be both the regulator and regulated entity, and such a situation could result in a conflict of interest since the Tribe would then be regulating itself. Independence of the regulator and regulated entity best assures effective and fair administration of a program.

A Tribe will generally not be required to divest itself of ownership of any regulated entities to address this problem. Instead, for example, the Tribe could create an independent organization to regulate Tribal entities subject to CAA regulatory requirements.¹³ Similar arrangements could be established using existing Tribal organizations.

This discussion is intended to alert Tribes at an early date about a potential bar to regulatory program assumption that must be resolved. For example, section 110 of the CAA sets out some of the basic requirements that SIPs must meet to assure attainment and maintenance of the NAAQS. Section 110(a)(2)(E)(ii) of the Act directs that SIPs must provide requirements that the State comply with the requirements applicable to State boards under section 128. Section 128, in turn, provides that each SIP shall contain requirements that:

(1) Any board or body which approves permits or enforcement orders under [the CAA] shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under [the CAA], and

(2) Any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

EPA does not intend to limit Tribal flexibility in creating structures which will ensure adequate separation of the regulator and regulated entity. Instead,

¹³ While States also are both the regulator and regulated entity, state government organization is typically one in which the State agency operating the regulated entity is not the same State agency that has primary regulatory authority. Thus, this separation of functions helps avoid potential conflicts of interest.

EPA will evaluate whether the Tribal submittal will ensure adequate separation of the regulator and regulated entity on a case-by-case basis in the context of the statutory and regulatory requirements applicable to the CAA program for which a Tribe is seeking approval.

5. Tribal consortia

Each member of a Tribal consortium must meet the eligibility qualifications described above. However, members of a consortium may rely on the expertise and resources of the consortium in demonstrating that the Tribe meets the capability requirement described above.

For example, some members of a consortium may have more technical expertise and environmental management experience than other members. A Tribe with less resources and expertise may rely on the combined resources of the consortium in demonstrating that the Tribe is "reasonably expected" to be capable of carrying out the functions to be exercised. However, a Tribe relying on a consortium in this manner must provide reasonable assurances that the Tribe has responsibility for carrying out necessary functions in the event the consortium fails to.

B. Provisions for Which Tribal Implementation is Appropriate

1. Tribal Implementation is Generally Appropriate

Part III.A discussed the eligibility requirements that a Tribe must meet in order to be treated as a State under the Clean Air Act. There is a separate question of whether it is appropriate to treat eligible Tribes in the same manner as States for all provisions under the Act, or whether only certain provisions lend themselves to such an approach. The Act provides that the Administrator shall promulgate regulations:

specifying those provisions of [the CAA] for which it is appropriate to treat Indian tribes as States.

Section 301(d)(2). The Act further provides,

[i]n any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provisions so as to achieve the appropriate purpose.

Section 301(d)(4). Thus, read together, the Act delegates to the Administrator broad discretion in determining those provisions of the Clean Air Act for which Tribes should be treated in the same manner as States and those

provisions for which such treatment would be inappropriate or infeasible.

It is EPA's basic position, proposed here, that treatment of Tribes in the same manner as States is appropriate for all programs under the Act with the exception of only a few provisions (those for which EPA has determined that it is infeasible or otherwise inappropriate to treat States and Tribes in the same manner). EPA proposes to be inclusive in identifying the provisions of the Act for which it is appropriate to treat Tribes in the same manner as States so as to maximize the opportunities for Tribal participation in CAA programs.

In light of this basic approach, today's proposed rule provides that Tribes will generally be treated in the same manner as States for all the provisions of the Clean Air Act, and specifies the limited exceptions to this approach. EPA is proposing to treat Tribes in the same manner as States for all of the remaining provisions of the statute not identified as exceptions in the discussion below. Today's action also addresses alternative means to achieve the intended purpose of the Act, where EPA believes such provisions are necessary in light of a proposed exception. Section 301(d)(4).

A common concern raised by both Tribes and States during the development of this proposed rule was the potential for sources located on State or Tribal lands to adversely impact air quality on downwind State or Tribal lands. EPA is proposing in this rule that the CAA protections against interstate pollutant transport apply with equal force to States and Tribes.

Thus, for example, EPA is proposing that the prohibitions and authority contained in sections 110(a)(2)(D) and 126 of the CAA apply to Tribes in the same manner as States. Section 110(a)(2)(D), among other things, requires States to include provisions in their SIPs that prohibit emissions activity within the State from significantly contributing to nonattainment, interfering with maintenance of the NAAQS, or interfering with measures under the PSD or visibility protection programs in another State. Section 126 authorizes any State to petition EPA to enforce these prohibitions against a State containing an allegedly offending source or group of sources.

2. Exceptions to Tribal Implementation

EPA notes at the outset that recurring provisions for which EPA is proposing not to treat Tribes in the same manner as States involve certain Clean Air Act submittal deadlines. The Act contains

many deadlines that mandate the submittal of a State plan, program or other requirement by certain dates. However, Tribes are not similarly compelled to develop and seek approval of air programs. Section 301(d)(2) provides for EPA to promulgate regulations specifying "those provisions of this [Act] for which it is appropriate to treat Indian tribes as States" but does not require Indian Tribes to develop CAA programs.

Further, the State program submittal deadlines in the statute are based upon a relatively long history of Clean Air Act planning and implementation by States.¹⁴ States have assumed an active role in Clean Air Act implementation since the 1970 Amendments to the Act. By comparison, in substantial part, Tribal authority for Clean Air Act programs was expressly addressed in the Act for the first time in the 1990 Amendments. Tribes, therefore, are at best in the early stages of developing air program expertise and planning efforts. Accordingly, EPA believes it would be both infeasible and inappropriate to subject Tribes to the State program submittal and related deadlines in the statute as explained in more detail below.

A related set of provisions are the sanctions and other Federal oversight mechanisms in the Act which are triggered when States fail to meet the air program submittal deadlines called for in the Act or when EPA disapproves a program submittal. In several instances, the Act mandates the imposition of sanctions, such as Federal transportation funding restrictions and two-to-one new source review offsets, by a specific deadline if a State fails to timely submit a required program or submits a program that is not fully approvable. E.g., CAA sections 179 and 502(d)(2)(B). Similarly, the Act often imposes specific deadlines upon EPA for issuing a Federal program within a certain period after a State fails to submit a program or after EPA disapproves an inadequate State program. E.g., CAA sections 110(c)(1) and 502(d)(3). For the reasons stated above, EPA is proposing not to treat Tribes in the same manner as States for certain provisions contained in these sections.

However, EPA is proposing to treat Tribes in the same manner as States for those provisions that mandate the

imposition of Federal sanctions for failure to adequately implement or enforce an approved Clean Air Act program. E.g., CAA sections 179(a)(4) and 502(i)(2). This includes EPA's authority to withhold all or part of air pollution control grants awarded under section 105. EPA is proposing to treat Tribes in the same fashion as States for the purposes of mandatory sanctions for nonimplementation of an approved Tribal program because once a Tribe has sufficient legal authority and capability to have a program approved, it should be treated as a similarly situated State. Thus, EPA expects a Tribe to follow through on its implementation of an approved program in the same manner as a State. This will provide an incentive for Tribes to maintain the primary role in implementing a previously approved air program and to administer effective programs. In addition, EPA will also treat Tribes in the same fashion as States with respect to EPA's discretionary authority to impose sanctions. E.g., sections 110(m), 502(d)(2), and 502(i)(1).

The approach EPA is proposing today regarding Clean Air Act deadlines and Federal sanctions is consistent with the approach outlined under Parts II.B. and II.C. of this notice. EPA's principal goal is to have Tribes develop and administer their own CAA programs. As indicated, EPA intends to issue guidance subsequent to this rule that sets out in some detail the Federal efforts and timetables for providing broader air quality protection for reservation air resources in those instances when Tribes choose not to develop their own programs. EPA intends to provide direct Federal Clean Air Act protection on reservations if, after some reasonable time, its efforts to assist Tribes in developing Tribal programs under the Act do not in fact lead to Tribal program adoption and approval.

a. *National Ambient Air Quality Standards applicable implementation plan submittal deadlines and related sanctions.* Consistent with the general discussion above, EPA is not proposing to treat Tribes in the same manner as States for the general implementation plan submittal deadlines specified in section 110(a)(1) of the Act. Further, Tribes will not be subject to the plan submittal deadlines for nonattainment areas set out in sections 172(a)(2), 182, 187, 189, and 191. EPA also is not proposing to treat Tribes in the same manner as States for the deadlines set out in section 124, associated with the review and revision of implementation plans related to major fuel burning sources.

However, EPA is proposing to treat Tribes in the same manner as States with respect to the statutory requirements that will apply in evaluating a Tribal program once a Tribe has decided to make a submittal. Further, as indicated previously, EPA intends to issue guidance specifying timeframes by which it will provide Federal protection for Tribes that have air quality worse than the NAAQS but are unable to develop their own CAA programs. The timing of Federal protection will be informed by the applicable Clean Air Act NAAQS attainment deadlines.

Also consistent with the general discussion above, EPA is not proposing to treat Tribes in the same manner as States for the imposition of certain mandatory sanctions by EPA under section 179 because a Tribe has failed to submit a Tribal Implementation Plan (TIP) or other requirement, has made an incomplete submittal, or has made a submittal that is in part or in whole not approvable. See CAA section 179(a)(1)-(3); see also discussion under Part III.C.1. of this preamble, concerning EPA's "modular" approach to Tribal Air Programs (TAPs). However, EPA is proposing to treat Tribes in the same manner as States for those provisions of section 179 mandating the imposition of sanctions when EPA determines that a requirement of an approved plan is not being implemented. See CAA section 179(a)(4). In addition, EPA is proposing to treat Tribes in the same manner as States with respect to EPA's discretionary authority to impose sanctions. See CAA section 110(m).

EPA is not proposing to treat Tribes in the same manner as States for the provisions of section 110(c)(1) that direct EPA to issue a Federal Implementation Plan (FIP) within two years after EPA finds that a State has failed to submit a required plan or has submitted an incomplete plan or within two years after EPA has disapproved a plan in whole or in part. This exception would apply only for that provision of section 110(c)(1) that sets a specified date by which EPA must issue a FIP. Treating Tribes in a similar manner as States under that provision would be inappropriate since Tribes are not in the first instance, like States, required to make submittals by a date certain, and in light of the very recent initiation of Tribal air quality planning efforts. EPA is proposing to treat Tribes in the same manner as States for all other provisions of section 110(c)(1). Thus, EPA would continue to be subject to the basic requirement to issue a FIP for affected areas within some reasonable time. EPA would give substantial weight to Tribal

¹⁴Note also that many of the submittal deadlines run from the enactment of the 1990 Amendments to the Clean Air Act on November 15, 1990. Therefore, Tribes submitting programs in response to the final rule authorizing the treatment of Tribes as States for those provisions would already be substantially behind in meeting the deadlines.

air quality needs in determining what is reasonable in particular instances. Further, as discussed in Part II.B., EPA intends to spell out in subsequent guidance the specific programs that EPA will implement to provide CAA protection within reservations and on other lands subject to Tribal jurisdiction.

However, EPA is proposing to treat Tribes in the same manner as it treats States for the State Implementation Plan/Tribal Implementation Plan (SIP/TIP) call provisions under sections 110(a)(2)(H)(ii) and (k)(5) of the Act. These provisions authorize EPA to require a State to revise a plan that is inadequate to assure attainment and maintenance of the relevant NAAQS or is otherwise inadequate to ensure compliance with applicable Clean Air Act requirements. Thus, once a Tribal Implementation Plan has been approved in whole or in part as meeting an applicable CAA requirement, Tribes will be similarly subject to these SIP/TIP call provisions.

b. Visibility implementation plan submittal deadlines. EPA is not proposing to treat Tribes in the same manner as States for the provisions of section 169A or implementing regulations requiring the submittal of visibility implementation plans by specific deadlines. Under today's proposal, Tribes would be treated in the same manner as States for all other purposes under section 169A and its implementing regulations.

c. Interstate air pollution and visibility transport. Commission plan submittal deadlines. EPA is not proposing to treat Tribes in the same manner as States for those interstate commission CAA provisions requiring the submittal of an applicable implementation plan by a specific date. See CAA sections 169B(e)(2), 184 (b)(1) & (c)(5). However, EPA is proposing to treat Tribes in the same manner as States for all other interstate commission-related provisions under sections 169B, 176A and 184 of the CAA.

Therefore, for example, Tribes meeting eligibility requirements for these provisions of the CAA would be treated in the same manner as States in identifying what areas should be included in "interstate" air pollution and visibility transport regions and in establishing commission membership. For eligible Tribes participating as members of such Commissions, the Administrator would establish those submittal deadlines that are determined to be practicable or, as with other non-participating Tribes in an affected transport region, provide for Federal implementation of necessary measures.

d. Criminal enforcement. In general, EPA is proposing that the enforcement provisions of sections 113 and 114 of the Act apply to Tribes in the same way that they apply to States. This would include the ability of a Tribe to establish its own administrative enforcement program, so that the Tribe could enforce administrative as well as civil penalties. In both cases, EPA would have the authority to take necessary enforcement action if the Tribe did not take such action or did not enforce adequately (e.g. did not impose a sufficient penalty); however, it would be most prudent for Tribes to attempt enforcement in the first instance. It should also be noted that EPA has a general policy of consulting with Tribal leaders and managers prior to taking an enforcement action against Tribal owned or managed facilities. November 8, 1984 "EPA Indian Policy Implementation Guidance" at p. 6.

Section 113(c) of the CAA provides for the imposition of criminal penalties. However, in certain circumstances Indian Tribes have limited criminal enforcement authority. Federal law prohibits Indian Tribes from holding criminal trials of or imposing criminal penalties on non-Indians, in the absence of a treaty or other agreement to the contrary. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). In addition, the Federal Indian Civil Rights Act prohibits any Indian Tribe from imposing for conviction of any one offense any criminal fine greater than \$500. 25 U.S.C. section 1302(7). To provide for the possible imposition of criminal penalties with respect to facilities located on Tribal lands, each Tribe seeking approval of a CAA program that requires such authority must enter into a formal Memorandum of Agreement with EPA, through which it would agree to provide for the timely and appropriate referral of criminal enforcement matters to the EPA Regional Administrator.

e. Title V operating permit program submittal deadlines, implementation deadlines and other requirements. For the reasons stated in the introduction to this section of the preamble, EPA is not proposing to treat Tribes in the same manner as States for the operating permit program submittal deadline set out in section 502(d)(1). Similarly, EPA is not proposing to treat Tribes in the same manner as States under the provisions of section 502(d)(2)(B) that mandate the imposition of sanctions under section 179 when a State fails to timely submit a required permit program or EPA disapproves a permit program. EPA also is not proposing to treat Tribes as States for the provisions

of section 502(d)(3) that direct EPA to promulgate and administer a Federal permit program if, within two years after the required submittal date, EPA has not approved a State permit program. Similar to the companion provision in Title I described above (i.e., section 110(c)(1)), EPA is proposing to exclude only those limited provisions of section 502(d)(3) that direct EPA action by a date certain (EPA would continue to be subject to the basic requirement to implement a Federal permit program within a reasonable period; EPA would give substantial weight to Tribal air quality needs in determining what is reasonable in particular instances). These provisions are inappropriate because Tribes are not in the first instance directed by the statute to submit their own programs and in light of the fact that the Tribal CAA program development efforts are at a very preliminary stage.

However, Tribes will be subject to the sanctions provisions of section 502(i)(1)-(4) in the same manner as States. Section 502(i) provides for the discretionary and mandatory imposition of section 179 sanctions when EPA determines that a permitting authority is not adequately administering and enforcing an operating permit program, or a portion thereof. Thus, once a Tribe submits an operating permit program and EPA approves that program, Tribes will be subject to the sanction provisions of section 502(i)(1)-(4) in the same way that States are. In addition, Tribes will be treated in the same manner as States with respect to EPA's discretionary authority to impose sanctions under section 502(d)(2)(A).

EPA is also not proposing to treat Tribes in the same manner as States for the interim approval provisions in section 502(g) of the Act. Those provisions authorize EPA to temporarily grant approval to a program that in substantial part meets the requirements of the Act, but that is not fully approvable. An interim approval under these provisions expires on a date established by EPA but not later than two years after the approval. Section 502(g) provides that the Title V sanctions provisions and obligations of the Administrator to promulgate a Federal operating permit program are suspended during this interim period.

The interim approval provisions allow EPA to grant States submitting a substantially satisfactory permit program up to two additional years to submit a fully approvable program without risk of sanctions and Federal implementation. These provisions are an adjunct of the statutory deadline requiring the submittal of State Title V

operating permit programs by November 15, 1993. If States were not in the first instance required to submit operating permit programs by that date certain, the relief of additional time to submit an approvable program without the risk of Federal penalties would be unnecessary. As stated previously, EPA is not proposing to treat Tribes in the same manner as States for Title V program submittal deadlines. Accordingly, EPA is also not proposing to treat Tribes in the same manner as States for this related interim approval authority.

Consistent with the general modular approach proposed with respect to Tribal programs (discussed below), EPA intends to allow Tribes some additional flexibility in implementing Title V programs. For example, EPA may allow Tribes to extend the period for permitting affected Title V sources over as long as five years from program approval. Accordingly, EPA is not proposing to treat Tribes in the same manner as States for those provisions of section 503(c) of the Act that direct permitting authorities to establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Section 503(c) provides that the phased schedule shall assure that at least one-third of such permit applications will be acted on by the permitting authority over a period of not to exceed three years after the effective date. EPA is not proposing to subject Tribes to these provisions. While it is possible that EPA may require some Tribes to permit affected sources within three years, EPA nevertheless wants to retain the discretion to allow Tribes up to five years to permit affected Title V sources after the date of program approval.

Further discussion of Title V requirements is set out below under the portion of this notice titled "Revisions to CAA Implementing Regulations."

f. *Small business assistance program submittal deadline and compliance advisory panel requirement.* EPA is not proposing to treat Tribes in the same manner as States for the provisions of section 507(a) specifying a deadline for the submittal of plans for establishing a small business stationary source technical and environmental compliance assistance program. EPA is also not proposing to treat Tribes in the same manner as States under section 507(e) which directs States to establish a Compliance Advisory Panel. Both of these provisions are inconsistent with section 301(d), which authorizes but does not require Tribes to develop and submit Clean Air Act programs to EPA

for approval. However, if a Tribe elects to establish a Compliance Advisory Panel under section 507(e), the membership specified in section 507(e)(2) shall be selected by the Tribal leader, legislative bodies and Tribal agencies that correspond with those identified for States.

Generally, the preceding discussion identifies those provisions of the CAA for which EPA is not proposing to treat Tribes in the same manner as States. EPA is proposing that Tribes be treated in the same manner as States for all other provisions of the statute.

3. Stringency of Tribal Regulations

Under the Clean Air Act, States generally retain legal authority to impose requirements that are more stringent than Federal standards. Section 116 of the Act, 42 U.S.C. 7416, expressly reserves States' authority to impose air pollution control requirements that are more stringent than those specified under the Act. This State discretion is retained except where the Act explicitly preempts or precludes the establishment of stricter State standards.

In certain instances under the Act uniformity is necessary to avoid an undue burden on the interstate sale of goods. In such instances, Congress has expressly prevented States from imposing stricter State standards and, therefore, the Federal requirements under the Act represent both the nationwide floor and ceiling. For example, section 209 of the Act, 42 U.S.C. section 7543, limits States' authority to adopt and enforce emission standards for new motor vehicles.

EPA is proposing to treat Tribes in the same manner as States for the purposes of both section 116 of the Act and for all of the CAA preemption provisions, including provisions such as section 177 that authorize exclusions from preemption provisions. This will clarify EPA's position that Tribes like States generally have authority to exceed minimum Federal requirements. It will also clarify the fact that Tribes, like States, are preempted from imposing stricter standards where Congress has so specified. This will advance the overarching purpose of the preemption provisions to avoid undue barriers on the trade of goods in commerce.

4. Provisions for Which no Separate Tribal Program Required.

Under some provisions of the CAA, Tribes would have a specific role by virtue of having met the minimum eligibility requirements discussed in Part III.A, irrespective of whether a specific program is approved.

For example, under section 107(d)(3), the Administrator would notify an eligible Tribe of information indicating that an area within the Tribe's jurisdiction should be redesignated, and the Tribe would have an opportunity to provide input on that redesignation in the same fashion as a State. Under section 107(d)(3) a Tribe could also submit a revised designation of any area within its jurisdiction on its own motion. Similarly, under section 112(r)(7)(B)(iii), risk management plans would be submitted to Tribal Emergency Response Commissions.

Under sections 169B, 176A and 184 Tribes meeting eligibility requirements for such provisions shall be treated in the same manner as States in identifying what areas should be included in interstate air pollution and visibility transport regions and in establishing commission membership.¹⁵

Also, treating Tribes in the same manner as States for purposes of section 505(a)(2) would require permitting authorities under Title V to notify an eligible Tribe that is contiguous to a State in which an emission originates and whose air quality may be affected by that emission, or that is within 50 miles of the emission source, of any Title V permit applications that are forwarded to EPA.¹⁶ Permitting authorities would also be required to provide such Tribes an opportunity to submit written recommendations and to notify such Tribes in writing of any recommendations not accepted and the reasons why. See 40 CFR 70.8(b)(2). Thus, special procedural provisions would apply to Tribes treated in the same manner as States for the purpose of Title V notification. This Title V notification and permitting authority obligation to explain any recommendations not accepted would apply regardless of whether an eligible Tribe has an approved Title V program.

As elaborated below, EPA expects that most recognized Tribes will be able to readily meet the eligibility requirements for such provisions as Title V permit application notification. To promote intergovernmental coordination, EPA encourages States and local governments to take steps now to provide Title V notification to Tribes, instead of waiting for a formal eligibility

¹⁵ EPA always retains any general discretionary authority to make Federal Indian Reservations part of a transport Region and to include representatives of Indian Tribes as interstate transport Commission members.

¹⁶ The geographic scope of Tribal lands for Title V notification purposes would include any lands over which an eligible Tribe has been determined to have jurisdiction, including any off-reservation lands.

determination by EPA. EPA also encourages Tribes to exercise the notification rights that extend to any citizen under the Title V program in the interim period preceding a Tribal eligibility determination, if necessary to ensure notification. The regulations implementing the Title V operating permit program generally require that permitting authorities must provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. See 40 CFR 70.7(h). These procedures include providing notice of draft permit proceedings to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. See 40 CFR 70.7(h)(1). Thus, a Tribe not determined eligible to be treated in the same manner as a State for notification could nevertheless ensure that it receives notification of draft permits by submitting a written request for such notification to appropriate permitting authorities.

EPA intends to revise existing CAA regulations to reflect this Tribal authority as part of its on-going regulatory development efforts. EPA also requests public comment identifying any other provisions of the CAA which similarly do not require a Tribal program submittal in order for a Tribe to have a role in CAA implementation.

In all instances, including those provisions of the Act for which no separate Tribal program submittal is required, it is a statutory requirement that a Tribe meet the section 301(d)(2) eligibility requirements, discussed in Part III.A above, before it may be treated in the same manner as a State. However, as a practical matter, this should not be burdensome. Often the provisions not requiring accompanying program submittals are intended to promote intergovernmental coordination and involve receipt or transmittal of information or active participation on a multigovernmental entity. Therefore, a minimal demonstration would be necessary to establish Tribal capability to carry out these functions consistent with the terms and purposes of statutory and regulatory requirements. Further, under today's proposed streamlined procedures for determining eligibility, EPA has generally simplified the demonstration that must be made for eligibility approval. Taken together with the minimum capability needed to carry out these particular requirements, most Federally recognized Tribes are expected to be able to readily demonstrate eligibility to be treated in the same manner as States for CAA

provisions not requiring a program submittal.

C. Procedures for Review of Tribal Air Programs

In general, Tribes will be required to comply with the same statutory and regulatory requirements as States for the CAA programs that are submitted to EPA for approval. The main difference is that section 301(d) does not require Tribes to develop CAA programs. Thus, a Tribe may decide to implement only those programs, or even portions of programs, that are most relevant to the air quality situation on its reservation or other lands subject to its jurisdiction. This "modular approach" to Tribal CAA program development is discussed further in Part III.C.1 below.

In addition, section 301(d)(3) of the Act provides that:

[t]he Administrator may promulgate regulations which establish the elements of tribal implementation plans and procedures for approval of tribal implementation plans and portions thereof.

Section 301(d)(4) provides that:

[i]n any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provisions so as to achieve the appropriate purpose.

Further, as discussed previously, section 301(d)(2) delegates to the Administrator broad discretion in determining those provisions of the Act for which it is appropriate to treat Tribes as States.

EPA interprets these provisions to mean that, both in the case of TIPs and in the case of other Tribal air programs ("TAPs"), where EPA finds that it is not appropriate for the same requirements to apply to Tribes as to States, EPA may modify those requirements by rulemaking. Accordingly, in this rulemaking EPA is proposing to make some changes to the State requirements for Tribal CAA programs. In addition, EPA is proposing to allow a Tribe to demonstrate to EPA that a specific CAA requirement may be inappropriate for that Tribe in light of the circumstances presented in a particular case. These issues are discussed further in Parts III.C.2 and C.3 below.

1. Modular Approach to Tribal Air Programs

Because Tribal governments have limited resources, and because Federal funding to support Tribal efforts is also limited, Tribes may decide to implement only certain of the CAA provisions for which EPA has

determined it is appropriate to treat Tribes in the same manner as States. In order to provide flexibility and incentive for Tribal governments to assume responsibility for CAA programs, Tribes may submit reasonably severable elements of programs to EPA for approval instead of entire complex programs. However, in order to be approved, any such submittal must meet all applicable minimum Federal requirements.

As one of the first steps in identifying Tribal priorities, EPA encourages Tribes to thoroughly assess their current air quality through emission inventories. Tribes should develop an accurate, comprehensive and current inventory of emissions from all sources of air pollution within the reservation and should project potential future emissions based on likely growth. This will help Tribes estimate the nature and location of air quality problems and, in turn, help prioritize Tribal CAA program development.¹⁷ Note that EPA has issued detailed guidance on how to conduct emission inventories.¹⁸

The results of Tribal emissions inventory assessments and projections regarding future growth will help Tribes to determine whether relatively few or many activities will need to be implemented immediately. Some minor problems may be addressed through public education and basic strategies to control the sources of pollution. Other problems may require some combination of monitoring, modelling and the development of Tribal plans and regulations. If future growth in emissions is projected, Tribes should also consider developing programs for the Prevention of Significant Deterioration of Air Quality ("PSD"). See Addendum A, "Title I" discussion (overview of the PSD program) and Part III.D.

Where the emissions inventory reveals a potential air quality problem, air quality monitoring can help further characterize the potential problem. EPA has issued regulations and guidance on air quality monitoring. EPA's air quality

¹⁷ As discussed in Part II.B. above, EPA intends to provide Tribal air quality protection when Tribes do not develop such programs. EPA's efforts will take place in a prioritized, phased-in fashion due to limitations on Federal resources.

¹⁸ See Volumes I-V of the *Procedures for Emission Inventory Preparation—Volume I: Emission Inventory Fundamentals*, EPA-450/4-81-026a, Sept. 1981; *Volume II: Point Sources*, EPA-450/4-81-026b, Sept. 1981; *Volume III: Area Sources*, EPA-450/4-81-026c, Sept. 1981; *Volume IV: Mobile Sources*, EPA-450/4-81-026d, 1982; *Volume V: Bibliography*, EPA-450/4-81-026e, Sept. 1981. The Clearinghouse for Inventories and Emission Factors, (919) 541-5285, has information on obtaining copies of these and other emission inventory guidance documents.

monitoring regulations are set out at 40 CFR part 58. Among other things, Appendices A through G to 40 CFR part 58 describe air quality network design, criteria for citing air quality monitors and quality assurance criteria.

In prioritizing Tribal efforts, Tribes should also evaluate the expertise and resource requirements needed to implement desired programs. As stated above, Tribes will be given the flexibility of implementing programs in a modular fashion. Thus, Tribes can develop reasonably severable CAA programs to address particular air quality problems and submit them to EPA for approval.

For example, a Tribe having a PM-10 air quality problem may develop a partial PM-10 nonattainment implementation plan that addresses pollution from existing sources but does not, for example, contain a program governing the review of new sources that propose to locate in the area. EPA would not decline to approve the submittal until the Tribe developed a nonattainment new source review program for PM-10 or developed a plan for addressing an ozone pollution problem.

Similarly, a Tribe having relatively good air quality and anticipating likely new source growth in the area may choose to focus resources on developing a PSD program. The CAA's PSD permit program provides for preconstruction review of the air quality impacts associated with proposed new or modified major stationary sources in areas meeting air quality standards. The permitting process is to ensure that the proposed source employs state-of-the-art control technology, does not cause or contribute to an exceedance of air quality standards, and does not adversely impact National Parks and Wilderness areas.

A Tribe may develop and submit to EPA for approval a PSD permit program alone. A Tribe expecting certain categories of new source growth may develop and submit to EPA for approval a PSD permit program addressing those sources or source categories.¹⁹ Under the rule proposed today, if the implementation plan elements or other partial CAA program submitted by the Tribe is reasonably severable and meets the applicable minimum requirements under Federal law, EPA will approve the submittal.

¹⁹ As described elsewhere in this notice, EPA will issue PSD permits for any sources not covered by an approved PSD program.

2. Procedures for Reviewing and Approving Tribal Implementation Plans ("TIPs")

The CAA contains provisions which specifically govern EPA's review and processing of the State implementation plans (SIPs) developed under Title I of the Act to provide for attainment and maintenance of the national ambient air quality standards (NAAQS). See Addendum A, "Title I" discussion. These provisions are set forth in section 110(k) of the Act. The CAA authorizes EPA to amend, by regulation, the procedures governing the review and processing of analogous Tribal implementation plans (TIPs). See sections 110(o) and 301(d)(3).

In broad terms, section 110(k)(1) provides the criteria EPA is to apply in determining whether a submittal is complete and therefore warrants further review and action. See also 57 FR 13,498, 13,565 (April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V. EPA is required to make completeness determinations within 60 days of receiving a SIP submittal. However, a submittal is deemed complete by operation of law if a completeness determination has not been made by EPA within 6 months of EPA's receipt of the submittal. Section 110(k)(1) & 57 FR at 13,565.

Section 110(k)(3)-(4) address EPA's review of submittals that have been deemed complete. For example, section 110(k)(3) provides that EPA shall fully approve submittals that meet all of the applicable requirements of the Act, and partially approve and disapprove submittals that meet only a portion of the applicable requirements. Section 110(k)(4) further authorizes EPA to conditionally approve commitments by a State to adopt specific enforceable measures by a date certain that is no later than one year after the approval. The conditional approval is automatically converted to a disapproval if the State fails to fulfill the commitment. Section 110(k)(2) directs EPA to act on a submittal within 12 months of determining it to be complete. The Act calls for the imposition of sanctions and the issuance of a Federal implementation plan when a State fails to submit a required plan or such plan is disapproved. See sections 110(c)(1), 110(m) and 179 of the Act. Guidance on EPA's implementation of these and related provisions is set out in a July 9, 1992 memorandum from John Calcagni, "Processing of State Implementation Plan (SIP) Submittals."

As indicated previously, the Act does not require Tribes to submit TIPs. For that reason and other reasons specified above, EPA is not proposing to treat Tribes in the same manner as States for the implementation plan submittal deadlines specified in the Act. See Part III.B above. Further, EPA is proposing to accept any reasonably severable portion of an applicable Tribal implementation plan.

EPA is proposing to apply the completeness criteria to TIPs in the manner described below. If a Tribe submits a reasonably severable portion of a TIP that meets applicable completeness criteria, EPA will continue to process the submittal. If the submittal is incomplete EPA will return it to the Tribe, identifying the deficiencies. EPA will exercise one of two options with respect to a complete TIP submittal. EPA will fully approve any portion of a TIP if it is reasonably severable and meets the applicable Federal requirements. For any portion that is not approvable, EPA will disapprove the submittal and work closely with the Tribe to correct the identified deficiencies. However, as noted earlier in Part III.B, EPA's disapproval of a TIP will not have the mandatory sanctions consequences that apply to States under section 179 of the Act or the consequences under section 110(c)(1) of requiring a FIP within two years of the disapproval.

As with SIPs, TIPs should be submitted to the EPA Regional Office for the region in which the Tribe is located. Addendum B to this notice contains a list and the addresses of EPA's Regional Offices and a map indicating the regions that they encompass. Any Tribes that have not yet been determined to be eligible by EPA for CAA program purposes must submit the materials described in Part III.A above, in conjunction with any TIP submittal.

3. Procedures for Reviewing Other Tribal Air Programs ("TAPs")

EPA will review all other Tribal air program submittals in light of the applicable statutory and regulatory requirements as well as EPA policy, including the modular concept described above. EPA is proposing in today's rule to treat Tribes in the same manner as States for all of the provisions of the CAA, with the limited exceptions identified in Part III.B & C above. However, EPA recognizes that in proposing this rule and obtaining comments, EPA may not have anticipated and identified all of those requirements applicable to States that would be infeasible or inappropriate to apply to Tribes. Therefore, EPA is

proposing to add a regulatory provision that will generally allow Tribes to demonstrate to EPA, in conjunction with the submittal of a TAP, that treatment of a Tribe in the same manner as a State for a particular provision is inappropriate or administratively infeasible. EPA will review the Tribal demonstration and take appropriate action.

TAPs should be submitted to the Regional Office for the region in which the Tribe is located. See Addendum B. EPA will internally review TAPs in the same manner as it reviews State submittals for the specific CAA programs presented, consulting with and obtaining the concurrence of the appropriate EPA offices. A determination that a TAP is not approvable or that a Tribe has not met the general eligibility requirements described in Part III.A above does not preclude the Tribe from making subsequent submittals at a future date. If EPA determines that a Tribal submittal is deficient or incomplete, EPA will work closely with the Tribe to identify and correct the deficiencies.

D. Revisions to CAA Implementing Regulations

The regulations implementing the CAA span many pages of the Code of Federal Regulations. In today's action, EPA is proposing to add new 40 CFR part 49, which will address the Tribal CAA authority described in this notice. To implement this authority EPA is also proposing to add a general requirement in part 49 that eligible Tribes will be treated in the same manner as States under all of EPA's existing, currently effective regulations implementing the Clean Air Act, except those regulations implementing provisions of the CAA for which EPA has concluded that it would be inappropriate to treat Tribes as States. Such exceptions are described in detail in Part III.B of this notice.

EPA will undertake a major effort, in conjunction with forthcoming rulemaking initiatives and its periodic review and revision of existing regulations, to make conforming changes to all CAA implementing regulations. As examples, today's proposed rule contains conforming modifications to 40 CFR Parts 50 and 81. The discussion below also explains in detail how the existing regulations implementing new source review permitting requirements and Title V permit program requirements would be affected by the action proposed today. The general regulatory provision applying existing, currently effective regulations to Tribes, as described in the previous paragraph, will address the

application of existing regulations during the interim period in which conforming changes are made to CAA regulations.

Further, in Part IV below, EPA outlines potential ways in which EPA's administration of Federal financial assistance for Tribes may differ from States. Thus, EPA is proposing to make corresponding changes to regulations implementing Federal financial assistance requirements.

1. 40 CFR Part 35—State [Tribal] and Local Assistance

EPA is proposing to make changes to its regulations at 40 CFR Parts 35 related to Federal financial assistance. The proposed changes are described in detail in Part IV of today's preamble.

2. 40 CFR Part 49—Tribal Clean Air Act Authority

The general Tribal authority provisions proposed in today's action will be codified at 40 CFR part 49. This includes the following: EPA's proposed interpretation of relevant jurisdictional issues, discussed in Part II; the proposed simplified eligibility criteria, discussed in Part III.A; the proposed finding that Tribes should generally be treated in the same manner as States under the CAA, the specific exceptions to this general finding, and the proposed provision authorizing Tribes to identify and request additional exceptions on an ad hoc basis, discussed in Part III.B, and; the general procedures for reviewing Tribal air programs, discussed in Part III.C.

3. 40 CFR Part 50—National Primary and Secondary Ambient Air Quality Standards

EPA is proposing conforming changes to 40 CFR part 50. These modifications clarify that references to the term "State" in 40 CFR Part 50 include, as appropriate, "Indian Tribe" and "Indian country." The revisions proposed clarify, for example, that under 40 CFR 50.2(c), the promulgation of NAAQS shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of Indian country (as defined in 18 U.S.C. 1151). They also clarify that in the same way that section 50.2(d) provides that States retain discretion to establish ambient air quality standards more stringent than the NAAQS, the establishment of NAAQS in no way prohibits Indian Tribes from establishing ambient air quality standards that are more stringent than the NAAQS.

4. 40 CFR Part 51—Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

The regulations in Part 51 contain the basic requirements for state implementation plans (SIP). However, EPA has not systematically updated 40 CFR Part 51 since the passage of the 1990 Amendments to the Clean Air Act. In many instances these regulatory requirements are inconsistent with the revised law and are therefore inoperative as a matter of law. See CAA section 193 ("regulation * * * in effect before the date of enactment of the Clean Air Act Amendments of 1990 shall remain in effect according to its terms, except to the extent * * * inconsistent with any provision of this Act.")

To facilitate SIP development under the amended law, EPA has issued guidance documents. These documents reflected EPA's preliminary interpretations of the relevant Act requirements at that time. See, e.g., "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992; 57 FR 18070, April 28, 1992); "New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements" (Issued by Office of Air Quality Planning and Standards Director on September 3, 1992); NO_x Supplement to the General Preamble (57 FR 55620, November 25, 1992).

EPA intends to update both the existing and new source regulatory requirements in Part 51 to make clear which regulatory provisions were rendered nugatory by the 1990 Amendments and which continue to have legal force.

Interim implementation of applicable Title I requirements for Tribal lands should be guided by EPA's preliminary interpretations of the revised Title I requirements and the interpretive statements in this notice.

5. 40 CFR Part 52—Approval and Promulgation of Implementation Plans

Federal PSD Permitting. EPA has issued rules that provide for Federal implementation of the PSD permit program (preconstruction permit requirements applicable to major stationary sources or major modifications²⁰ in areas that currently

²⁰ Note that a proposed source in certain listed source categories is "major" for PSD purposes if it has the potential to emit 100 tons per year of any pollutant regulated under the Act. Other sources are "major" for PSD if their emissions may exceed 250 tons per year. The regulatory definitions of "major

meet the NAAQS). 40 CFR 52.21. In the same manner as States, Federal implementation of a PSD program on Tribal lands applies in any case where the Tribe does not have an approved PSD program.

EPA is undertaking a comprehensive regulatory effort to revise its PSD rules (and its nonattainment NSR program, see below) consistent with some of the changes made to the substantive PSD program under the revised Act (and as a part of a broader reform initiative). Since these revised rules have not yet been promulgated, EPA has issued detailed guidance addressing transitional and interim implementation issues associated with the changes made by the 1990 Amendments. See 57 FR 18070 at 18074-77 (April 28, 1992) (Appendix D—"New Source Review (NSR) Program Transitional Guidance," March 11, 1991). At least until any further guidance is provided in EPA's NSR rulemaking, EPA's review and issuance of PSD permits for applicable sources proposing to locate on Tribal lands will be in accordance with the previously-issued PSD transitional permitting guidance, today's guidance, and 40 CFR 52.21, to the extent that the existing provisions of 40 CFR 52.21 are consistent with the amended Act.²¹ See section 193 of the Act.

Federal NSR Permitting. 40 CFR 52.24(c) provides that 40 CFR part 51, Appendix S ("Offset Ruling") governs the issuance of NSR permits (required for the construction and operation of new and modified major stationary sources in nonattainment areas) where approved State rules are not in place. The Offset Ruling sets out EPA's interpretation regarding the conditions that are designed to ensure that sources and source modifications subject to the NSR requirements will be controlled to the greatest degree possible and that more than equivalent offsetting emission reductions will be obtained from existing sources, thus ensuring progress toward achievement of the NAAQS.

The 1990 Amendments to the CAA added new provisions to the Act addressing the substantive NSR

permitting requirements. See, e.g., sections 173, 182 and 189(b)(3) of the Act, 42 U.S.C. 7503, 7511a and 7513a(b)(3). As with the new changes to the PSD program, EPA has issued guidance addressing the implementation of the revised nonattainment NSR requirements in the period before EPA's comprehensive regulations are adopted. See 57 FR 13498 (April 16, 1992); 57 FR 18070, 18075-77 (April 28, 1992) (Appendix D—"New Source Review (NSR) Program Transitional Guidance," March 11, 1991); "New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements" (Sept. 3, 1992). In the interim period before EPA issues further guidance through its Federal nonattainment NSR rulemaking to implement the amended Act, EPA intends to conduct nonattainment NSR permitting on Tribal lands consistent with the Offset Ruling and the transitional EPA guidance addressing the revisions to the Act.

6. 40 CFR Part 70—State [and Tribal] Operating Permit Programs

This discussion explains how the regulations at 40 CFR Part 70 implementing the Title V operating permit program would be affected by today's proposed action. EPA is currently developing Federal rules to be codified in 40 CFR Part 71 that will authorize direct Federal implementation of Title V permit program requirements for States and Tribes that lack adequate program coverage.

Program Submittal Deadlines and Processing. Program submittal deadlines are set out at 40 CFR 70.4(a). Tribes will not be compelled to develop and submit Title V permit programs to EPA for approval. 40 CFR 70.4(e) addresses the processing of Title V program submittals. Any Tribal submittal that is incomplete or disapproved will be returned to the Tribe following such determination. To the extent possible, EPA will work with the Tribe to remedy deficiencies in the Tribal program. However, the timeframes governing EPA's processing of Tribal submittals will be the same as those applicable to State submittals.

Program Coverage. The regulations call for States to issue permits that assure compliance with "each applicable requirement * * * by all part 70 sources". 40 CFR 70.4(b)(3)(i); see also 40 CFR 70.6(a)(1) ("[e]ach permit issued under this part shall include * * * [e]mission limitations and standards * * * that assure compliance with all applicable requirements at the time of permit issuance"). Approvable

Tribal programs must address all affected Part 70 sources within a Tribe's jurisdiction.

Deadlines for Permit Applications and Processing of Applications. 40 CFR 70.5(a) requires the owner or operator of Part 70 sources to submit applications within 12 months of becoming subject to the program. 40 CFR 70.7(a)(2) requires the permitting authority to act on an application within 18 months of receipt. To ensure that permits are expeditiously submitted and reviewed, these deadlines will apply with equal force to Tribal programs, to the extent that Tribes elect to develop and implement such programs.

40 CFR 70.4(b)(11) requires States to have a transition plan for acting on applications received within the first 12 months after approval, such that the State will act on one-third of the applications in each of the first three years of its program. This requirement overrides the 18-month requirement for acting on applications during the first 3 years. As discussed in Part III.B.2.e above, the 3-year implementation requirement in section 503(c) is among the provisions of the CAA for which EPA is not proposing to treat Tribes in the same manner as States. For Tribal programs, this initial program phase-in will be based on a schedule developed by the Regional Office in conjunction with each Tribe. This case-by-case approach will ensure that any transition adequately accounts for the scope of Tribal program coverage, the universe of Part 70 sources and the extent of Tribal expertise and resources. However, EPA is also proposing to provide that in no case shall such a transitional schedule exceed 5 years from the date of EPA's approval of the Tribal program.

Enforcement. Required enforcement authority is set out in 40 CFR 70.11. As stated above, Federal law prohibits Indian Tribes from holding criminal trials of or imposing criminal penalties on non-Indians, in the absence of a treaty or other agreement to the contrary. *Oliphant*, at 435 U.S. 191. In addition, Federal law prohibits Indian Tribes from imposing for conviction of any one offense a criminal fine greater than \$500. 25 U.S.C. section 1302(7). Tribes requesting Title V program approval will be required to enter into formal Memorandum of Agreement with EPA, through which it would agree to provide for the timely referral of criminal enforcement matters to the appropriate EPA Regional Administrator.

Operational Flexibility. The three operational flexibility provisions at 40 CFR 70.4(b)(12) will be optional for Tribes as will 40 CFR 70.6(a)(8), (10)

stationary source" and "major modification" for the PSD program are set out at 40 CFR 52.21(b)(1), (2).

²¹The 1977 Amendments to the CAA authorized Indian tribes to redesignate the classification of lands within the exterior boundaries of a reservation for PSD planning purposes. Section 164(a), 42 U.S.C. 7474(c); *Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981), cert. den'd, 451 U.S. 1081 (1981). Area classifications for PSD determine the maximum increment of degradation that is permissible in a clean air area. Tribal authority to redesignate areas for this purpose is set forth in 40 CFR 52.21. Tribes continue to have this authority under the Act as amended in 1990.

(emissions trading in the permit) and 40 CFR 70.6(a)(9) which requires States to include alternative operating scenarios, if requested, in their permits.

Permit Issuance, Revisions Procedures. Generally, for the procedures governing permit issuance and revision, EPA will treat Tribes in the same manner as it treats States. While Tribes will have some flexibility regarding the form and manner of public notice requirements under 40 CFR 70.7(h), the minimum period for public notice will be 30 days for Tribes as with States.

Tribes, like States, must have authority to reopen permits for cause, as required by 40 CFR 70.7(f).

Application content requirements. These requirements are set out in 40 CFR 70.5. These requirements will apply with equal force to sources within Tribal jurisdiction, since EPA believes that the information specified in this provision constitutes the minimum information that is essential to the issuance of an effective permit.

Permit content requirements. These are found in 40 CFR 70.6(a), (c). The permit content requirements will generally apply to Tribes in the same manner in which they apply to States. These remaining requirements are necessary to an effective permit. These requirements include 40 CFR 70.6(a)(3), which requires the State and, under today's proposal, the Tribal permitting authority to insert monitoring requirements into the permit where the underlying monitoring requirement is deficient.

Judicial Review. 40 CFR 70.4(b)(3)(x)-(xii) requires States to provide an opportunity for judicial review of a final permit action and for the State's failure to take such final action. Tribes will have to meet the same requirements.

EPA Veto and Citizen Petition Process. 40 CFR 70.8 requires States to provide EPA with a 45-day review period and opportunity for veto. The provision further specifies that no permit may issue prior to the expiration of that period or at all over an EPA veto. It also provides citizens the right to petition EPA to veto a State-issued permit. These provisions will apply with equal force to Tribal programs.

40 CFR 70.8(b) also requires that State programs provide that the permitting authority notify any affected States of each draft permit. This requirement to provide notice will apply with equal force to Tribal programs. Further, any State or Tribal permitting authority will provide notice to any affected Tribe in the same manner as the regulations require notification to affected States. See Part III.B.4 above.

General Revisions. References to States and State officials will include Tribes and corresponding Tribal officials.

7. 40 CFR Part 81—Designation of Areas for Air Quality Planning Purposes.

EPA is proposing conforming regulatory changes to part 81, in light of today's proposal to treat Indian Tribes in the same manner in which it treats States under the air quality designation provisions set out at section 107 of the Act.

Pursuant to section 107(d)(3) of the CAA EPA would notify eligible Indian Tribes that EPA has information indicating that an air quality designation for an Indian Reservation should be revised. Then, as with the Governor of an affected State, the relevant Tribal leader would have 120 days to reply to EPA. In addition, eligible Indian Tribes would on their own initiative have authority to submit a redesignation request to EPA for approval in the same way that States and the relevant Governors are authorized to under section 107(d)(3)(D) of the Act.

EPA is proposing to add explicit definitions of Indian Reservation, Indian Tribe and State to 40 CFR Part 81. EPA is also proposing revisions to subpart C of Part 81 to reflect the authority that eligible Indian Tribes may have to initiate revisions to designations.

Future air quality designations for eligible Tribes will be codified under an entry for the affected Indian Tribe in subpart C, Part 81 that is the same as State air quality designations under Part 81.

IV. Federal Financial Assistance

A. Sources of Funding Assistance

Financial assistance for Indian Tribes under the Clean Air Act is available via two principal authorities: grants for the support of air pollution planning and control programs under section 105 (42 U.S.C. 7405); and grants for investigations, demonstrations and studies into the causes, effects, extent, prevention and control of air pollution under section 103 (42 U.S.C. 7403).

In addition to these potential sources of funds under the Clean Air Act, EPA can provide Tribes funding assistance for air quality work under the Agency's Indian Environmental General Assistance Grants Program (40 CFR part 35, subpart Q). These grants provide funds to Tribes for planning, developing and establishing the capacity to implement environmental programs on Indian lands, regardless of the program's environmental media.

Each of these assistance and fee programs carries various statutory and/or administrative requirements which are discussed and explained in this portion of the preamble. Proposed regulatory revisions are set out at the end of this notice.

B. Tribal Eligibility for Air Grant Assistance

In today's action, EPA is proposing to modify certain regulatory and administrative limitations on the manner in which Indian Tribes qualify for and obtain financial assistance under the Act. EPA also seeks comment from interested parties on options in meeting the non-Federal matching requirements for grants obtained under section 105 authority. The financial assistance options are described below.

1. Section 103 Air Assessment Grants

Tribes may apply for grant assistance to assess reservation air quality conditions under authority of section 103(b)(3) of the Act. Section 103(b)(3) allows EPA to fund investigations, research, surveys, and studies concerning any specific problem of air pollution in cooperation with any air pollution control agency. Tribes may undertake specific projects to assess Tribal air quality conditions at any time. Typically, Tribes will undertake such projects as an initial step, prior to initiating development and adoption of Tribal regulations to control air resources. Section 103(b)(3) grant funds are not available for developing Tribal capacity.

Funds provided under section 103 are available to Tribes at up to a 95% Federal share. Thus each recipient must contribute at least five percent of the total allowable project costs. The Agency believes that the five percent cost sharing requirement should be retained.

EPA rules limit award of section 103 grants to a maximum of five years for any one project period. 40 CFR 40.125-1. This should allow a reasonable amount of time for Tribal recipients of assistance to assess the nature of their air quality and determine the extent of any air quality problems. However, the Agency will carefully consider requests for deviations under 40 CFR 31.6 for extensions of grant project periods. Further, section 103 is available for multiple project periods. Finally, Tribes that have received previous section 103 grants will remain eligible for future grants to fund appropriate projects at any time. The determination of each Tribal applicant's continued eligibility and the appropriate authority of award will be the responsibility of the

appropriate Regional Administrator. As this suggests, Tribes not establishing eligibility to be treated in the same manner as States under section 301(d) will remain eligible, as they are currently, for assistance under section 103(b)(3).

2. Section 105 Air Program Grants

The Agency encourages eligible Tribes to apply for continuing environmental assistance under authority of section 105 and 301(d) of the Act, particularly after a comprehensive assessment of reservation air quality conditions. Section 105 allows EPA to make grants for implementing programs for the prevention and control of air pollution or implementation of air quality standards.

Currently, in order to be eligible to receive a grant under section 105, a recipient must meet the definition of an air pollution control agency specified in section 302(b) of the Act. This definition includes "[a]n agency of an Indian tribe." See section 302(b)(5). Thus, section 302(b)(5) authorizes 105 grants to Tribes that have not established their eligibility to be treated in the same manner as States.

The Act expressly provides that until the promulgation of these regulations, EPA may continue to provide section 105 grants to eligible Tribes on this basis. See section 301(d)(5). EPA believes that section 301(d)(5) was intended to ensure that Tribes would be able to receive financial assistance while this regulation was being developed. The Agency does not believe that this provision, which on its face is designed to ensure Tribal access to funds, must be read to require that EPA cease awarding section 105 grants to Tribes not meeting the eligibility requirements after this regulation is issued.

Consistent with this legal interpretation, this regulation provides two avenues for Tribes to obtain section 105 assistance. A Tribe that does not establish eligibility for treatment in the same manner as a state under section 301 but that is "an agency of an Indian tribe," and therefore meets the definition of an "air pollution control agency" under section 302(b)(5), can obtain 105 funds, subject to the same limitations that apply to other 105 grant recipients. These limitations include the statutory requirement that the grant recipient contribute matching funds for 40% of the allowable project costs.

Alternatively, Tribes that establish their eligibility to be treated in the same manner as States under section 301(d) may, like States, receive section 105

financial assistance. However, assistance to Tribes pursuant to 301(d) can be provided without being subject to every limitation that applies to such grants when made to States. Section 301(d)(4) expressly provides that, in cases where it is not appropriate to treat Tribes as identical to States, EPA "may provide, by regulation, other means by which the [Agency] will directly administer such provisions so as to achieve the appropriate purpose." EPA believes that requiring the 40% match as a prerequisite for assistance under section 105 could impose an undue financial burden on Tribes; the Agency further believes it can best administer section 105 to achieve the purpose of maximizing tribal access to this assistance by providing relief from the cost share requirement. However, based on statutory language, this special relief will, as noted above, only be available for Tribes that have established their eligibility to be treated in the same manner as states and therefore are eligible for financial assistance pursuant to section 301(d).

This proposal seeks comments on the appropriate level of Tribal cost share for a section 105 grant match, from a minimum of 5% to a maximum of 40%. This proposal also seeks comments on the establishment of a phase-in period for Tribes to meet whatever match is ultimately required for section 105 grants.

A 40% match of air grant funds under section 105 is currently required from States. However, when these air grants were originally awarded some 25 years ago, a 25% State match was required. Given the lack of Tribal financial resources, there is concern that even this lower level of Tribal match may not be appropriate in many instances. In addition, the Agency believes it may be appropriate to allow a Tribe establishing eligibility to be treated in the same manner as a state to begin receiving 105 assistance with a lower match, which would gradually be phased upward until it reaches some appropriate level.

During the development of the regulation, EPA discussed the option of developing a sliding scale, with differing levels of match based on tribal demonstrations of ability to pay. This option is not being proposed in this regulation, due to the Agency's concern that requiring some tribes to pay a higher match than others could create barriers to participation by those tribes, and that all tribes experience resource constraints.

The Agency also recognizes that its approach should be consistent with President Clinton's April 29 Presidential Memorandum on "Government-to-

Government Relations with Native American Tribal Governments." 59 FR 22,951 (May 4, 1994). That Memorandum directs agencies to "take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the * * * governmental rights of the tribes." The Agency believes minimizing the burdens to participation by all tribes may be the approach most consistent with this directive.

Although the Agency is not proposing a sliding scale, it requests comments on whether such an approach might be feasible and the criteria that could be used to determine the matching requirement for each grant recipient. The Agency solicits comments on: An appropriate initial match level equal to or exceeding five percent; the length appropriate for a phase-in period (if any) of the match; the rate at which the match would be phased upward; and an appropriate level for a permanent match requirement.

The Clean Air Act also establishes one purpose for which Tribes may not be treated in the same manner as states. Under section 301(d)(1)(A) Tribes may not be treated in the same manner as States for purposes of section 105(b)(2) which ensures that each State applying for assistance have made available to it for application (but not necessarily for award) a minimum of one half of one percent of the total section 105 amount annually appropriated under the Act.

3. Tribal Agencies and Consortia

Section 103 and 105 assistance is currently available to an individual Tribe because it constitutes an air pollution control agency under section 302(b)(5). The Agency also believes it may be appropriate to provide assistance to groups of tribes, typically tribes with air resources that are either contiguous or similar in their characteristics, when those tribes join into consortia for the purpose of applying for and managing the air quality financial assistance described above. A consortium is a partnership between two or more Indian tribal governments authorized by their governing bodies. Tribes can join into consortia in circumstances they find appropriate. The "economies of scale" made possible through Tribal consortia arrangements may allow for the assumption of air resource management responsibilities that may not otherwise be possible with small, single-Tribe environmental agencies.

Consortia will have discretion in demonstrating how they will meet the matching funds requirement. Therefore,

when a consortium reaches the point that it must provide matching funds to obtain grant funds, the consortium may combine its resources to meet the requirement in any manner it deems appropriate.

C. Use of EPA General Assistance Grants

EPA has recently issued regulations governing the use of Indian Environmental General Assistance Grants as required under 42 U.S.C. 4368b. Indian Environmental General Assistance Program Act of 1992; 42 U.S.C. 4368b, (58 FR 63876, December 2, 1993) codified at 40 CFR part 35, subpart Q. The regulations establish requirements for applying for and utilizing general assistance funds. The Indian Environmental General Assistance Grants may be used by Tribes to fund program development activities in various environmental media, including air, and are thus considered to be an important means of establishing overall Tribal environmental program capability. Moreover, the award of these grants in no way precludes a Tribe from applying for, and being awarded, air grant assistance under section 103 or section 105 of the Act.

D. Additional Administrative Requirements

Each Tribal application for assistance must still meet the Agency's general administrative requirements for grants which are set forth in more detail in 40 CFR Parts 31, 32 and 34 and which are not modified by this regulation. Additional requirements specific to section 105 air grants are detailed in 40 CFR 35 and, for section 103, in 40 CFR Part 40.

V. Miscellaneous

A. Executive Order (EO) 12866

Section 3(f) of EO 12866 defines "significant regulatory action" to mean any regulatory action 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 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 this Executive order.

This proposed rule was determined not to be a significant regulatory action. A draft of this proposed rule was nevertheless reviewed by the Office of Management and Budget (OMB) prior to publication because of anticipated public interest in this action including potential interest by Indian Tribes and State/local governments.

EPA has placed the following information related to OMB's review of this proposed rule in the public docket referenced at the beginning of this notice:

- (1) Materials provided to OMB in conjunction with OMB's review of this proposed rule; and
- (2) Materials that identify substantive changes made between the submittal of a draft proposed rule to OMB and this notice, and that identify those changes that were made at the suggestion or recommendation of OMB.

B. Regulatory Flexibility Act (RFA)

Under the RFA, 5 U.S.C. sections 601-612, EPA must prepare, for rules subject to notice-and-comment rulemaking, initial and final Regulatory Flexibility Analyses describing the impact on small entities. The RFA defines small entities as follows:

- Small businesses. Any business which is independently owned and operated and is not dominant in its field as defined by Small Business Administration regulations under section 3 of the Small Business Act.
- Small governmental jurisdictions. Governments of cities, counties, towns, townships, villages, school districts or special districts, with a population of less than fifty thousand.
- Small organizations. Any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

However, the requirement of preparing such analyses is inapplicable if the Administrator certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Many Indian Tribes may meet the definition of small governmental jurisdiction provided above. However, the proposed rule does not place any mandates on Indian Tribes. Rather, it authorizes Indian Tribes to demonstrate their eligibility to be treated in the same

manner as States under the Clean Air Act, to submit CAA programs for specified provisions and to request Federal financial assistance as described elsewhere in this preamble. Further, the proposed rule calls for the minimum information necessary to effectively evaluate Tribal applications for eligibility, CAA program approval and Federal financial assistance. Thus, EPA has attempted to minimize the burden for any Tribe that chooses to participate in the programs provided in this proposed rule.

The proposed regulation will not have a significant impact on a substantial number of small businesses. Any additional economic impact on the public resulting from implementation of this proposed regulation is expected to be negligible, since Tribal regulation of these activities is limited to areas within Tribal jurisdiction and, in any event, EPA has regulated or may regulate these activities in the absence of Tribal CAA programs.

The proposed regulation will not have a significant impact on a substantial number of small organizations for the same reasons that the proposed regulation will not have a significant impact on a substantial number of small businesses.

Accordingly, I certify that this proposed regulation, if promulgated, will not have a significant economic impact on a number of small entities.

C. Executive Order (EO) 12875

EO 12875 is intended to reduce the imposition of unfunded mandates upon State, local and Tribal governments. To that end, it calls for Federal agencies to refrain, to the extent feasible and permitted by law, from promulgating any regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless funds for complying with the mandate are provided by the Federal government or the Agency first consults with affected State, local and Tribal governments.

The issuance of this proposed rule is required by statute. Section 301(d) of the CAA directs the Administrator to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian Tribes as States. Moreover, this proposed rule would not place mandates on Indian Tribes. Rather, as discussed in section V.B above, this rule authorizes or enables Tribes to demonstrate their eligibility to be treated in the same manner as States under the Clean Air Act and to submit CAA programs for the provisions specified by the Administrator. Further, the proposed

rule also explains how Tribes seeking to develop and submit CAA programs to EPA for approval may qualify for Federal financial assistance.

D. Paperwork Reduction Act

OMB has approved the information collection requirements pertaining to grants applications contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2030-0020.

This collection of information pertaining to the grants application process has an estimated reporting burden averaging 29 hours per response and an estimated annual recordkeeping burden averaging 3 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The information collection requirements in this proposed rule pertaining to an Indian Tribe's application for eligibility to be treated in the same manner as a State or "treatment as a State" have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1676.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460 or by calling (202) 260-2740.

This collection of information for Treatment in the Same Manner as States (TISMAS) to carry out the Clean Air Amendments has an estimated reporting burden of 20 annual responses, averaging 40 hours per response and an estimated annual recordkeeping burden averaging 800 hours. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will be accompanied with responses to OMB or public comments on the information collection requirements contained in this proposal.

VI. Request for Public Comments

EPA requests public comments on all aspects of today's proposal, including the following: EPA's proposed interpretation of the Clean Air Act as delegating to Tribes jurisdiction over all air resources within the exterior boundaries of the reservation; EPA's proposed interpretation of the term "reservation"; EPA's proposed interpretation that in enacting the CAA, Congress found that the activities regulated under the Act constitute a class of activities that, if left unregulated, could have serious and substantial adverse effects on public health and welfare, and accordingly, that these activities would generally be within the inherent civil regulatory authority of Tribes; EPA's position regarding Federally-administered Clean Air Act programs to provide protection for Tribal air resources; EPA's proposed implementation of its policy for streamlining eligibility determinations; the CAA provisions for which EPA is proposing to treat Indian Tribes as States, and the proposed exceptions that EPA has identified in this rule; EPA's general approach to encourage Tribal participation by allowing Tribes to submit reasonably severable portions of CAA programs; EPA's proposed procedures for reviewing Tribal air programs, including Tribal implementation plans developed under Title I of the CAA; EPA's proposed revisions to its implementing regulations, and; EPA's proposed administration of Federal financial assistance to Tribes.

VII. Electronic Filing of Comments

A public docket has been established for this proposed rule under docket number "A-93-3087" (including comments and data submitted electronically as described below). The public docket is located in M1500, 401 M Street, Washington, DC 20460. The information contained in this public docket, including printed, paper versions of electronic comments is available for inspection from 8 a.m. to 4 p.m., Monday thru Friday, excluding legal holidays. Starting October 1, 1994, the docket will be open 8 a.m. to 5:30 p.m., excluding legal holidays.

As part of an interagency "streamlining" initiative, EPA is experimenting with submission of public comments on selected rulemaking actions electronically through the Internet in addition to accepting comments in traditional written form. This proposed rule is one of the rulemaking actions selected by EPA for this experiment. From the

experiment, EPA will learn how electronic commenting works, and any problems that arise can be addressed before EPA adopts electronic commenting more broadly in its rulemaking activities. Electronic commenting through posting to the EPA Bulletin Board or through the Internet using the ListServe function raise some novel issues that are discussed below in this Section.

To submit electronic comments, persons can either "subscribe" to the Internet ListServe application or "post" comments to the EPA Bulletin Board. To "Subscribe" to the Internet ListServe application for this proposed rule, send an e-mail message to: listserver@unixmail.rtpnc.epa.gov that says "Subscribe RIN-2060-AE95 <first name> <last name>." Once you are subscribed to the ListServe, comments should be sent to: RIN-2060-AE95@unixmail.rtpnc.epa.gov.

For online viewing of submissions and posting of comments, the public access EPA Bulletin Board is also available by dialing 202-488-3671, enter selection "DMAIL," user name "BB__USER" or 919-541-4642, enter selection "MAIL," user name "BB__USER." When dialing the EPA Bulletin Board type <Return> at the opening message. When the "Notes^]" prompt appears, type "open RIN-2060-AE95" to access the posted messages for this document. To get a listing of all files, type "dir/all" at the prompt line. Electronic comments can also be sent directly to EPA at: Docket-OPPTS@epamail.epa.gov.

To obtain further information on the electronic comment process, or on submitting comments on this proposed rule electronically through the EPA Bulletin Board or the Internet ListServe, please contact John A. Richards (Telephone: 202-260-2253; FAX: 202-260-3884; Internet: richards.john@epamail.epa.gov).

Persons who comment on this proposed rule, and those who view comments electronically, should be aware that this experimental electronic commenting is administered on a completely public system. Therefore, any personal information included in comments and the electronic mail addresses of those who make comments electronically are automatically available to anyone else who views the comments.

Commenters and others outside EPA may choose to comment on the comments submitted by others using the RIN-2060-AE95 ListServe or the EPA Bulletin Board. If they do so, those comments as well will become part of EPA's record and included in the public

docket for this rulemaking. Persons outside EPA wishing to discuss comments with commenters or otherwise communicate with commenters but not have those discussions or communications sent to EPA and included in the EPA rulemaking record and public docket should conduct those discussions and communications outside the RIN-2060-AE95 ListServe or the EPA Bulletin Board.

EPA will transfer all comments received electronically in the RIN-2060-AE95 ListServe or the EPA Bulletin Board, in accordance with the instructions for electronic submission, into printed, paper form as they are received and will place the paper copies in the official rulemaking docket which will also include all comments submitted directly in writing. All the electronic comments will be available to everyone who obtains access to the RIN-2060-AE95 ListServe or the EPA Bulletin Board; however, the official rulemaking docket is the paper docket maintained at the address in ADDRESSES at the beginning of this document. (Comments submitted only in written form will not be transferred into electronic form and thus may be accessed only by reviewing them in the EPA Docket as described above.)

Because the electronic comment process is still experimental, EPA cannot guarantee that all electronic comments will be accurately converted to printed, paper form. If EPA becomes aware, in transferring an electronic comment to printed, paper form, of a problem or error that results in an obviously garbled comment, EPA will attempt to contact the comment submitter and advise the submitter to resubmit the comment either in electronic or written form. Some commenters may choose to submit identical comments in both electronic and written form to ensure accuracy. In that case, EPA requests that commenters clearly note in both the electronic and written submissions that the comments are duplicated in the other medium. This will assist EPA in processing and filing the comments in the rulemaking docket.

As with ordinary written comments, EPA will not attempt to verify the identities of electronic commenters nor to review the accuracy of electronic comments. EPA will take such commenters and comments at face value. Electronic and written comments will be placed in the rulemaking docket without any editing or change by EPA except to the extent changes occur in the process of converting electronic comments to printed, paper form.

EPA will address significant electronic comments either in a notice in the *Federal Register* or in a response to comments document placed in the rulemaking docket for this proposed rule. EPA will not respond to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or conversion to printed, paper form as discussed above. Any communications from EPA employees to electronic commenters, other than those described in this paragraph, either through Internet or otherwise are not official responses from EPA.

List of Subjects

40 CFR Part 35

Environmental protection, Grant programs—environmental protection, Grant programs—Indians, Indians, Reporting and recordkeeping requirements.

40 CFR Part 49

Air pollution control, Environmental protection, Air pollution control—Tribal authority, Air pollution control—Tribal eligibility criteria, Indian tribes.

40 CFR Part 50

Air pollution control, Carbon monoxide, Environmental protection, Lead, Nitrogen dioxide, Ozone, Particulate matter, and Sulfur oxides.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: August 18, 1994.

Carol M. Browner,
Administrator.

Addendum A to Preamble—General Description of Clean Air Act Programs

The Clean Air Act is codified in the United States Code (U.S.C.) at 42 U.S.C. 7401-7671q. There are six different Titles that comprise the Act as codified.¹ The following discussion contains a broad overview of each Title with the objective of providing a general road map to the Clean Air Act. The discussion is not, and is not intended to be, a comprehensive and detailed discussion of Clean Air Act requirements.

To help illustrate the potential effect of today's proposal, the discussion at times refers to Tribes as if the authority proposed today was in effect. However,

¹ The Clean Air Act is Chapter 85, Title 42 of the U.S. Code. The Titles of the Act are actually subchapters of the Code. To avoid confusion, these subchapters will be referred to herein as Titles of the Act.

this authority will not be in place until EPA takes final action on today's proposed rule. The process preceding final action includes the consideration of public comments on today's proposal that may alter the final rule.

Title I—National Ambient Air Quality Standards and Stationary Source Requirements.

EPA has established national ambient air quality standards (NAAQS) for certain air pollutants for the protection of the public health ("primary" standards) and welfare ("secondary" standards). CAA section 109, 42 U.S.C. 7409. EPA establishes these standards after a thorough review of the latest scientific studies and literature indicating the kind and extent of identifiable effects on public health or welfare which may be expected from the presence of such pollutants in the ambient air in varying quantities. CAA section 108, 42 U.S.C. 7408. EPA has established health and welfare NAAQS for six different pollutants: ozone, carbon monoxide, particulate matter, sulfur dioxide, nitrogen dioxide, and lead. These standards are codified in 40 CFR Part 50.

Areas nationwide are "designated" based on whether they meet the NAAQS. Areas that do not meet the NAAQS are designated "nonattainment." CAA section 107, 42 U.S.C. 7407. States containing such areas are required to develop State implementation plans (SIPs) which must bring the areas into attainment as expeditiously as practicable. If EPA finalizes today's rule as proposed, Tribes may submit such implementation plans ("TIPs"). Title I contains general requirements that SIPs and, as appropriate, TIPs must meet (CAA section 110(a)(2), 42 U.S.C. 7410(a)(2)) as well as planning provisions (e.g., inventorying of emissions) and control requirements applicable to existing stationary sources in nonattainment areas. CAA sections 171-192, 42 U.S.C. 7501-7514a.

EPA has issued detailed guidance that sets out its preliminary views on the implementation of the air quality planning requirements applicable to areas that are not in attainment with the NAAQS. This guidance is titled the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (or "General Preamble"). See 57 FR 13,498 (April 16, 1992) and 57 FR 18,070 (April 28, 1992). The General Preamble has been supplemented with further guidance on Title I requirements. See 57 FR 31,477 (July 16, 1992) (announcing the availability of draft guidance for

lead nonattainment areas and serious PM-10 nonattainment areas); 57 FR 55,621 (Nov. 25, 1992) (guidance on NO_x RACT requirements in ozone nonattainment areas). EPA will likely issue further supplements to the General Preamble.

Title I also contains control requirements applicable to new (or modified) major stationary sources. "Major" sources are those emitting more than a certain amount of pollutant per year. Sources subject to the New Source Review ("NSR") or Prevention of Significant Deterioration ("PSD") requirements may not initiate construction, as it is defined under the law, without obtaining an NSR or PSD permit from the State or Tribe (or from EPA, if the State or Tribe has not been authorized by EPA to administer the program).

The nonattainment NSR permit program applies only in nonattainment areas. The Act directs EPA to require States and authorizes EPA to permit Tribes to develop NSR permit programs as part of their SIPs or TIPs. The NSR permit program requires strict control technology and emissions reductions from nearby sources to "offset" emissions released for proposed new (or modified) major stationary sources in nonattainment areas. *E.g.*, CAA section 173, 42 U.S.C. 7503.

The PSD program applies to certain new or modified major stationary sources in areas that currently have air quality meeting the NAAQS. To prevent the air quality in these areas from significantly deteriorating, the Clean Air Act requires States in such clean air areas to develop permit programs that impose control requirements on new or modified major stationary sources. The permit program must also require an assessment of the air quality impacts of proposed sources to ensure that new sources will not cause or contribute to an exceedance of the NAAQS or certain allowed "increments" of air quality degradation. CAA sections 160-169, 42 U.S.C. 7470-7479. Since all areas of the country meet at least one of the NAAQS, all States are required to have a PSD program for areas within their jurisdiction. EPA administers PSD programs for States that have failed to submit approvable programs. In today's action, EPA is proposing to authorize Tribes to submit PSD programs for EPA approval.

There is also a minor source permit program, under CAA section 110(a)(2)(C), 42 U.S.C. 7410(a)(2)(C), and 40 CFR 51.160-164 which requires SIPs to include a program regulating the modification and construction of any stationary source, regardless of size or

attainment status, as necessary to assure that the NAAQS are achieved. In today's action, EPA is proposing to authorize Tribes to include minor source permit programs as part of their TIPs in the same manner as States.

Finally, EPA also issues new source performance standards ("NSPS") that affected new or modified stationary sources must meet in both attainment and nonattainment areas. States are required to submit, and EPA is proposing that Tribes be authorized to submit, plans similar to SIPs or TIPs that provide for the implementation and enforcement of certain requirements for certain pollutants regulated by NSPS. CAA sections 111(d), 129, 42 U.S.C. 7411(d), 7429.

Conformity. Section 176 of the Act, 42 U.S.C. 7506, prohibits Federal agencies from supporting or providing financial assistance for activities that do not conform to an approved SIP or TIP. The restriction extends to State, Tribal and local transportation plans or projects that are approved or funded by a Federal agency.

Visibility. Title I also requires States in which certain mandatory "class I" Federal areas (certain national parks, wildernesses and international parks as specified in section 162(a), 42 U.S.C. 7472(a)) are located, or States whose emissions may affect such areas, to include provisions in their SIPs to remedy and prevent visibility impairment in those areas. CAA sections 169A & 169B, 42 U.S.C. 7491 & 7492. In today's action, EPA is proposing to authorize Tribes to submit visibility TIPs.

Interstate Pollution Provisions. Section 126 of the Act, 42 U.S.C. 7426, authorizes States to petition the Administrator to find that a major source or group of stationary sources in one State emits air pollutants that contribute significantly to nonattainment, interfere with maintenance of the NAAQS, or interfere with measures under the PSD or visibility protection programs in another State. See also section 110(a)(2)(D) of the Act. EPA is proposing that these provisions apply to Tribes in the same fashion that they apply to States so that a Tribe or State may take such action to remedy pollution from an upwind Tribe or State.

In addition, sections 169B, 176A and 184, 42 U.S.C. 7492, 7506a & 7511c, were added to the Act in the 1990 Amendments and contain provisions for cooperatively addressing interstate pollution problems. These provisions authorize (and, in some instances, direct) the establishment of interstate transport commissions to address

regionwide visibility impairment, ozone pollution and other NAAQS pollution issues. The Governors of the affected States (or their designees) represent the State members of the commissions. Generally, the commissions develop and transmit recommendations to EPA on the specific issues the commissions are charged with addressing. Thus, the commissions provide a vehicle for facilitating interstate cooperation and input in addressing air pollution problems that require a regional solution due to pollutant transport across political boundaries. In today's action, EPA is proposing to extend this authority to Tribes. Among other things, Tribes would be authorized to petition the Administrator for establishment of commissions and Tribal leaders included in commission membership in the same fashion as State leaders.

Hazardous Air Pollutants. The provisions governing the emissions of hazardous air pollutants are also contained in Title I. EPA is directed to issue control technology standards ("maximum achievable control technology" or "MACT") covering 189 hazardous air pollutants. CAA section 112, 42 U.S.C. 7412. Section 112 also contains provisions to prevent and minimize the consequences of accidental releases of, among other things, extremely hazardous substances. States or, as proposed today, Tribes may develop and submit to EPA for approval, programs implementing both the hazardous air pollutant emission standards and accidental release requirements.

Enforcement and Information Collection. The Clean Air Act general Federal enforcement provisions are contained in Title I. Section 113 of the CAA, 42 U.S.C. 7413, authorizes the imposition of both civil and criminal penalties for violation of Clean Air Act requirements. It also contains provisions authorizing EPA to pay cash awards to persons furnishing information leading to a criminal conviction or certain civil penalties.

Section 114 of the Act, 42 U.S.C. 7414, contains provisions granting EPA broad authority to require, among other things, recordkeeping, monitoring and right of entry and inspection. It also contains provisions authorizing EPA to delegate this authority to States and, as proposed in today's rule, Tribes.

Federal Facilities. Section 118 of the CAA, 42 U.S.C. 7418, provides that Federal facilities must comply with all Federal, State and local air pollution requirements to the same extent as nongovernmental agencies unless expressly exempted by the President. EPA is proposing to extend this

authority to Tribal air pollution requirements.

Financial Assistance. The provisions governing the issuance of Federal financial assistance to air pollution control agencies are set out in Title I. CAA sections 103 & 105, 42 U.S.C. 7403 & 7405. The phrase "air pollution control agency" for this purpose is, in turn, defined in CAA section 302(b), 42 U.S.C. 7602(b), and expressly includes "[a]n agency of an Indian tribe." An "Indian tribe" is defined in CAA section 302(r). See discussion below under Title III/Definitions. Issues associated with the award of Federal financial assistance to Tribes are addressed in more detail in the SUPPLEMENTARY INFORMATION section of this notice.

Title II—Mobile Sources

This Title contains the provisions of the Clean Air Act addressing mobile sources (e.g., automobiles, trucks, off-road vehicles). It contains provisions addressing motor vehicle emission standards as well as standards for aircraft and non-road vehicles and engines. See, e.g., CAA sections 202, 213 & 231, 42 U.S.C. 7521, 7547 & 7571. It also provides for the regulation of motor vehicle and other fuels, including registration requirements, requirements for new fuels and fuel additives as well as provisions for reformulated gasoline and low sulfur diesel fuel. CAA section 211, 42 U.S.C. 7545.

Significant provisions of this Title preempt in whole or in part the issuance of State standards. For example, section 209 of the CAA, 42 U.S.C. 7543, precludes any State or political subdivision from controlling emissions from new motor vehicles. EPA may waive this prohibition for California, and other States may adopt California standards. CAA sections 209(b) & 177, 42 U.S.C. 7543 & 7507. Similarly, except in limited circumstances, States are precluded from enforcing controls on motor vehicle fuels that are different from those required by EPA. CAA section 211(c)(4), 42 U.S.C. 7545(c)(4). Therefore, the motor vehicle and fuel requirements in Title II generally are issued and administered by EPA unless the statute contemplates and a State qualifies for special treatment or waiver of the preemption provisions.

However, some Title II provisions are administered by the States through the SIP system established under Title I. For example, States containing certain carbon monoxide and ozone nonattainment areas are required to develop and submit to EPA for approval a SIP revision establishing a clean-fuel vehicle program for motor vehicle fleets. CAA section 246, 42 U.S.C. 7586. States

containing certain carbon monoxide nonattainment areas are required to develop and submit to EPA for approval a SIP revision establishing an oxygenated gasoline program. CAA section 211(m), 42 U.S.C. 7545(m). In today's action, EPA is proposing to extend this State-implemented authority to Tribes.

Title III—Citizen Suits

Section 304 of the Act, 42 U.S.C. 7604, authorizes any person who provides the minimum required advance notice to bring a civil action against: any person, including any governmental entity or agency, who is in violation of an emission limit; the Administrator of EPA where he or she fails to carry out a non-discretionary duty under the Clean Air Act or has unreasonably delayed agency action; any person who proposes to construct or constructs any new or modified major stationary source without a NSR or PSD permit that meets the requirements of the Act (described previously); and any person who is alleged to be in violation of such permit. The term "person" "includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof." Section 302(e), 42 U.S.C. 7602(e). The Federal district courts are granted jurisdiction over such legal action. In today's action, EPA is proposing that Tribes be subject to these provisions in the same manner that States are.

Judicial Review of Final Agency Action. Section 307(b), 42 U.S.C. 7607(b), contains the provisions governing judicial review of final agency action issuing or approving regulations. Section 307(b) specifies in which U.S. Court of Appeals an action is to be brought and by what date a petition for review must be filed with the appropriate Court of Appeals.

Definitions. Section 302, 42 U.S.C. 7602, contains definitions for many of the terms used in the Clean Air Act. The term "Indian tribe" is among the terms defined in this section and is defined as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." CAA section 302(r). Not all of the CAA definitions are set out in section 302. Terms often are defined in the specific Titles in which they appear.

Outer Continental Shelf. Section 328, 42 U.S.C. 7627, provides for regulation

of sources located on the Outer Continental Shelf (OCS) offshore all the States except Texas, Louisiana, Mississippi and Alabama. These sources must comply with EPA's rule on OCS requirements, which generally set forth requirements that are the same as the applicable requirements in the corresponding onshore area that pertain to the attainment and maintenance of ambient air quality standards and to PSD. If States develop and submit to EPA an adequate program, EPA can delegate implementation and enforcement of these provisions to States. EPA is proposing to extend such authority to Tribes in today's action.

Title IV—Acid Deposition.

This program calls for phased nationwide emission reductions in sulfur dioxide (SO₂) of approximately 10 million tons from 1980 levels from fossil fuel-fired electric utility units. These reductions are achieved through the purchase and sale of a fixed number of SO₂ "allowances." Each allowance entitles the holder to emit one ton of SO₂. Through this emissions trading program, owners of "affected" units that can reduce emissions efficiently can sell excess allowances to owners of units where it is more costly to obtain the required reductions, thereby achieving emissions reductions in a cost-effective manner.

The acid rain program also calls for reductions in nitrogen oxides of approximately 2 million tons from 1980 levels from coal-fired electric utility units. These reductions are obtained by requiring affected sources to comply with certain emission limitations. In many situations, compliance may be demonstrated by averaging the emissions among different utility units.

The Title IV program is a Federal program during Phase I, from 1995—1999. However, during Phase II, which begins in the year 2000, States will issue the acid precipitation portion of the operating permits addressed below under Title V. 42 U.S.C. 7651—7651o. In today's rule, EPA is proposing to extend this Phase II permitting authority to Tribes.

Title V—Operating Permits Program.

Title V of the Act requires States to develop and submit to EPA an operating permit program.² Title V calls for the permitting of certain sources by certain deadlines. Operating permits are to contain all of the Clean Air Act requirements applicable to such

² Note that this operating permit program is not the same as the NSR and PSD permit programs described previously that, by contrast, require construction permits.

sources. The program is intended to promote regulatory certainty and enforceability. Title V also provides for the collection of fees by the permitting agency that reflect the reasonable costs of the permit program. 42 U.S.C. 7661-7661e. EPA has issued rules specifying the minimum requirements for State permit programs. 57 FR 32,250 (July 21, 1992). EPA is proposing to extend Title V operating permit program authority to Tribes in today's rule.

Small Business Assistance Program. Title V also contains provisions requiring States to adopt a small business stationary source technical and environmental compliance assistance program, which is to be incorporated into the SIP described under Title I. 42 U.S.C. 7661f. EPA is proposing to authorize Tribes to submit such assistance programs.

Title VI—Phaseout of Ozone-Depleting Chemicals.

This Title provides for the phase-out of the production of certain substances that deplete stratospheric ozone as well as providing other restrictions on the use of such substances. It is a Federally established and federally managed program. 42 U.S.C. 7671-7671q. Among other things, it implements the Montreal Protocol, a multinational agreement addressing damage to stratospheric ozone.

Addendum B—List of EPA Regional Offices

Region 1

Environmental Protection Agency,
John F. Kennedy Federal Building,
One Congress Street, Boston, MA
02203, (617) 565-3420
Air, Pesticides and Toxics
Management Division, (617) 565-
3800

Region 2

Environmental Protection Agency,
Jacob K. Javits Federal Building, 26
Federal Plaza, New York, NY
10278, (212) 264-2657
Air and Waste Management Division,
(212) 264-2301

Region 3

Environmental Protection Agency,
841 Chestnut Building,
Philadelphia, PA 19107, (215) 597-
9800
Air, Radiation and Toxics Division,
(215) 597-9390

Region 4

Environmental Protection Agency,
345 Courtland Street, NE, Atlanta,
GA 30365, (404) 347-4727
Air, Pesticides and Toxics
Management Division, (404) 347-
3043

Region 5

Environmental Protection Agency, 77
West Jackson Boulevard, Chicago,
IL 60604-3507, (312) 353-2000
Air and Radiation Division, (312)
393-1661

Region 6

Environmental Protection Agency,
First Interstate Bank Tower at
Fountain Place, 1445 Ross Avenue
12th Floor Suite 1200, Dallas, TX
75202-2733, (214) 655-6444
Air Pesticides and Toxics Division,
(214) 655-7200

Region 7

Environmental Protection Agency,
726 Minnesota Avenue, Kansas
City, KS 66101, (913) 551-7000
Air and Toxics Division, (913) 551-
7020

Region 8

Environmental Protection Agency,
999 18th Street Suite 500, Denver,
CO 80202-2405, (303) 293-1603
Air and Toxics Division (303) 293-
0946

Region 9

Environmental Protection Agency, 75
Hawthorne Street, San Francisco,
CA 94105, (415) 744-1305
Air and Toxics Division, (415) 744-
1219

Region 10

Environmental Protection Agency,
1200 Sixth Avenue, Seattle, WA
98101, (206) 553-4973
Air and Toxics Division, (206) 553-
1152

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority cite for part 35, subpart A, continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); Secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j-2, 300j-9 and 300j-11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a)).

2. Section 35.105 is amended by revising the definitions for "Eligible Indian Tribe", "Federal Indian reservation", and the first definition for "Indian Tribe", and by removing the second definition for "Indian Tribe" to read as follows:

§ 35.105 Definitions.

* * * * *

Eligible Indian Tribe means:

(1) For purposes of the Clean Water Act, any federally recognized Indian Tribe that meets the requirements set forth at 40 CFR 130.6(d); and

(2) For purposes of the Clean Air Act, any federally recognized Indian Tribe that meets the requirements set forth at § 35.220.

Federal Indian reservation means for purposes of Clean Water Act or the Clean Air Act, all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Indian Tribe means:

(1) Within the context of the Public Water System Supervision and Underground Water Source Protection grants, any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

(2) For purposes of the Clean Water Act, any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

(3) For purposes of the Clean Air Act, any Indian Tribe, band, nation, or other organized group or community, including any Alaskan Native Village, which is recognized by the Secretary of the Interior and which exercises governmental authority over a Federal Indian reservation or other defined area.

* * * * *

3. Section 35.205 is amended by adding a sentence to the end of paragraphs (a) and (b) to read as follows:

§ 35.205 Maximum Federal share.

(a) * * * For Indian tribes establishing eligibility pursuant to § 35.220, the Regional Administrator may provide financial assistance to in an amount up to _____ (amount to be determined) of the approved costs of planning, developing, establishing, or improving an air pollution control, and up to _____ (amount to be determined) of the approved costs of maintaining that program."

(b) * * * The Regional Administrator may provide agencies of one or more tribes that have established eligibility pursuant to § 35.220 which have substantial responsibility for carrying out an applicable implementation plan under section 110 of the Clean Air Act up to _____ (amount to be determined) of the approved costs of planning, developing, establishing, or approving

an air pollution control program and up to _____ (amount to be determined) of the approved costs of maintaining that program.

4. Section 35.210 is amended by adding a paragraph (c) to read as follows:

§ 35.210 Maintenance of effort.

* * * * *

(c) The requirements of paragraphs (a) and (b) of this section shall not apply to Indian tribes that have established eligibility pursuant to § 35.220.

5. Section 35.215 is revised to read as follows:

§ 35.215 Limitations.

(a) The Regional Administrator will not award section 105 funds to an interstate, intertribal or intermunicipal agency which does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate State, interstate, local, and international interests.

(b) The Regional Administrator will not award section 105 funds to a local, interstate, or intermunicipal agency without consulting with the appropriate official designated by the Governor or Governors of the State or States affected or the appropriate official of any affected Indian tribe or tribes.

(c) The Regional Administrator will not disapprove an application for or terminate or annul an award of section 105 funds without prior notice and opportunity for a public hearing in the affected State or area within Tribal jurisdiction or in one of the affected States or areas within Tribal jurisdiction if several are affected.

6. Section 35.220 is added just before the center heading "Water Pollution Control (Section 106)" to read as follows:

§ 35.220 Eligible Indian Tribes.

The Administrator may make Clean Air Act section 105 grants to eligible Indian tribes without requiring the same cost share that would be required if such grants were made to states. Instead grants to eligible tribes will include a cost share of _____ (amount to be determined).

(a) An Indian tribe is eligible to receive such assistance if it has demonstrated eligibility to be treated in the same manner as a State under 40 CFR 49.6.

(b) A tribe that has not made a demonstration under 40 CFR 49.6 is eligible for financial assistance under 42 U.S.C. 7405 and 7602(b)(1) if:

(1) The Indian tribe has a governing body carrying out substantial duties and powers.

(2) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the boundaries of an Indian reservation or other areas within the tribe's jurisdiction.

(3) The Indian tribe is reasonably expected to be capable, in the judgment of the Regional Administrator, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and applicable regulations.

(c) The Administrator shall process a tribal application for financial assistance under this section in a timely manner.

7. Part 49 is added to read as follows:

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

Sec.

- 49.1 Program overview.
- 49.2 Definitions.
- 49.3 General Tribal Clean Air Act authority.
- 49.4 Clean Air Act provisions inapplicable to Tribes.
- 49.5 Tribal requests for inapplicability of additional Clean Air Act provisions.
- 49.6 Tribal eligibility requirements.
- 49.7 Request by an Indian Tribe for eligibility determination and Clean Air Act program approval.
- 49.8 Provisions for Tribal criminal enforcement authority.
- 49.9 EPA review of Tribal Clean Air Act applications.
- 49.10 EPA review of State Clean Air Act programs.

Authority: 42 U.S.C. 7401, *et seq.*

§ 49.1 Program overview.

(a) The regulations in this part identify those provisions of the Clean Air Act (Act) for which Indian Tribes are treated in the same manner as States. In general, these regulations authorize eligible Tribes to have the same rights as States under the Clean Air Act and authorize EPA approval of Tribal air quality programs meeting the applicable minimum requirements of the Act.

(b) Nothing in this part shall prevent an Indian Tribe from establishing additional or more stringent air quality protection requirements not inconsistent with the Act.

§ 49.2 Definitions.

Clean Air Act or Act means those statutory provisions in the United States Code at 42 U.S.C. 7401, *et seq.*

Federal Indian Reservation, Indian Reservation or Reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government,

notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Indian Tribe or Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian Tribe Consortium or Tribal Consortium means a group of two or more Indian Tribes.

State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

§ 49.3 General Tribal Clean Air Act authority.

Tribes meeting the eligibility criteria of § 49.6 shall be treated in the same manner as States with respect to all provisions of the Clean Air Act and implementing regulations, except for those provisions identified in § 49.4 and the regulations that implement those provisions.

§ 49.4 Clean Air Act provisions inapplicable to Tribes.

The following provisions of the Clean Air Act and any implementing regulations are not applicable to Tribes:

(a) Specific plan submittal and implementation deadlines for NAAQS-related requirements, including but not limited to such deadlines in sections 110(a)(1), 172(a)(2), 182, 187, 189, 191 of the Act.

(b) The specific deadlines associated with the review and revision of implementation plans related to major fuel burning sources in section 124 of the Act.

(c) The mandatory imposition of sanctions under section 179 of the Act because of a failure to submit an implementation plan or required plan element by a specific deadline, or the submittal of an incomplete or disapproved plan or element.

(d) The "within 2 years" clause in section 110(c)(1) of the Act. The inapplicability of this specific clause does not in any way curtail the general authority delegated to the Administrator under section 110(c)(1) to issue a Federal implementation plan upon the failure of a Tribe to make a required submission, upon a finding that the plan or plan revision submitted by a Tribe is incomplete or in response to EPA's disapproval of a Tribal implementation plan in whole or in part.

(e) Specific visibility implementation plan submittal deadlines established under section 169A of the Act.

(f) Specific implementation plan submittal deadlines related to interstate commissions under sections 169B(e)(2), 184(b)(1) & (c)(5) of the Act. For eligible Tribes participating as members of such Commissions, the Administrator shall establish those submittal deadlines that are determined to be practicable or, as with other non-participating Tribes in an affected transport region, provide for Federal implementation of necessary measures.

(g) Any provisions of the Act requiring as a condition of program approval the demonstration of criminal enforcement authority or any provisions of the Act providing for the delegation of such criminal enforcement authority. Tribes seeking approval of a Clean Air Act program requiring such demonstration may receive program approval if they meet the requirements for enforcement authority established under § 49.8.

(h) The specific deadline for the submittal of operating permit programs in section 502(d)(1) of the Act.

(i) The mandatory imposition of sanctions under section 502(d)(2)(B) because of failure to submit an operating permit program or EPA disapproval of an operating permit program submittal in whole or part.

(j) The "2 years after the date required for submission of such a program under paragraph (1)" clause in section 502(d)(3) of the Act. The inapplicability of this specific clause does not in any way curtail the general authority delegated to the Administrator under section 502(d)(3) to promulgate, administer and enforce a Federal operating permit program for a Tribe not having a program that has been approved in whole.

(k) Section 502(g), which authorizes a limited interim approval of an operating permit program that substantially meets the requirements of Title V, but is not fully approvable.

(l) The provisions of section 503(c) that direct permitting authorities to establish a phased schedule assuring that at least one-third of the permit applications submitted within the first full year after the effective date of an operating permit program (or a partial or interim program) will be acted on by the permitting authority over a period of not to exceed three years after the effective date.

(m) The provisions of section 507(a) that specify a deadline for the submittal of plans for establishing a small business stationary source technical and

environmental compliance assistance program.

(n) The provisions of section 507(e) that direct the establishment of a Compliance Advisory Panel.

§ 49.5 Tribal requests for inapplicability of additional Clean Air Act provisions.

Any Tribe may request that the Administrator specify additional provisions of the Clean Air Act for which it would be inappropriate to treat Tribes in the same manner as States. Such request should clearly identify the provisions at issue and should be accompanied with an explanation why it is inappropriate to treat Tribes in the same manner as States with respect to such provisions.

§ 49.6 Tribal eligibility requirements.

Sections 301(d)(2) and 302(r), 42 U.S.C. 7601(d)(2) and 7602(r), authorize the Administrator to treat an Indian Tribe in the same manner as a State for the Clean Air Act provisions identified in § 49.3 if the Indian Tribe meets the following criteria:

(a) The applicant is an Indian Tribe recognized by the Secretary of the Interior,

(b) The Indian Tribe has a governing body carrying out substantial governmental duties and functions,

(c) The functions to be exercised by the Indian Tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction, and

(d) The Indian Tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.

§ 49.7 Request by an Indian Tribe for eligibility determination and Clean Air Act program approval.

(a) An Indian Tribe may apply to the EPA Regional Administrator for a determination that it meets the eligibility requirements of § 49.6 for Clean Air Act program authorization. The application shall concisely describe how the Indian Tribe will meet each of the requirements of § 49.6 and should include the following information:

(1) A statement that the applicant is an Indian Tribe recognized by the Secretary of the Interior.

(2) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area. This statement should:

(i) Describe the form of the Tribal government;

(ii) Describe the types of government functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(iii) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(3) A descriptive statement of the Indian Tribe's authority to regulate air quality. For applications covering areas within the exterior boundaries of the applicant's Reservation the statement must identify with clarity and precision the exterior boundaries of the reservation including, for example, a map and a legal description of the area. For Tribal applications covering areas outside the boundaries of the applicant's Reservation the statement should include:

(i) A map or legal description of the area over which the application asserts authority.

(ii) A statement by the applicant's legal counsel (or equivalent official) which describes the basis for the Tribe's assertion of authority (including the nature or subject matter of the asserted regulatory authority) which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority.

(4) A narrative statement describing the capability of the applicant to effectively administer any Clean Air Act program for which the Tribe is seeking approval. The narrative statement must demonstrate the applicant's capability consistent with the applicable provisions of the Clean Air Act and implementing regulations and, if requested, may include:

(i) A description of the Indian Tribe's previous management experience which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101, *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(ii) A list of existing environmental or public health programs administered by the Tribal governing body and a copy of related Tribal laws, policies, and regulations;

(iii) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government;

(iv) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for administering a Clean Air Act program (including a description of the relationship between the existing or proposed agency and its regulated entities);

(v) A description of the technical and administrative capabilities of the staff to administer and manage an effective air quality program or a plan which proposes how the Tribe will acquire administrative and technical expertise. The plan should address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(5) A Tribe that is a member of a Tribal consortium may rely on the expertise and resources of the consortium in demonstrating under paragraph (a)(4) of this section that the Tribe is reasonably expected to be capable of carrying out the functions to be exercised consistent with § 49.6(a)(4). A Tribe relying on a consortium in this manner must provide reasonable assurances that the Tribe has responsibility for carrying out necessary functions in the event the consortium fails to.

(6) Where applicable Clean Air Act or implementing regulatory requirements mandate criminal enforcement authority, an application submitted by an Indian Tribe may be approved if it meets the requirements of § 49.8.

(7) Additional information required by the EPA Regional Administrator which, in the judgment of the EPA Regional Administrator, is necessary to support an application.

(8) Where the applicant has previously received authorization for a Clean Air Act program or for any other EPA-administered program, the applicant need only identify the prior authorization and provide the required information which has not been submitted in the previous application.

(b) A Tribe may simultaneously submit a request for an eligibility determination and a request for approval of a Clean Air Act program.

(c) A request for Clean Air Act program approval must meet any applicable Clean Air Act statutory and regulatory requirements and may contain any reasonable portion of a Clean Air Act program to the extent not inconsistent with applicable statutory and regulatory requirements.

§ 49.8 Provisions for Tribal criminal enforcement authority.

To the extent that an Indian Tribe is precluded from asserting criminal enforcement authority, the Federal government will exercise primary

criminal enforcement responsibility. The Tribe, with the EPA Region, shall develop a procedure by which the Tribal agency will refer potential criminal violations to the EPA Regional Administrator, as agreed to by the parties, in an appropriate and timely manner. This procedure shall encompass all circumstances in which the Tribe is incapable of exercising applicable enforcement requirements as provided in § 49.7(a)(6). This agreement shall be incorporated into a Memorandum of Agreement with the EPA Region.

§ 49.9 EPA review of Tribal Clean Air Act applications.

(a) The EPA Regional Administrator shall process a request of an Indian Tribe submitted under § 49.7 in a timely manner. The EPA Regional Administrator shall promptly notify the Indian Tribe of receipt of the application.

(b) Within 30 days of receipt of an Indian Tribe's initial, complete application, the EPA Regional Administrator shall notify all appropriate governmental entities.

(1) For Tribal applications addressing air resources within the exterior boundaries of the Reservation, EPA's notification of other governmental entities shall specify the geographic boundaries of the Reservation.

(2) For Tribal applications addressing off-reservation areas, EPA's notification of other governmental entities shall include the substance and bases of the Tribe's assertions that it meets the requirements of § 49.6(a)(3).

(c) The governmental entities shall have 15 days to provide written comments to EPA's Regional Administrator regarding any dispute concerning the boundary of the Reservation. Where a Tribe has asserted jurisdiction over off-reservation lands, appropriate governmental entities may request a single 15-day extension to the general 15-day comment period.

(d) In all cases, comments must be timely, limited to the scope of the Tribe's jurisdictional assertion, and clearly explain the substance, bases and extent of any objections. If a Tribe's assertion is subject to a conflicting claim, the EPA Regional Administrator may request additional information and may consult with the Department of the Interior.

(e) The EPA Regional Administrator shall decide the scope of the Tribe's jurisdiction. If a conflicting claim cannot be promptly resolved, the EPA Regional Administrator may approve that portion of an application addressing all undisputed areas.

(f) A determination by the EPA Regional Administrator concerning the boundaries of a Reservation or Tribal jurisdiction over other off-reservation areas shall apply to all future Clean Air Act applications from that Tribe or Tribal consortia and no further notice of governmental entities as provided in paragraph (b) of this section shall be provided, unless the application presents different jurisdictional issues or significant new factual or legal information relevant to jurisdiction is presented to the EPA Regional Administrator.

(g) If the EPA Regional Administrator determines that a Tribe meets the requirements of § 49.6, the Indian Tribe is eligible to be treated in the same manner as a State for those Clean Air Act provisions identified in § 49.3. The eligibility will extend to all areas within the exterior boundaries of the Tribe's reservation, as determined by the EPA Regional Administrator, and any other areas the EPA Regional Administrator has determined to be within the Tribe's jurisdiction.

(h) A Tribal application containing a Clean Air Act program submittal will be reviewed by EPA in the same procedural and substantive manner as EPA would review a similar State submittal.

(i) The EPA Regional Administrator shall return an incomplete or disapproved application for eligibility or program approval to the Tribe with a summary of the deficiencies.

§ 49.10 EPA review of State Clean Air Act programs.

A State Clean Air Act program submittal shall not be disapproved because of failure to address air resources within the exterior boundaries of an Indian Reservation or other areas within the jurisdiction of an Indian Tribe.

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

8. The authority citation for part 50 is revised to read as follows:

Authority: Clean Air Act, 42 U.S.C. 7401, *et seq.*

9. Section 50.1 is amended by adding paragraph (i) to read as follows:

§ 50.1 Definitions.

* * * * *

(i) *Indian country* is as defined in 18 U.S.C. 1151.

10. Section 50.2 is amended by revising paragraphs (c) and (d) to read as follows:

§ 50.2 Scope.

* * * * *

(c) The promulgation of national primary and secondary ambient air quality standards shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of any State or Indian country.

(d) The proposal, promulgation, or revision of national primary and secondary ambient air quality standards shall not prohibit any State or Indian Tribe from establishing ambient air quality standards for that State or Indian Tribe or any portion thereof which are more stringent than the national standards.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

11. The authority citation for part 81 is revised to read as follows:

Authority: Clean Air Act, 42 U.S.C. 7401, *et seq.*

12. Section 81.1 is amended by revising paragraph (a) and adding new paragraphs (c), (d) and (e) as follows:

§ 81.1 Definitions.

* * * * *

(a) *Act* means the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*).

* * * * *

(c) *Federal Indian Reservation, Indian Reservation or Reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

(d) *Indian Tribe or Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) *State* means a State, the District of Columbia, the Commonwealth of Puerto

Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

Subpart C—Section 107 Attainment Status Designations

13. The authority citation for subpart C, part 81 is revised to read as follows:

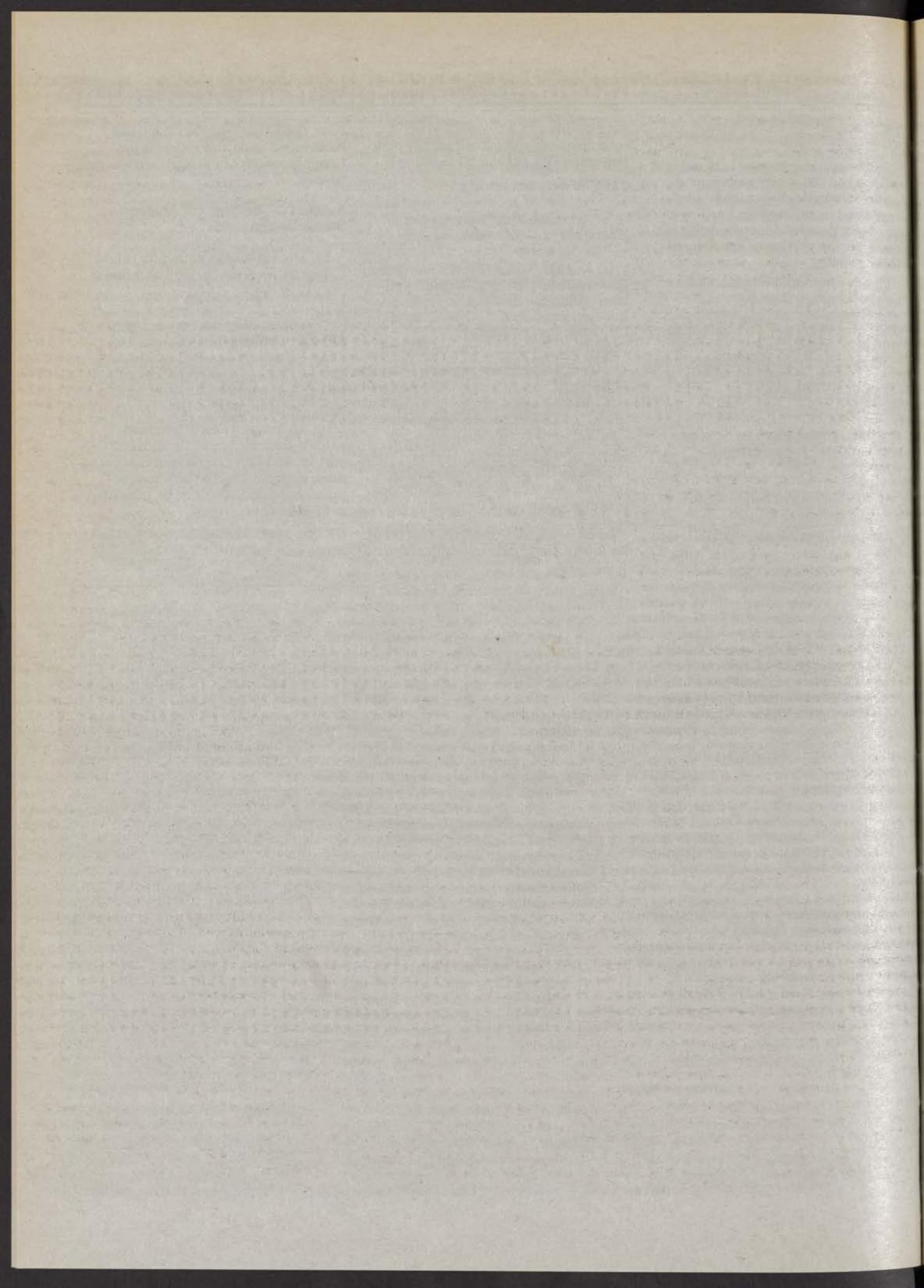
Authority: Clean Air Act, 42 U.S.C. 7401, *et seq.*

§ 81.300 [Amended]

14. Section 81.300(a) is amended by revising the words "Both the State and EPA can initiate changes to these designations, but any State" to read "A State, an Indian Tribe determined eligible for such functions under 40 CFR part 49, and EPA can initiate changes to these designations, but any State or Tribal redesignation must be submitted to EPA for concurrence."

[FR Doc. 94-20811 Filed 8-24-94; 8:45 am]

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Thursday
August 25, 1994

Federal Register

Part IV

**Department of
Education**

34 CFR Part 647

Ronald E. McNair Postbaccalaureate
Achievement Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 647

RIN 1840-AB65

Ronald E. McNair Postbaccalaureate Achievement Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary establishes regulations to govern the Ronald E. McNair Postbaccalaureate Achievement Program (McNair). The regulations are needed to implement statutory changes made to the McNair program by the Higher Education Amendments of 1992 and the Higher Education Technical Amendments Act of 1993. These regulations also codify those policies and practices that have been used in the requirements governing the program for the past four years. Previously, the McNair program has been administered using only the program statute and the Education Department General Administrative Regulations (EDGAR).

EFFECTIVE DATE: These regulations take effect on or before October 11, 1994 or later if the Congress takes certain adjournments, except that compliance is not required with the information collection requirements in § 647.21, 647.22, and 647.32 until the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Eileen S. Bland, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5065, Washington, D.C. 20202-5249. Telephone: (202) 708-4804. 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: The purposes and allowable activities of the McNair program support the National Education Goals. Specifically, the program funds projects designed to increase the number of United States undergraduate and graduate students, especially minorities, who complete advanced degrees in numerous disciplines, including the fields of

mathematics and science, and the proportion of graduates equipped with the capacity for advanced critical analysis and problem solving.

On December 2, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for the McNair program in the Federal Register (58 FR 63870). In this notice the Secretary solicited public comment on the proposed regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 17 persons submitted comments on the proposed regulations. The following is an analysis of the comments and the changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes made to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Who is Eligible for a Grant? (Section 647.2)

Comment: The Secretary received one comment regarding eligible applicants under this program. The commenter encouraged the Secretary to include "disciplinary groups" such as professional associations and public or private agencies or organizations or combinations of these groups as eligible applicants under the McNair program. The commenter indicated that these groups are included as eligible under section 402A of the Higher Education Act of 1965 as amended (HEA) and that the Department is being overly restrictive in this limitation.

Discussion: The Secretary believes § 647.2 of these regulations accurately reflects section 402E of the HEA which authorizes the McNair program. While section 402A of the HEA denotes the full complement of eligible applicants for all Federal TRIO Programs, institutions of higher education and combinations of those institutions are generally the only entities that can provide McNair program services. Further, section 402E(d) of the HEA provides for specific award considerations for institutions of higher education. However, applicants are encouraged to solicit and encourage the participation and coordination of professional associations, both private and public, to further enhance the quality of the services to be provided to the eligible participants.

Changes: None.

Who Is Eligible To Participate in a McNair Grant? (Section 647.3)

Comments: Many commenters suggested that the Secretary change § 647.3 by deleting the eligibility requirement that students must have completed their sophomore year of study to participate in the McNair program. The commenters felt that this requirement was overly restrictive and placed an additional eligibility requirement that went beyond legislative intent. Further, the commenters felt that early intervention, even at the freshman level, may provide the program participants with necessary information and motivation necessary to make future educational choices and decisions.

Discussion: The Secretary has determined that the requirement that students must have completed their sophomore year of study before they are eligible to participate in the McNair program is overly restrictive and has deleted the requirement. However, because of the small size of the McNair program (less than 70 grants nationwide and under 2,000 participants currently), the Secretary encourages grantees to focus project services on students in their junior and senior years of undergraduate study. Thus, the Secretary prefers to see the emphasis of the McNair program placed on students who have completed the general college-wide requirements and are ready to select their major fields of study. Nevertheless, the Secretary will not absolutely preclude freshmen and sophomores from participation in the McNair program. Grantees are advised that recipients of summer research internships must have completed their sophomore year. It should be noted that a companion program, Student Support Services, emphasizes the provision of academic support services to freshmen and sophomore students, including mentoring and counseling, to encourage enrollment in postbaccalaureate programs of study.

Changes: The requirement that students must have completed their sophomore year of study to be eligible to participate in the McNair program has been deleted except with regard to summer research internships.

Comments: Several commenters questioned whether the proposed regulations would allow students enrolled at the master's level of studies to participate in the McNair program.

Discussion: The proposed regulations do not preclude the participation of students enrolled in master's level studies. However, given the types of activities and services normally

provided by the McNair program, the Secretary anticipates that students at the master's level of study probably have received effective preparation for doctoral studies.

Changes: None.

How Long Is a Project Period? (Section 647.5)

Comment: The Secretary received one comment regarding whether the four-to-five year grant award cycles would be made retroactive to include the grantees currently funded under the McNair program.

Discussion: Grant awards made in FY 1995 will be for either four or five years, depending upon the peer review score received by applicants in the competition. The grant award cycle for currently funded grantees under the McNair program will not be modified.

Changes: None.

What Definitions Apply? (Section 647.7)

Comment: One commenter suggested that the definition for *first-generation college student* might be clarified by utilizing the language agreed upon in the Talent Search Program for the similar definition of *potential first-generation college student* (§ 643.7).

Discussion: The Secretary agrees with the commenter.

Changes: The definition of *first-generation college student* has been revised to reflect the definition of that term in the Talent Search Program regulations.

Comments: None.

Discussion: The Secretary has reviewed the regulations since the publication of the NPRM and has determined that providing information on what groups are underrepresented in graduate education is beneficial to all prospective applicants. However, there is no need to define both *Individuals from groups underrepresented in graduate education*, and *Groups underrepresented in graduate education*.

Changes: The definition of "Individuals from groups underrepresented in graduate education" has been deleted and replaced with the definition of "Groups underrepresented in graduate education."

Further, an additional definition has been added to this section for "target population." Applicants are asked to provide information on their proposed "target population" under the "Need" criterion, which was revised in response to comments that the criterion not be restricted to an applicant's student population.

Comments: Several commenters questioned the definition of *summer internship*. Exception was taken to the phrase, "* * * that normally will occur between the junior and senior year * * *" because it appears restrictive and one commenter suggested that the term "experienced practitioner" be defined.

Discussion: The Secretary disagrees that the definition of this term could be interpreted as requiring that a summer internship take place only between a student's junior and senior years but decided to delete the phrase nevertheless.

Changes: The definition of "summer internship" has been revised, and the Secretary has replaced the term "experienced practitioners" with "experienced faculty researchers."

How Does the Secretary Decide which New Grants to Make? (Section 647.20)

Comments: Two commenters observed that the eight point maximum prior experience score conflicts with the language included in the Higher Education Technical Amendments of 1993.

Discussion: The Secretary has raised the maximum prior experience score to 15 points as required by a statutory change made by the Higher Education Technical Amendments Act of 1993.

Changes: The maximum score for all the criteria in § 647.22 is 15 points. Further, the Secretary has modified the maximum score for each criterion in that section to reflect the new total score.

Comments: One commenter objected to the provision that additional points, equal to 10 percent of the applicant's score, be awarded to applications from Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Northern Mariana Islands. The commenter objected because the commenter believes it gives those applicants an unfair advantage.

Discussion: The requirement that priority be given to proposals submitted by the territories was deleted from the Higher Education Act by the Higher Education Technical Amendments Act of 1993.

Changes: The provision has been deleted from § 647.20(a) of the regulations.

Comments: Several commenters objected to § 647.20(c) of the proposed regulations, which describes how the Secretary awards grants when two or more applications receive identical scores and all of these applications cannot be funded. The commenters suggested that the use of a subjective selection factor such as geographical

distribution was not impartial and could possibly be construed as setting a new precedent for other TRIO funding.

Discussion: The Secretary believes that a tie-breaker that takes into account underserved geographic areas is appropriate. The Secretary further believes this provision reflects congressional concern regarding equitable distribution of services to geographic areas and eligible populations that have been underserved by the program.

Changes: None.

What Selection Criteria Does the Secretary Use? (Section 647.21)

Comments: Several commenters questioned why the "Need" criterion is based on the eligibility of students at the applicant institution when the program legislation does not restrict an applicant's service area to its own student population.

Discussion: The Secretary agrees that the "Need" criterion as published could inadvertently restrict the applicant's service area.

Changes: Section 647.21(b) has been revised and reformatted to appear as § 647.21(a).

Comments: One commenter suggested that § 647.21(c)(2) would be strengthened by adding an objectives section, which would require the inclusion of information on specific process and outcome objectives relative to the purposes of the McNair program, their relevance in addressing the needs of the target group, and their clarity and attainability given the project budget and other resources.

Discussion: The Secretary has reviewed the proposed regulations and determined that the inclusion of process and outcome objectives would provide relevant information about the quality of the proposed project. Further, to avoid duplication or overlap of information requested, additional changes within the selection criteria have been made to delete the criterion, "Meeting the purpose of the McNair program," to include a new criterion, "Objectives," and to revise the criterion, "Plan of Operation." Also included is a redistribution of the points that may be earned under each criterion.

Changes: Section 647.21 (b) and (c) has been modified to include a new criterion, "Objectives," a revision of the "Plan of Operation" criterion, and a modification of the point distribution.

Comments: Several commenters suggested that § 647.21(c)(2) appeared to be overly restrictive by requesting information on time commitments for all employees of the project rather than

just those designated as "key" personnel.

Discussion: As a result of the overall modification of the program selection criteria, the Secretary has concentrated all personnel concerns in § 647.21(d) of the revised selection criteria.

Changes: Section 647.21 has been modified.

Comments: One commenter suggested that the "Plan of Operation" criterion failed to include language that mirrored section 402A(c)(6), which encourages coordination among TRIO programs and other programs for disadvantaged students regardless of their funding source.

Discussion: The Secretary is aware of the legislative language to coordinate programs for disadvantaged students and agrees that it should be addressed in the regulations. Therefore, the selection criteria, specifically § 647.21(c)(8), have been modified to include a request for pertinent information regarding any planned coordination activities.

Changes: Section 647.21(c)(2) has been redesignated as § 647.21(c)(8) and modified to include language requesting details of planned coordination activities by the applicant.

Comments: Several commenters objected to the inclusion of fee waivers or tuition waivers as requirements for funding consideration and point assignment included in § 647.21(e)(3).

Discussion: The Secretary has reviewed the pertinent section under § 647.21(e)(3) and has determined that the phrase in question is appropriate. The waiving of fees is not required as a condition of funding. Rather, the examples listed are but a few suggestions of the many kinds of support that could be construed as positive in nature and an indicator of institutional commitment.

Changes: None.

Comments: Several commenters questioned the requirement contained in the proposed plan of operation (§ 647.21(c)(4)(i)), which states that participants selected for the program be enrolled in programs of study in which a doctorate degree is the terminal degree. It was the consensus of the commenters that this language infers that students in some pre-professional programs (such as law or medical technology) might be ineligible for program participation.

Discussion: The Secretary has reviewed the criterion and the language in question has been deleted due to the overall modification of the plan of operation. However, it should be noted that the intent of section 402A describes the purpose of the McNair program as

one that motivates and prepares students for doctoral programs. Thus, this may preclude some fields of study that terminate at the master's level and some preprofessional programs.

Changes: The plan of operation has been modified and the language in question has been deleted.

Comments: One commenter questioned the failure of the selection criteria to include the award considerations contained in section 402E(d)(3) of the HEA that called for consideration of students enrolled in projects authorized under this "section."

Discussion: The reference in section 402E(d)(3) to this "section" refers to section 402E of the HEA, which is the section authorizing the McNair Program. Therefore, since the only Federal TRIO Program that serves students already enrolled in institutions of higher education is the Student Support Services program, the Secretary has interpreted that section as applying to the Student Support Services program and has revised § 647.21(c)(3) accordingly.

Changes: Section 647.21(c)(3) has been revised and redesignated as § 647.21(c)(1).

How Does the Secretary Evaluate Prior Experience? (Section 647.22)

Comments: One commenter suggested that the consideration of information relevant to the previous five years of funding prior to the fiscal year under funding consideration provided an insufficient time frame to determine the relative success of projects in encouraging students to enter doctoral study. The commenter suggested that seven to ten years was a more accurate indicator of success in this area.

Discussion: The Secretary agrees that seven to ten years may provide a more comprehensive picture of the success of a project's endeavors to assure that students enter or complete a program of study leading to a doctoral degree. However, for the purposes of prior experience, the most recent years' experience of the project is considered adequate, and thus the rationale for the five-year cap, since that is the maximum grant award period allowed under current legislation. To ensure the consistent application of this policy, § 647.22(a) has been revised to clearly state that the period to be considered is the performance period under an expiring McNair grant.

Changes: Section 647.22(a) has been modified.

What are Allowable Costs? (Section 647.30)

Comments: Several commenters objected to the provision that restricted the \$2,400 stipend to the "summer" research internships. They felt that this provision was overly restrictive and did not allow the applicants flexibility in designing programs that most appropriately meet the unique needs of the students to be served.

Discussion: The Secretary has reconsidered the provision that ties the payment of the \$2,400 stipend to summer research internships. The Secretary will allow the payment of stipends for research internships that take place other than in the summer.

Changes: Section 647.30(b) has been modified. Also, language has been added to § 647.30(c) to clarify that tuition, room and board, and transportation costs are allowable only for summer internships involving research.

What are Unallowable Costs? (Section 647.31)

Comments: Several commenters suggested that allowable costs should include student fees for test preparation workshops, colloquia or other courses that directly increase the likelihood of a student entering a doctoral program.

Discussion: The Secretary disagrees with the commenters because this payment would constitute a form of direct student aid that is not allowed under this program except as provided for in § 647.30. The provision of the workshops, colloquia or courses under the project for all interested participants is, however, allowable.

Changes: None.

What Other Requirements Must A Grantee Meet? (Section 647.32)

Comments: One commenter suggested that the phrase "as a result of the services" be deleted from § 647.32(b)(4) since the causal connection between services and outcomes is often difficult to make.

Discussion: The Secretary agrees that the phrase in the proposed regulations may cause an undue hardship on grantees to demonstrate that such a relationship exists.

Changes: A change has been made in paragraph § 647.32(b)(4) to eliminate the phrase "as a result of the services."

Paperwork Reduction Act of 1980

Sections 647.21, 647.22, and 647.32 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of

Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Institutions of higher education and combinations of those institutions are eligible to apply for grants to carry out McNair Program projects. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 20 hours per response for 68 respondents, 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 requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 647

Colleges and universities, Disadvantaged students, Discretionary grants, Educational programs, Graduate education, Reporting and recordkeeping requirement.

Dated: August 17, 1994.

David A. Longanecker,
Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number 84.217 Ronald E. McNair Postbaccalaureate Achievement Program.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 647 to read as follows:

PART 647—RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

Subpart A—General

Sec.

647.1 What is the Ronald E. McNair Postbaccalaureate Achievement Program?

647.2 Who is eligible for a grant?

647.3 Who is eligible to participate in a McNair project?

647.4 What activities and services may a project provide?

647.5 How long is a project period?

647.6 What regulations apply?

647.7 What definitions apply?

Subpart B—Assurances

647.10 What assurances must an applicant submit?

Subpart C—How Does the Secretary Make a Grant?

647.20 How does the Secretary decide which new grants to make?

647.21 What selection criteria does the Secretary use?

647.22 How does the Secretary evaluate prior experience?

647.23 How does the Secretary set the amount of a grant?

Subpart D—What Conditions Must Be Met by a Grantee?

647.30 What are allowable costs?

647.31 What are unallowable costs?

647.32 What other requirements must a grantee meet?

Authority: 20 U.S.C. 1070a-11 and 1070a-15, unless otherwise noted.

Subpart A—General

§ 647.1 What is the Ronald E. McNair Postbaccalaureate Achievement Program?

The Ronald E. McNair Postbaccalaureate Achievement Program—referred to in these regulations as the McNair program—awards grants to institutions of higher education for projects designed to provide disadvantaged college students with effective preparation for doctoral study.

(Authority: 20 U.S.C. 1070a-15)

§ 647.2 Who is eligible for a grant?

Institutions of higher education and combinations of those institutions are eligible for grants to carry out McNair projects.

(Authority: 20 U.S.C. 1070a-11, 1070a-15, 1088, and 1141(a) and 1144a)

§ 647.3 Who is eligible to participate in a McNair project?

A student is eligible to participate in a McNair project if the student meets all the following requirements:

(a) (1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States; or

(3) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(4) Is a permanent resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; or

(5) Is a resident of one of the Freely Associated States.

(b) Is currently enrolled in a degree program at an institution of higher education that participates in the student financial assistance programs authorized under Title IV of the HEA.

(c) Is—

(1) A low-income individual who is a first-generation college student;

(2) A member of a group that is underrepresented in graduate education; or

(3) A member of a group that is not listed in § 647.7 if the group is underrepresented in certain academic disciplines as documented by standard statistical references or other national survey data submitted to and accepted by the Secretary on a case-by-case basis.

(d) Has not enrolled in doctoral level study at an institution of higher education.

(Authority: 20 U.S.C. 1070a-15)

§ 647.4 What activities and services may a project provide?

A McNair project may provide the following services and activities:

(a) Opportunities for research or other scholarly activities at the grantee institution or at graduate centers that are designed to provide participants with effective preparation for doctoral study.

(b) Summer internships.

(c) Seminars and other educational activities designed to prepare participants for doctoral study.

(d) Tutoring.

(e) Academic counseling.

(f) Assistance to participants in securing admission to and financial assistance for enrollment in graduate programs.

(g) Mentoring programs involving faculty members or students at institutions of higher education, or any combination of faculty members and students.

(h) Exposure to cultural events and academic programs not usually available to project participants.

(Authority: 20 U.S.C. 1070a-15)

§ 647.5 How long is a project period?

(a) Except as provided in paragraph (b) of this section, a project period under the McNair program is four years.

(b) The Secretary approves a project period of five years for applications that score in the highest ten percent of all applications approved for new grants under the criteria in § 647.21.

(Authority: 20 U.S.C. 1070a-11)

§ 647.6 What regulations apply?

The following regulations apply to the McNair program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 ((Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 647.

(Authority: 20 U.S.C. 1070a-11 and 1070a-15)

§ 647.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Budget
Budget Period
EDGAR
Equipment
Facilities
Fiscal Year
Grant
Grantee
Project
Project Period
Public
Secretary
Supplies

(b) *Other definitions.* The following definitions also apply to this part:

First-generation college student means—

(1) A student neither of whose natural or adoptive parents received a baccalaureate degree; or

(2) A student who, prior to the age of 18, regularly resided with and received support from only one parent, and whose supporting parent did not receive a baccalaureate degree.

(3) An individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent.

Graduate center means an educational institution as defined in sections 481, 1201(a), and 1204 of the HEA; and that—

(1) Provides instruction in one or more programs leading to a doctoral degree;

(2) Maintains specialized library collections;

(3) Employs scholars engaged in research that relates to the subject areas of the center; and

(4) Provides outreach and consultative services on a national, regional or local basis.

Graduate education means studies beyond the bachelor's degree leading to a postbaccalaureate degree.

HEA means the Higher Education Act of 1965, as amended.

Groups underrepresented in graduate education. The following ethnic and racial groups are currently underrepresented in graduate education: Black (non-Hispanic), Hispanic, and American Indian/Alaskan Native.

Institution of higher education means an educational institution as defined in sections 481, 1201(a) and 1204 of the HEA.

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

Summer internship means an educational experience in which participants, under the guidance and direction of experienced faculty researchers, are provided an opportunity to engage in research or other scholarly activities.

Target population means the universe from which McNair participants will be selected. The universe may be expressed in terms of geography, type of institution, academic discipline, type of disadvantage, type of underrepresentation, or any other qualifying descriptor that would enable an applicant to more precisely identify

the kinds of eligible project participants they wish to serve.

(Authority: 20 U.S.C. 1070a-11, 1070a-15, and 1141)

Subpart B—Assurances

§ 647.10 What assurances must an applicant submit?

An applicant must submit as part of its application, assurances that—

(a) Each participant enrolled in the project will be enrolled in a degree program at an institution of higher education that participates in one or more of the student financial assistance programs authorized under Title IV of the HEA;

(b) Each participant given a summer research internship will have completed his or her sophomore year of study; and

(c)(1) At least two thirds of the students to be served will be low-income individuals who are first-generation college students; and

(2) The remaining students to be served will be members of groups underrepresented in graduate education.

(Authority: 20 U.S.C. 1070a-15)

Subpart C—How Does the Secretary Make a Grant?

§ 647.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1)(i) The Secretary evaluates an application on the basis of the selection criteria in § 647.21.

(ii) The maximum score for all the criteria in § 647.21 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2)(i) For an application from an applicant who has carried out a McNair project in the fiscal year immediately preceding the fiscal year for which the applicant is applying, the Secretary evaluates the applicant's prior experience on the basis of the criteria in § 647.22.

(ii) The maximum score for all the criteria in § 647.22 is fifteen (15) points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) If an applicant described in paragraph (a)(2)(i) of this section applies for more than one new grant in the same fiscal year, the Secretary applies the criteria in § 647.22 to a project that seeks to continue support for an existing McNair project on that campus.

(b) The Secretary makes new grants in rank order on the basis of the total scores received by applications under paragraphs (a)(1) through (a)(3) of this section.

(c)(1) If the total scores of two or more applications are the same and there are insufficient funds for these applications after the approval of higher-ranked applications, the Secretary uses the remaining funds to achieve an equitable geographic distribution of all new projects.

(2) In making an equitable geographic distribution of new projects, the Secretary considers only the locations of new projects.

(d) The Secretary may decline to make a grant to an applicant that carried out a Federal TRIO Program project that involved the fraudulent use of funds.

(Authority: 20 U.S.C. 1070a-11 and 1070a-15)

§ 647.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need* (16 Points). The Secretary reviews each application to determine the extent to which the applicant can clearly and definitively demonstrate the need for a McNair project to serve the target population. In particular, the Secretary looks for information that clearly defines the target population; describes the academic, financial and other problems that prevent potentially eligible project participants in the target population from completing baccalaureate programs and continuing to postbaccalaureate programs; and demonstrates that the project's target population is underrepresented in graduate education, doctorate degrees conferred and careers where a doctorate is a prerequisite.

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's proposed project objectives on the basis of the extent to which they—

(1) Include both process and outcome objectives relating to the purpose of the McNair program stated in § 647.1;

(2) Address the needs of the target population; and

(3) Are measurable, ambitious, and attainable over the life of the project.

(c) *Plan of Operation* (44 points). The Secretary reviews each application to determine the quality of the applicant's plans of operation, including—

(1) (4 points) The plan for identifying, recruiting and selecting participants to be served by the project, including students enrolled in the Student Support Services program;

(2) (4 points) The plan for assessing individual participant needs and for monitoring the academic growth of participants during the period in which the student is a McNair participant;

(3) (5 points) The plan for providing high quality research and scholarly activities in which participants will be involved;

(4) (5 points) The plan for involving faculty members in the design of research activities in which students will be involved;

(5) (5 points) The plan for providing internships, seminars, and other educational activities designed to prepare undergraduate students for doctoral study;

(6) (5 points) The plan for providing individual or group services designed to enhance a student's successful entry into postbaccalaureate education;

(7) (3 points) The plan to inform the institutional community of the goals and objectives of the project;

(8) (8 points) The plan to ensure proper and efficient administration of the project, including, but not limited to matters such as financial management, student records management, personnel management, the organizational structure, and the plan for coordinating the McNair project with other programs for disadvantaged students; and

(9) (5 points) The follow-up plan that will be used to track the academic and career accomplishments of participants after they are no longer participating in the McNair project.

(d) *Quality of key personnel* (9 points). The Secretary evaluates the quality of key personnel the applicant plans to use on the project on the basis of the following:

(1)(i) The job qualifications of the project director.

(ii) The job qualifications of each of the project's other key personnel.

(iii) The quality of the project's plan for employing highly qualified persons, including the procedures to be used to employ members of groups underrepresented in higher education, including Blacks, Hispanics, American Indians, Alaska Natives, Asian Americans and Pacific Islanders (including Native Hawaiians).

(2) In evaluating the qualifications of a person, the Secretary considers his or her experience and training in fields related to the objectives of the project.

(e) *Adequacy of the resources and budget* (15 points). The Secretary evaluates the extent to which—

(1) The applicant's proposed allocation of resources in the budget is clearly related to the objectives of the project;

(2) Project costs and resources, including facilities, equipment, and supplies, are reasonable in relation to the objectives and scope of the project; and

(3) The applicant's proposed commitment of institutional resources to the McNair participants, as for example, the commitment of time from institutional research faculty and the waiver of tuition and fees for McNair participants engaged in summer research projects.

(f) *Evaluation plan* (7 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project's objectives;

(2) Provide for the applicant to determine, in specific and measurable ways, the success of the project in—

(i) Making progress toward achieving its objectives (a formative evaluation); and

(ii) Achieving its objectives at the end of the project period (a summative evaluation); and

(3) Provide for a description of other project outcomes, including the use of quantifiable measures, if appropriate.

(Authority: 20 U.S.C. 1070a-15)

§ 647.22 How does the Secretary evaluate prior experience?

(a) The Secretary reviews information relating to an applicant's performance as a grantee under its expiring McNair project. In addition to the application under review, this information may be derived from performance reports, audit reports, site visit reports, and project evaluation reports received by the Secretary during the project period about to be completed.

(b) The Secretary evaluates the applicant's performance as a grantee on the basis of the following criteria:

(1) (3 points) Whether the applicant consistently served the number and types of participants the project was funded to serve.

(2) (4 points) Whether the applicant was successful in providing the participants with research and scholarly activities and whether those activities had an impact on project participants.

(3) (8 points) The extent to which the applicant met or exceeded its funded objectives with regard to project participants as demonstrated by the number of participants who—

(i) Attained a baccalaureate degree;

(ii) Enrolled in a postbaccalaureate program; and

(iii) Attained a doctoral level degree.

(Authority: 20 U.S.C. 1070a-11 and 1070a-15)

§ 647.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233 for new grants; and

(2) 34 CFR 75.253 for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant beginning in fiscal year 1995 at the lesser of—

(1) \$190,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a-11)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 647.30 What are allowable costs?

Allowable project costs, not specifically covered by 34 CFR Part 74, may include the following costs reasonably related to carrying out a McNair project:

(a) Activities of an academic or scholarly nature, such as trips to institutions of higher education offering doctoral programs, and special lectures, symposia, and professional conferences, which have as their purpose the encouragement and preparation of project participants for doctoral studies.

(b) Stipends of up to \$2,400 per year for students engaged in research internships, provided that the student has completed the sophomore year of

study at an eligible institution before the internship begins.

(c) Necessary tuition, room and board, and transportation for students engaged in research internships during the summer.

(d) Purchase of computer hardware, computer software, or other equipment for student development, project administration, and recordkeeping, if the applicant demonstrates to the Secretary's satisfaction that the equipment is required to meet the objectives of the project more economically or efficiently.

§ 647.31 What are unallowable costs?

Costs that may not be charged against a grant under this program include the following:

(a) Payment of tuition, stipends, test preparation and fees or any other form of student financial support to staff or participants not expressly allowed under § 647.30.

(b) Construction, renovation, and remodeling of any facilities.

(Authority: 20 U.S.C. 1070a-5)

§ 647.32 What other requirements must a grantee meet?

(a) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each student before the student is selected to participate. A grantee does not have to redetermine a student's

eligibility once the student has been determined eligible in accordance with the provisions of § 647.3; and

(2) A grantee shall determine the status of a low-income individual on the basis of the documentation described in section 402A(e) of the HEA.

(b) *Recordkeeping.* For each student, a grantee shall maintain a record of—

(1) The basis for the grantee's determination that the student is eligible to participate in the project under § 647.3;

(2) The individual needs assessment;

(3) The services provided to the participant; and

(4) The specific educational progress made by the student during and after participation in the project.

(c) *Other reporting requirements.* A grantee shall submit to the Secretary reports and other information as requested in order to demonstrate program effectiveness.

(d) *Project director.* A grantee shall designate a project director who has—

(1) Authority to conduct the project effectively; and

(2) Appropriate professional qualifications, experience and administrative skills to effectively fulfill the objectives of the project.

(Authority: 20 U.S.C. 1070a-15)

[FR Doc. 94-20892 Filed 8-24-94; 8:45 am]

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Thursday
August 25, 1994

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Suspension of Certain Aircraft Operations
From the Transponder With Automatic
Pressure Altitude Reporting Capability
Requirement; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26242, Notice No. 94-28]

RIN 2120-AF30

Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to reinstate as SFAR 62-1 and modify expired Special Federal Aviation Regulation (SFAR) No. 62, which suspended certain provisions of the regulations that require the installation and use of automatic altitude reporting (Mode C) transponders. On December 5, 1990, the FAA published SFAR No. 62, which suspended the Mode C transponder requirement for certain operations to and from specific outlying airports located within 30 miles of a terminal control area (Class B airspace area) primary airport (the Mode C Veil). The operations and routings specified in SFAR No. 62 included operations within a 2 nautical mile radius of the designated airports and along a direct route between those airports and the outer boundary of the Mode C veil. No airports were excluded from the Mode C transponder requirement if those airports were primarily served by aircraft required to install and operate Traffic Alert and Collision Avoidance Systems (TCAS). SFAR No. 62 was issued with an expiration date of December 30, 1993, to allow sufficient time to upgrade ATC radar systems at the Class B airspace areas listed in the SFAR. Scheduled radar system upgrades have not been completed and operationally assessed in all of the Class B airspace areas. This notice proposes to reinstate the previous exclusions at those Class B airspace areas that have not attained improved radar coverage, amend the list of exempted airports affected by the movement of the Denver Class B airspace and Mode C veil associated with the closing of the Stapleton International Airport and opening of the Denver International Airport, Denver CO, and reinstate and amend the previous exclusions in the 4 Class B airspace areas that have attained improved radar coverage.

DATES: Comments must be received on or before October 11, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-200), Airspace Docket No. 26242, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Crum, Air Traffic Rules Branch (ATP-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Comments Invited**

The original SFAR No. 62 was effective on December 5, 1990, and provided access for aircraft without operating Mode C transponders to specified outlying airports located within 30 miles of a Class B airspace area primary airport. The FAA invites comments from users regarding the effectiveness of this SFAR, and the number of aircraft operators who have benefitted from this SFAR.

Interested parties should submit 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 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 Docket No. 26242." The postcard will be date/time stamped and returned to the commenter. 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 also be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Amendment 91-78 to part 91 of the Federal Aviation Regulations (35 FR 7782), which provided for the establishment of Terminal Control Areas (TCA's). On June 21, 1988, the FAA published the Mode C final rule (53 FR 23356). The Mode C rule requires, in part, that aircraft operating within 30 miles of a Class B airspace area (formerly known as TCA) primary airport (the Mode C veil) to be equipped with an operable Mode C transponder.

On December 17, 1991, the FAA published the airspace reclassification final rule (56 FR 65638). Specifically applicable to this NPRM is the reclassification of TCA airspace into Class B airspace, effective September 16, 1993. Nevertheless, the FAA did not modify any of the Mode C veils under the airspace reclassification final rule.

Background

As a result of regulatory proceedings initiated under Notice 88-2 (53 FR 4306, February 12, 1988), no person may operate an aircraft in the Mode C veil unless that aircraft is equipped with an operable Mode C transponder. However, aircraft otherwise authorized or directed by ATC; aircraft not originally certificated with an engine-driven electrical system or not subsequently certified with such a system installed; balloons; and gliders are excluded from the Mode C requirement in the veil.

In response to over 65,000 comments received to Notice 88-2, the FAA stated

that it would consider a means of providing access to outlying airports within the Mode C veil for those aircraft not equipped with an operable Mode C transponder; and that access would be allowed only to the extent that operations without an operable Mode C transponder would be consistent with maintaining adequate safety.

SFAR No. 62 was proposed (55 FR 21722; May 25, 1990) to permit the operation of aircraft to and from designated airports within the Mode C veil without an operable Mode C transponder. When SFAR No. 62 was adopted (55 FR 50302; December 5, 1990), the FAA designated 306 airports, within 24 Mode C veils, at which the Mode C requirement would be suspended. SFAR No. 62 allowed for the operation of aircraft not equipped with an operable Mode C transponder in the airspace at or below the altitude specified for the airport and within 2-nautical miles of the center of the airport or along the most direct and expeditious routing (or on a routing directed by ATC) between that airport and the outer boundary of the Mode C veil, consistent with established traffic patterns, noise abatement procedures, and safety.

Prior to the adoption of SFAR No. 62, any requests to deviate from the Mode C transponder requirements were handled by ATC facilities on a case-by-case basis. If approved, the ATC authorization specified all restrictions or conditions necessary to ensure that the operation could be conducted safely, without any impact on other operations. Although there were circumstances that were applicable to many operators (such as operations to and from a specified outlying airport or operations conducted in areas of no radar coverage), ATC authorizations had to be requested and granted on an individual basis. This aspect of the ATC authorization process proved to be inefficient and time consuming for both operators and ATC staff.

The promulgation of SFAR No. 62 proved to be beneficial for the affected aircraft and ATC, in that it provided access to outlying airports with a minimum of ATC involvement without degrading the safety benefits of the Mode C rule. The 3-year duration of SFAR No. 62 was expected to allow for the completion or ATC radar system upgrades at each Class B airspace area primary airport. An operational evaluation was to be completed to determine the extent of the improved radar coverage within each Mode C veil achieved as a result of the radar system upgrades. It was anticipated that if extensions to the suspension of the

Mode C transponder requirement for operations at certain airports were required, each extension would be addressed on a site-by-site basis. During the period that SFAR No. 62 was in effect, no known violations or derogations of safety were known to have occurred and no complaints were received by the FAA. Consequently, the FAA still believes, as stated in the original promulgation of SFAR No. 62, that the operation of an aircraft not equipped with a Mode C transponder within the Mode C veil can be accommodated safely, provided the operations are conducted outside ATC radar coverage, and are consistent with the restrictions delineated in the expired SFAR No. 62.

The Proposal

In support of the FAA's General Aviation Action Plan, which in part promotes increased access to airspace and eliminating unneeded equipment requirements for General Aviation (GA) aircraft, this notice proposes to reinstate and amend the former SFAR No. 62. This proposal will permit the operation of aircraft, without an operable Mode C transponder, in the airspace at or below the specified altitude and within a 2-nautical mile radius, or, if directed by ATC, within a 5-nautical mile radius, of an airport listed in section 2 of the SFAR; and in the airspace at or below the specified altitude along the most direct and expeditious routing, or on routing directed by ATC, between an airport listed in section 2 of this SFAR and the outer boundary of the Mode C veil overlying that airport, consistent with established traffic patterns, noise abatement procedures and safety.

This proposed SFAR and the amended altitude designations for each airport would not supersede the provisions of § 91.119, minimum safe altitudes. Routings to and from each airport are intentionally unspecified to permit the pilot to avoid operating near obstructions.

As of the date of this notice, only 10 of the 24 Mode C veils have commissioned the new radar systems. This notice proposes to reinstate, without change, the exclusions previously afforded to airports associated with the 14 Mode C veils that have not commissioned the new radar systems.

The FAA has conducted operational evaluations of the 10 sites that have commissioned the new radar systems to determine the extent of attained radar coverage improvement. Of the 10 sites evaluated, 6 experienced no increase in radar coverage at the altitudes and routing previously approved under

SFAR No. 62. The FAA proposes to reinstate the exclusions formerly provided for by SFAR No. 62 at these 6 sites without change. Four sites have experienced improvement in radar coverage, and this notice proposes the following changes to the altitudes at which operations by aircraft not equipped with an operable Mode C transponder can be accommodated at those sites:

Airports within a 30-nautical-mile radius of the Charlotte/Douglas International Airport.

Airport name	Former (AGL)	Proposed (AGL)
Arant Airport, Wingate, NC	2,500	2,000
Bradley Outernational Airport, China Grove, NC	2,500	1,500
Chester Municipal Airport, Chester, SC	2,500	1,600
China Grove Airport, China Grove, NC ...	2,500	1,500
Goodnight's Airport, Kannapolis, NC	2,500	1,500
Knapp Airport, Marshville, NC	2,500	2,000
Lake Norman Airport, Mooresville, NC	2,500	2,000
Lancaster County Airport, Lancaster, SC	2,500	1,600
Little Mountain Airport, Denver, NC ...	2,500	2,000
Long Island Airport, Long Island, NC ...	2,500	2,000
Miller Airport, Mooresville, NC	2,500	1,500
U S Heliport, Wingate, NC	2,500	1,600
Unity Aerodrome Airport, Lancaster, SC	2,500	1,900
Wilhelm Airport, Kannapolis, NC	2,500	1,900

Airports within a 30-nautical-mile radius of the Houston Intercontinental Airport and the William P. Hobby Airport.

Airport name	Former (AGL)	Proposed (AGL)
Ainsworth Airport, Cleveland, TX	1,200	1,000
Ausinia Ranch Airport, Texas City, TX	1,200	1,000
Bailes Airport, Angleton, TX	1,200	1,000
Biggin Hill Airport, Hockley, TX	1,200	1,000
Cleveland Municipal Airport, Cleveland, TX	1,200	1,000
Covey Trails Airport, Fulshear, TX	1,200	1,000
Creasy Airport, Santa Fe, TX	1,200	1,000

Airport name	Former (AGL)	Proposed (AGL)
Custom Aire Service Airport, Angleton, TX	1,200	1,000
Fay Ranch Airport, Cedar Lane, TX	1,200	1,000
Flying C Ranch Airport, Needville, TX	1,200	1,000
Freeman Property Airport, Katy, TX	1,200	1,000
Garrett Ranch Airport, Danbury, TX	1,200	1,000
Gum Island Airport, Dayton, TX	1,200	1,000
H & S Airfield Airport, Damon, TX	1,200	1,000
Harbican Airpark Airport, Katy, TX	1,200	1,000
Harold Freeman Farm Airport, Katy, TX	1,200	1,000
HHL Hitchcock Heliport, Hitchcock, TX	1,200	1,000
Hoffpaul Airport, Katy, TX	1,200	1,000
Horn-Katy Hawk International Airport, Katy, TX	1,200	1,000
Johnnie Volk Field Airport, Hitchcock, TX	1,200	1,000
King Air Airport, Katy, TX	1,200	1,000
Lake Bay Gall Airport, Cleveland, TX	1,200	1,000
Lake Bonanza Airport, Montgomery, TX	1,200	1,000
Lane Airpark Airport, Rosenberg, TX	1,200	1,000
Meyer Field Airport, Rosharon, TX	1,200	1,000
Prairie Aire Field Airport, Damon, TX	1,200	1,000
R W J Airpark Airport, Baytown, TX	1,200	1,000
Westheimer Air Park Airport, Houston, TX	1,200	1,000

Airports within a 30-nautical-mile radius of the Memphis International Airport.

Airport name	Former (AGL)	Proposed (AGL)
Bernard Manor Airport, Earle, AR	2,500	2,000
Holly Springs-Marshall County Airport, Holly Springs, MS	2,500	2,000
McNeely Airport, Earle, AR	2,500	2,000
Price Field Airport, Joiner, AR	2,500	2,000
Tucker Field Airport, Hughes, AR	2,500	2,000
Tunica Airport, Tunica, MS	2,500	2,000
Tunica Municipal Airport, Tunica, MS	2,500	2,000

Airports within a 30-nautical-mile radius of the Lambert/St. Louis International Airport.

Airport name	Former (AGL)	Proposed (AGL)
Blackhawk Airport, Old Monroe, MO	1,000	1,000
Lebert Flying L Airport, Lebanon, IL	1,000	1,000
Shafer Metro East Airport, St. Jacob, IL	1,000	*0
Sloan's Airport, Elsberry, MO	1,000	1,000
Wentzville Airport, Wentzville, MO	1,000	*0
Woodliff Airpark Airport, Foristell, MO	1,000	1,000

*The FAA proposes to remove the Shafer Metro East Airport (3K6) and the Wentzville Airport (M050) from the Lambert/St. Louis International Airport listing.

Additionally, the FAA proposes to further amend SFAR No. 62 by deleting the list of airports exempted from the provisions of the Mode C veil requirements for the Stapleton International Airport Class B airspace area Mode C veil and adding the following list of airports exempted from the provisions of the Mode C veil requirements for the Denver International Airport Class B airspace area Mode C veil:

Airports within a 30-nautical-mile radius of the Denver International Airport.

Airport name	Arpt ID	Alt. (AGL)
Air Dusters Inc., Airport, Roggen, CO	49CO	1,200
Bijou Basin Airport, Byers, CO	CD17	1,200
Boulder Municipal Airport, Boulder, CO	1V5	1,200
Bowen Farms No. 1 Airport, Littleton, CO	CO98	1,200
Bowen Farms No. 2 Airport, Strasburg, CO	3CO5	1,200
Carrera Airpark Airport, Mead, CO	93CO	1,200
Cartwheel Airport, Mead, CO	0CO8	1,200
Chaparral Airport, Byers, CO	CO18	1,200
Colorado Antique Field Airport, Niwot, CO	8CO7	1,200
Comanche Livestock Airport, Strasburg, CO	59CO	1,200
Dead Stick Ranch Airport, Kiowa, CO	18CO	1,200
Frederick-Firestone Air Strip Airport, Frederick, CO	CO58	1,200
Frontier Airstrip Airport, Mead, CO	84CO	1,200

Airport name	Arpt ID	Alt. (AGL)
Horseshoe Landings Airport, Franktown, CO	CO60	1,200
Hoy Airstrip Airport, Bennett, CO	76CO	1,200
J & S Airport, Bennett, CO	CD14	1,200
Kostrski Airport, Franktown, CO	43CO	1,200
Kugel-Strong Airport, Platteville, CO	27V	1,200
Land Airport, Keenesburg, CO	CO82	1,200
Lemons Private Strip Airport, Boulder, CO	CO10	1,200
Lindys Airpark Airport, Hudson, CO	7CO3	1,200
Parkland Airport, Erie, CO	7CO0	1,200
Pine View Airport, Elizabeth, CO	02V	1,200
Platte Valley Airport, Hudson, CO	18V	1,200
Rancho De Aereo Airport, Mead, CO	05CO	1,200
Reid Ranches Airport, Roggen, CO	7CO6	1,200
Singleton Ranch Airport, Byers, CO	68CO	1,200
Sky Haven Airport, Byers, CO	CO17	1,200
Spickard Farm Airport, Byers, CO	5CO4	1,200
Tri-County Airport, Erie, CO	48V	1,200
Westberg-Rosting Farms Airport, Roggen, CO	74CO	1,200
Yoder Airstrip Airport, Bennett, CO	CD09	1,200

Upon expiration of the proposed SFAR, [Insert date 3 years after date of publication of the final rule], the Mode C transponder requirement would become effective for aircraft operations to and from the designated airports. However, during the effective period of the SFAR, the FAA will continue to conduct field evaluations, as the remaining Class B airspace areas receive and commission the new radar systems, to reassess the radar coverage within the associated Mode C veil. Additionally, the FAA will explore the feasibility of making permanent exclusions based on safety, operational impact, and radar coverage. The public will be invited to provide comment on any such proposals through further notice published in the Federal Register.

Paperwork Reduction Act

This proposed rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with the U.S. obligations under the Convention on International Civil Aviation (ICAO), it is the FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. For this notice, the FAA has determined that this proposal, if adopted, would not present any difference.

Regulatory Evaluation Summary

The FAA has determined that this proposed rule is not a "significant regulatory action," as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this proposed rule are summarized below.

Overview

When SFAR No. 62 was adopted (December 1990), the FAA designated 306 airports located within the 24 Class B airspace Mode C veils at which the Mode C requirement would be temporarily suspended. SFAR No. 62 allowed aircraft operations into and out of these designated airports without an operable Mode C transponder if these operations were conducted at and below the altitude specified, within 2-nautical miles from the airport's center, and along a direct route (or as directed by ATC) between that airport and the outer boundary of the Mode C veil. In this evaluation, the term "Designated Airports" refers to those outlying airports located within the 24 Class B airspace areas Mode C veils where local airport operations were beyond or below ATC radar coverage and, as such, were temporarily suspended from Mode C requirements by the forerunner of this SFAR.

Benefits

This proposed rule is expected to generate potential benefits in the form of: (1) Increased convenience to pilots operating aircraft not equipped with operable Mode C transponders, and (2) enhanced operational efficiency to FAA air traffic control.

Prior to SFAR No. 62, aircraft not equipped with operable Mode C transponders could operate at an airport within a Mode C veil only after receiving ATC authorization. This requirement was valid at all airports within the Mode C veil, even those airports that were located beyond existing ATC radar coverage. Because ATC authorization can only be granted on a case-by-case basis, the process of obtaining ATC authorization can be inefficient and time consuming for

pilots, as well as the FAA. The benefit of this proposed rule would be temporary relief from the burden of obtaining individual ATC authorizations for those aircraft operations at airports located beyond existing radar coverage.

For FAA air traffic control, this proposed rule would provide benefits in the form of enhanced operational efficiency. Such enhanced efficiency would be the temporary relief of ATC from assigning authorizations, particularly during busy periods. This proposed rule would allow TAC to allocate temporarily its personnel and equipment resources to more productive functions.

Although the benefits of this proposed rule have not been quantified, they are expected to be large for both aircraft operators and the FAA.

Costs

This proposed rule is not expected to impose costs on the FAA or society. In addition, this proposed rule would not impose significant costs on the aviation community (namely, fixed based operators).

This proposed rule would not impose additional equipment or personnel costs to the FAA. The acquisition of new radar tracking systems is a routine cost of upgrading FAA equipment. No additional FAA personnel would be required, because the temporary suspension of the Mode C transponder requirement is expected to enhance air traffic control (ATC) operational efficiency by eliminating the need for ATC authorizations at the designated airports. This proposed rule would reduce the demand on ATC equipment and personnel resources.

This proposed rule is not expected to impose societal costs, in the form of reduced aviation safety. When the FAA initially published SFAR No. 62, which temporarily suspended the Mode C requirements at the Designated Airports, it did so on the basis that there was no ATC radar coverage at those Designated Airports. The regulatory evaluation prepared for that final rule concluded that there would not be any adverse impact on aviation safety, because the full intent of the Mode C rule had not been realized. Furthermore, such safety would not be realized until ATC radar coverage was extended to those designated airports, through the installation of the new ASR-9 radar.

Since the implementation of SFAR No. 62, ASR-9 radar has been commissioned at 10 of the 24 Class B airspace areas. Under this proposed rule, aviation safety would not be affected adversely for two reasons. First,

operations at those designated airports located within the Mode C veils of the 14 Class B airspace areas not utilizing the ASR-9 radar would be temporarily excluded from the Mode C requirements. Second, operations at those designated airports, located within the Mode C veils of the 10 Class B airspace areas now equipped with ASR-9 radar, would be subject to the requirements of the Mode C rule when conducted within that associated airspace covered by the extended ASR-9 radar coverage. Operations conducted at those same airports, but below the areas of ASR-9 radar coverage, would be exempt from the Mode C rule. The areas not covered by the ASR-9 radar would be defined by a specified ceiling altitude and extend down to the surface. For example, prior to the installation of ASR-9 radar, radar coverage excluded the airspace above Airport A, from a ceiling of 2000 feet AGL down to the ground. As the result of the installation of ASR-9 radar, the airspace above Airport A, which is not excluded from the enhanced ATC coverage, is from a ceiling of 1000 feet AGL down to the ground. Under this proposed rule, operations below 1000 feet AGL would be temporarily excluded from the Mode C requirements, since operations below the altitude of 1000 feet AGL are beyond ATC radar coverage. Thus, the FAA contends that access to certain outlying airports by aircraft without Mode C transponders can be accommodated without diminishing Mode C safety benefits, provided the operation is conducted outside radar coverage. When aircraft operations are confined exclusively to areas of no radar coverage, many of the safety benefits of the Mode C rule cannot be realized. Further enhancement of the radar tracking system is expected to increase radar coverage, thus extending the Mode C benefits to more areas outside of the current radar coverage.

For the aviation community, the FAA anticipates that this proposed rule would impose no significant costs on fixed base operators (FBO's). FBO's represent the most likely group to incur potential costs. When the FAA evaluated the potential cost impact of SFAR No. 62 on FBO's, it did so on the increased likelihood that some general aviation (GA) aircraft operators (without Mode C transponders) would relocate to airports outside of the Mode C veil from airports inside of the Mode C veil. If this relocation activity had materialized, FBO's inside of the Mode C veil would have incurred lost revenues from decreases in demand for mechanical repairs and related activities from some

GA aircraft operators. After SFAR No. 62 was issued as a notice, the FAA did not receive any comments from FBO's with regard to cost impacts. Therefore, with no cost impact comments received on SFAR No. 62, this evaluation concludes that the proposed rule would not have any significant cost impact on any FBO's.

Conclusion

This proposed rule is not expected to impose costs on either the FAA or society. In addition, this proposed rule would not impose any significant costs on the aviation community (FBO's). The FAA estimates that this proposed rule would generate benefits in the form of increased convenience to some GA aircraft operators and increased operational efficiency to FAA air traffic control. Thus, the FAA contends that this proposed rule is cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The types of small entities that could be potentially affected by the implementation of the proposed rule are air taxi operators and FBO's.

In terms of air taxi operators, no cost impacts are anticipated by this proposed rule. This assessment is based on the FAA's estimation that these operators are already equipped with Mode C transponders. They are, in all likelihood, based at airports within the Mode C veil which fall within the radar coverage of ATC.

In terms of FBO's, the FAA estimates that this proposed rule would not impose significant costs. This assessment is based on the belief that FBO's would not experience revenue losses from GA aircraft to airports outside of the Mode C veil or undesignated airports within the Mode C veil to designated airports specified in this proposed rule. Although the proposed rule provides access to a Mode C veil, the FAA believes that this proposed rule does not provide GA aircraft operators with much of an incentive to relocate. This assessment is further supported by the belief that the vast majority of those GA aircraft operators required to install Mode C transponders acquired them by December 30, 1990 (Phase II of the Mode C rule for Airport Radar Service Areas). Therefore, the FAA contends

that a regulatory flexibility analysis is not required because this proposed rule would not have a significant economic impact on substantial number of small entities.

International Trade Impact Assessment

This proposed rule would not have an effect on the sale of foreign aviation products or services in the United States, nor would not have an effect on the sale of U.S. products or services in foreign countries. This proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either. The proposed rule may impose insignificant costs on FBO's in the United States. However, FBO's in the U.S. do not compete directly with FBO's in foreign countries. Therefore, no competitive trade disadvantage is expected to impact FBO's.

Federalism Determination

This proposed rule would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this proposed regulation is not a "significant regulatory action" under Executive Order 12866. In addition the FAA certifies that this proposed regulation, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An initial Regulatory Flexibility Determination and International Trade Impact Assessment, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Federal Aviation Administration, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 91 of the Federal Aviation Regulation (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation (SFAR) No. 62, which expired on December 30, 1993, is reinstated as SFAR 62-1 and amended to read as follows:

Special Federal Aviation Regulation No. 62-1—Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement

Section 1. For purposes of this SFAR:

(a) The airspace within 30 nautical miles of a Class B airspace area primary airport, from the surface upward to 10,000 feet MSL, excluding the airspace designated as a Class B airspace area is referred to as the Mode C veil.

(b) Effective until [Insert date three years after date of publication of the final rule], the transponder with automatic altitude reporting capability requirements of § 91.215(b)(2) do not apply to the operation of an aircraft:

(1) In the airspace at or below the specified altitude and within a 2-nautical mile radius, or, if directed by ATC, within a 5-nautical mile radius, of an airport listed in Section 2 of this SFAR; and

(2) In the airspace at or below the specified altitude along the most direct and expeditious routing, or on a routing directed by ATC, between an airport listed in Section 2 of this SFAR and the outer boundary of the Mode C veil airspace overlying that airport, consistent with established traffic patterns, noise abatement procedures, and safety.

Section 2. Effective until [Insert date three years after date of publication of the final rule], airports at which the provisions of § 91.215(b)(2) do not apply.

(1) Airports within a 30-nautical mile radius of The William B. Hartsfield Atlanta International Airport.

Airport name	Arpt ID	Alt. (AGL)	Airport name	Arpt ID	Alt. (AGL)	Airport name	Arpt ID	Alt. (AGL)
Air Acres Airport, Woodstock, GA	5GA4	1,500	Taunton Municipal Airport, Taunton, MA	TAN	2,500	Olson Airport, Plato Center, IL	LL53	1,200
B&L Strip Airport, Hollonville, GA	GA29	1,500	Unknown Field Airport, Southborough, MA	1MA5	2,500	Redeker Airport, Milford, IL	IL85	1,200
Camfield Airport, McDonough, GA	GA36	1,500	(3) Airports within a 30-nautical mile radius of the Charlotte/Douglas International Airport.			Reid RLA Airport, Gilberts, IL	6IL6	1,200
Cobb County-McCollum Field Airport, Marietta, GA	RYY	1,500				Shamrock Beef Cattle Farm Airport, McHenry, IL	49LL	1,200
Covington Municipal Airport, Covington, GA	9A1	1,500	(4) Airports within a 30-nautical mile radius of the Chicago-O'Hare International Airport.			Sky Soaring Airport, Union, IL	55LL	1,200
Diamond R Ranch Airport, Villa Rica, GA	3GA5	1,500				(5) Airports within a 30-nautical mile radius of the Cleveland-Hopkins International Airport.			Waukegan Regional Airport, Waukegan, IL .....	UGN	1,200
Dresden Airport, Newnan, GA	GA79	1,500	Arant Airport, Wingate, NC	1NC6	2,000				Wormley Airport, Oswego, IL .....	85LL	1,200
Eagles Landing Airport, Williamson, GA	5GA3	1,500	Bradley Outernational Airport, China Grove, NC	NC29	1,500	(6) Airports within a 30-nautical mile radius of the Dallas/Fort Worth International Airport.		
Fagundes Field Airport, Haralson, GA	6GA1	1,500	Chester Municipal Airport, Chester, SC	9A6	1,600				Akron Fulton International Airport, Akron, OH .....	AKR	1,300
Gable Branch Airport, Haralson, GA	5GA0	1,500	China Grove Airport, China Grove, NC	76A	1,500	Bucks Airport, Newbury, OH	400H	1,300
Georgia Lite Flite Ultralight Airport, Acworth, GA	31GA	1,500	Goodnight's Airport, Kannapolis, NC	2NC8	1,500	Derecsky Airport, Auburn Center, OH	6OI0	1,300
Griffin-Spalding County Airport, Griffin, GA	6A2	1,500	Knapp Airport, Marshville, NC	3NC4	2,000	Hannum Airport, Streetsboro, OH	69OH	1,300
Howard Private Airport, Jackson, GA	GA02	1,500	Lake Norman Airport, Mooresville, NC	14A	2,000	Kent State University Airport, Kent, OH	1G3	1,300
Newnan Coweta County Airport, Newnan, GA	CCO	1,500	Lancaster County Airport, Lancaster, SC	LKR	1,600	Lost Nation Airport, Willoughby, OH	LNN	1,300
Peach State Airport, Williamson, GA	3GA7	1,500	Little Mountain Airport, Denver, NC	66A	2,000	Mills Airport, Mantua, OH	OH06	1,300
Poole Farm Airport, Oxford, GA	2GA1	1,500	Long Island Airport, Long Island, NC	NC26	2,000	Portage County Airport, Ravenna, OH	29G	1,300
Powers Airport, Hollonville, GA	GA31	1,500	Miller Airport, Mooresville, NC	8A2	1,500	Stoney's Airport, Ravenna, OH	OI32	1,300
S & S Landing Strip Airport, Griffin, GA	8GA6	1,500	U S Heliport, Wingate, NC	NC56	1,600	Wadsworth Municipal Airport, Wadsworth, OH	3G3	1,300
Shade Tree Airport, Hollonville, GA	GA73	1,500	Unity Aerodrome Airport, Lancaster, SC	SC76	1,900	(2) Airports within a 30-nautical mile radius of the General Edward Lawrence Logan International Airport.		
			Wilhelm Airport, Kannapolis, NC	6NC2	1,900				Airport name	Arpt ID	Alt. (AGL)
			(2) Airports within a 30-nautical mile radius of the General Edward Lawrence Logan International Airport.			Aurora Municipal Airport, Chicago/Aurora, IL	ARR	1,200
						Airport name	Arpt ID	Alt. (AGL)	Beggs Ranch/Aledo Airport, Aledo, TX ..	TX15	1,800
Berlin Landing Area Airport, Berlin, MA ..	MA19	2,500	Donald Alfred Gade Airport, Antioch, IL ..	IL11	1,200	Belcher Airport, Sanger, TX	TA25	1,800
Hopedale Industrial Park Airport, Hopedale, MA	1B6	2,500	Dr. Joseph W. Esser Airport, Hampshire, IL	7IL6	1,200	Bird Dog Field Airport, Krum, TX	TA48	1,800
Larson's SPB, Tyngsboro, MA	MA74	2,500	Flying M. Farm Airport, Aurora, IL	IL20	1,200	Boe-Wrinkle Airport, Azle, TX	28TS	1,800
Moore AAF, Ayer/Fort Devens, MA	AYE	2,500	Fox Lake SPB, Fox Lake, IL	IS03	1,200	Flying V Airport, Sanger, TX	71XS	1,800
New England Gliderport, Salem, NH	NH29	2,500	Graham SPB, Crystal Lake, IL	IS79	1,200	Graham Ranch Airport, Celina, TX	TX44	1,800
Plum Island Airport, Newburyport, MA ..	2B2	2,500	Herbert C. Mass Airport, Zion, IL	IL02	1,200	Haire Airport, Bolivar, TX	TX33	1,800
Plymouth Municipal Airport, Plymouth, MA	PYM	2,500	Landings Condominium Airport, Romeoville, IL	C49	1,200	Hartlee Field Airport, Denton, TX	1F3	1,800
			Lewis University Airport, Romeoville, IL ..	LOT	1,200	Hawkin's Ranch Strip Airport, Rhome, TX ..	TA02	1,800
			McHenry Farms Airport, McHenry, IL ..	44IL	1,200	Horseshoe Lake Airport, Sanger, TX	TE24	1,800

Airport name	Arpt ID	Alt. (AGL)	Airport name	Arpt ID	Alt. (AGL)	Airport name	Arpt ID	Alt. (AGL)
Ironhead Airport, Sanger, TX	T58	1,800	Bowen Farms No. 2 Airport, Strasburg, CO	3CO5	1,200	Brighton Airport, Brighton, MI	45G	1,400
Kezer Air Ranch Airport, Springtown, TX	61F	1,800	Carrera Airpark Airport, Mead, CO	93CO	1,200	Cackleberry Airport, Dexter, MI	2MI9	1,400
Lane Field Airport, Sanger, TX	58F	1,800	Cartwheel Airport, Mead, CO	0CO8	1,200	Erie Aerodome Airport, Erie, MI	05MI	1,400
Log Cabin Airport, Aledo, TX	TX16	1,800	Chaparral Airport, Byers, CO	CO18	1,200	Ham-A-Lot Field Airport, Petersburg, MI	MI48	1,400
Lone Star Airpark Airport, Denton, TX	T32	1,800	Colorado Antique Field Airport, Niwot, CO	8CO7	1,200	Merillat Airport, Tecumseh, MI	34G	1,400
Rhyme Meadows Airport, Rhyme, TX	TS72	1,800	Comanche Livestock Airport, Strasburg, CO	59CO	1,200	Rossette Airport, Manchester, MI	75G	1,400
Richards Airport, Krum, TX	TA47	1,800	Dead Stick Ranch Airport, Kiowa, CO	18CO	1,200	Tecumseh Products Airport, Tecumseh, MI	0D2	1,400
Tallows Field Airport, Celina, TX	79TS	1,800	Frederick-Firestone Air Strip Airport, Frederick, CO	CO58	1,200	(9) Airports within a 30-nautical mile radius of the Honolulu International Airport.		
Triple S Airport, Aledo, TX	42XS	1,800	Frontier Airstrip Airport, Mead, CO	84CO	1,200	Airport Name	Arpt ID	Alt. (AGL)
Warshun Ranch Airport, Denton, TX	4TA1	1,800	Horseshoe Landings Airport, Franktown, CO	CO60	1,200	Dillingham Airfield Airport, Moluleia, HI	HDH	2,500
Windy Hill Airport, Denton, TX	46XS	1,800	Hoy Airstrip Airport, Bennett, CO	76CO	1,200	(10) Airports within a 30-nautical mile radius of the Houston Intercontinental Airport and the William P. Hobby Airport.		
Aero Country Airport, McKinney, TX	TX05	1,400	J & S Airport, Bennett, CO	CD14	1,200	Airport name	Arpt ID	Alt. (AGL)
Bailey Airport, Midlothian, TX	7TX8	1,400	Kostroski Airport, Franktown, CO	43CO	1,200	Ainsworth Airport, Cleveland, TX	0T6	1,000
Branson Farm Airport, Burleson, TX	TX42	1,400	Kugel-Strong Airport, Platteville, CO	27V	1,200	Ausinia Ranch Airport, Texas City, TX	TS50	1,000
Carroll Air Park Airport, De Soto, TX	F66	1,400	Land Airport, Keenesburg, CO	CO82	1,200	Bailes Airport, Angleton, TX	7R9	1,000
Carroll Lake-View Airport, Venus, TX	70TS	1,400	Lemons Private Strip Airport, Boulder, CO	CO10	1,200	Biggin Hill Airport, Hockley, TX	TX49	1,000
Eagle's Nest Estates Airport, Ovilla, TX	2T36	1,400	Lindys Airpark Airport, Hudson, CO	7CO3	1,200	Cleveland Municipal Airport, Cleveland, TX	6R3	1,000
Flying B Ranch Airport, Ovilla, TX	TS71	1,400	Parkland Airport, Erie, CO	7CO0	1,200	Covey Trails Airport, Fulshear, TX	80XS	1,000
Lancaster Airport, Lancaster, TX	LNC	1,400	Pine View Airport, Elizabeth, CO	02V	1,200	Creasy Airport, Santa Fe, TX	5TA5	1,000
Lewis Farm Airport, Lucas, TX	6TX1	1,400	Platte Valley Airport, Hudson, CO	18V	1,200	Custom Aire Service Airport, Angleton, TX	81D	1,000
Markum Ranch Airport, Fort Worth, TX	TX79	1,400	Rancho De Aereo Airport, Mead, CO	05CO	1,200	Fay Ranch Airport, Cedar Lane, TX	0T2	1,000
McKinney Municipal Airport, McKinney, TX	TKI	1,400	Reid Ranches Airport, Roggen, CO	7CO6	1,200	Flying C Ranch Airport, Needville, TX	XS25	1,000
O'Brien Airpark Airport, Waxahachie, TX	F25	1,400	Singleton Ranch Airport, Byers, CO	68CO	1,200	Freeman Property Airport, Katy, TX	61T	1,000
Phil L. Hudson Municipal Airport, Mesquite, TX	HQZ	1,400	Sky Haven Airport, Byers, CO	CO17	1,200	Garrett Ranch Airport, Danbury, TX	77XS	1,000
Plover Heliport, Crowley, TX	82Q	1,400	Spickard Farm Airport, Byers, CO	5CO4	1,200	Gum Island Airport, Dayton, TX	3T6	1,000
Venus Airport, Venus, TX	75TS	1,400	Tri-County Airport, Erie, CO	48V	1,200	H & S Airfield, Damon, TX	XS21	1,000
(7) Airports within a 30-nautical mile radius of the Denver International Airport.			Westberg-Rosling Farms Airport, Roggen, CO	74CO	1,200	Harbican Airpark Airport, Katy, TX	9XS9	1,000
Airport name	Arpt ID	Alt. (AGL)	Yoder Airstrip Airport, Bennett, CO	CD09	1,200	Harold Freeman Farm Airport, Katy, TX	8XS1	1,000
Air Dusters Inc., Airport, Roggen, CO ..	49CO	1,200	(8) Airports within a 30-nautical mile radius of the Detroit Metropolitan Wayne County Airport.			HHI Hitchcock Heliport, Hitchcock, TX	6TA5	1,000
Bijou Basin Airport, Byers, CO	CD17	1,200	Airport name	Arpt ID	Alt. (AGL)	Hoffpaur Airport, Katy, TX	59T	1,000
Boulder Municipal Airport, Boulder, CO ..	1V5	1,200	Al Meyers Airport, Tecumseh, MI	3TE	1,400			
Bowen Farms No. 1 Airport, Littleton, CO	CO98	1,200						

Airport name	Arpt ID	Alt. (AGL)	Airport name	Arpt ID	Alt. (AGL)	Airport name	Arpt ID	Alt. (AGL)
Horn-Katy Hawk International Airport, Katy, TX	57T	1,000	McComas-Lee's Summit Municipal Airport, Lee's Summit, MO	K84	1,000	Flying M Ranch Airport, Roberts, WI ...	78WI	1,200
Johnnie Volk Field Airport, Hitchcock, TX	37R	1,000	Mission Road Airport, Stilwell, KS	64K	1,000	Johnson Airport, Rockford, MN	MY86	1,200
King Air Airport, Katy, TX	55T	1,000	Northwood Airport, Holt, MO	2MO2	1,000	River Falls Airport, River Falls, WI	Y53	1,200
Lake Bay Gall Airport, Cleveland, TX	0T5	1,000	Plattsburg Airpark Airport, Plattsburg, MO	MO28	1,000	Rusmar Farms Airport, Roberts, WI ...	WS41	1,200
Lake Bonanza Airport, Montgomery, TX	33TA	1,000	Richards-Gebaur Airport, Kansas City, MO	GVW	1,000	Waldref SPB, Forest Lake, MN	9Y6	1,200
Lane Airpark Airport, Rosenberg, TX	T54	1,000	Rosecrans Memorial Airport, St. Joseph, MO	STJ	1,000	Ziermann Airport, Mayer, MN	MN71	1,200
Meyer Field Airport, Rosharon, TX	TA33	1,000	Runway Ranch Airport, Kansas City, MO	2MO9	1,000			
Prairie Aire Field Airport, Damon, TX	4TA0	1,000	Sheller's Airport, Tonganoxie, KS	11KS	1,000			
R W J Airpark Airport, Baytown, TX	54TX	1,000	Shomin Airport, Oskaloosa, KS	0KS1	1,000			
Westheimer Air Park Airport, Houston, TX	5TA4	1,000	Stonehenge Airport, Williamstown, KS ..	71KS	1,000			
			Threshing Bee Airport, McLouth, KS ..	41K	1,000			

(11) Airports within a 30-nautical mile radius of the Kansas City International Airport.

Airport name	Arpt ID	Alt. (AGL)
Amelia Earhart Airport, Atchison, KS ..	K59	1,000
Booze Island Airport, St. Joseph, MO	64MO	1,000
Cedar Air Park Airport, Olathe, KS	51K	1,000
D'Field Airport, McLouth, KS	KS90	1,000
Dorei Airport, McLouth, KS	K69	1,000
East Kansas City Airport, Grain Valley, MO	3GV	1,000
Excelsior Springs Memorial Airport, Excelsior Springs, MO	3EX	1,000
Flying T Airport, Oskaloosa, KS	7KS0	1,000
Hermon Farm Airport, Gardner, KS	KS59	1,000
Hillside Airport, Stilwell, KS	63K	1,000
Independence Memorial Airport, Independence, MO	3IP	1,000
Johnson County Executive Airport, Olathe, KS	OJC	1,000
Johnson County Industrial Airport, Olathe, KS	IXD	1,000
Kimray Airport, Plattsburg, MO	7MO7	1,000
Lawrence Municipal Airport, Lawrence, KS	LWC	1,000
Martins Airport, Lawson, MO	21MO	1,000
Mayes Homestead Airport, Polo, MO ..	37MO	1,000

(12) Airports within a 30-nautical mile radius of the McCarran International Airport.

Airport name	Arpt ID	Alt. (AGL)
Sky Ranch Estates Airport, Sandy Valley, NV	3L2	2,500

(13) Airports within a 30-nautical mile radius of the Memphis International Airport.

Airport name	Arpt ID	Alt. (AGL)
Bernard Manor Airport, Earle, AR	65M	2,000
Holly Springs-Marshall County Airport, Holly Springs, MS	M41	2,000
McNeely Airport, Earle, AR	M63	2,000
Price Field Airport, Joiner, AR	80M	2,000
Tucker Field Airport, Hughes, AR	78M	2,000
Tunica Airport, Tunica, MS	30M	2,000
Tunica Municipal Airport, Tunica, MS	M97	2,000

(14) Airports within a 30-nautical mile radius of the Minneapolis-St. Paul International World-Chamberlain Airport.

Airport name	Arpt ID	Alt. (AGL)
Belle Plaine Airport, Belle Plaine, MN ...	7Y7	1,200
Carleton Airport, Stanton, MN	SYN	1,200
Empire Farm Strip Airport, Bongards, MN	MN15	1,200

(15) Airports within a 30-nautical mile radius of the New Orleans International/Moisant Field Airport.

Airport name	Arpt ID	Alt. (AGL)
Bollinger SPB, Larose, LA	L38	1,500
Clovelly Airport, Cut Off, LA	LA09	1,500

(16) Airports within a 30-nautical mile radius of the John F. Kennedy International Airport, the La Guardia Airport, and the Newark International Airport.

Airport name	Arpt ID	Alt. (AGL)
Allaire Airport, Belmar/Farmingdale, NJ	BLM	2,000
Cuddihy Landing Strip Airport, Freehold, NJ	NJ60	2,000
Ekdahl Airport, Freehold, NJ	NJ59	2,000
Fla-Net Airport, Nelcong, NJ	0NJ5	2,000
Forrestal Airport, Princeton, NJ	N21	2,000
Greenwood Lake Airport, West Milford, NJ	4N1	2,000
Greenwood Lake SPB, West Milford, NJ	6NJ7	2,000
Lance Airport, Whitehouse Station, NJ	6NJ8	2,000
Mar Bar L Farms, Englishtown, NJ	NJ46	2,000
Peekskill SPB, Peekskill, NY	7N2	2,000
Peters Airport, Somerville, NJ	4NJ8	2,000
Princeton Airport, Princeton/Rocky Hill, NJ	39N	2,000
Solberg-Hunterdon Airport, Readington, NJ	N51	2,000

(17) Airports within a 30-nautical mile radius of the Orlando International Airport.

Airport name	Arpt ID	Alt. (AGL)
Arthur Dunn Air Park Airport, Titusville, FL	X21	1,400
Space Center Executive Airport, Titusville, FL	TIX	1,400

(18) Airports within a 30-nautical mile radius of the Philadelphia International Airport.

Airport name	Arpt ID	Alt. (AGL)
Ginns Airport, West Grove, PA	78N	1,000
Hammonon Municipal Airport, Hammonon, NJ	N81	1,000
Li Calzi Airport, Bridgeton, NJ	N50	1,000
New London Airport, New London, PA ...	N01	1,000
Wide Sky Airpark Airport, Bridgeton, NJ	N39	1,000

(19) Airports within a 30-nautical mile radius of the Phoenix Sky Harbor International Airport.

Airport Name	Arpt. ID	Alt. (AGL)
Ak Chin Community Airfield Airport, Maricopa, AZ	E31	2,500
Boulais Ranch Airport, Maricopa, AZ	9E7	2,500
Estrella Sailport, Maricopa, AZ	E68	2,500
Hidden Valley Ranch Airport, Maricopa, AZ	AZ17	2,500
Millar Airport, Maricopa, AZ	2AZ4	2,500
Pleasant Valley Airport, New River, AZ	AZ05	2,500
Serene Field Airport, Maricopa, AZ	AZ31	2,500
Sky Ranch Carefree Airport, Carefree, AZ	E18	2,500
Sycamore Creek Airport, Fountain Hills, AZ	0AS0	2,500
University of Arizona, Maricopa Agricultural Center Airport, Maricopa, AZ	3AZ2	2,500

(20) Airports within a 30-nautical-mile radius of the Lambert/St. Louis International Airport.

Airport Name	Arpt. ID	Alt. (AGL)
Blackwall Airport, Old Monroe, MO	6MO0	1,000
Lebert Flying L Airport, Lebanon, IL ...	3H5	1,000
Sloan's Airport, Elsberry, MO	0MO8	1,000
Woodlift Airpark Airport, Foristell, MO	98MO	1,000

(21) Airports within a 30-nautical-mile radius of the Salt Lake City International Airport.

Airport Name	Arpt. ID	Alt. (AGL)
Bolinder Field-Tooole Valley Airport, Tooole, UT	TVY	2,500
Cedar Valley Airport, Cedar Fort, UT	UT10	2,500
Morgan County Airport, Morgan, UT ...	42U	2,500
Tooole Municipal Airport, Tooole, UT	U26	2,500

(22) Airports within a 30-nautical mile radius of the Seattle-Tacoma International Airport.

Airport name	Arpt ID	Alt. (AGL)
Firstair Field Airport, Monroe, WA	WA38	1,500
Gower Field Airport, Olympia, WA	6WA2	1,500
Harvey Field Airport, Snohomish, WA	S43	1,500

(23) Airports within a 30-nautical mile radius of the Tampa International Airport.

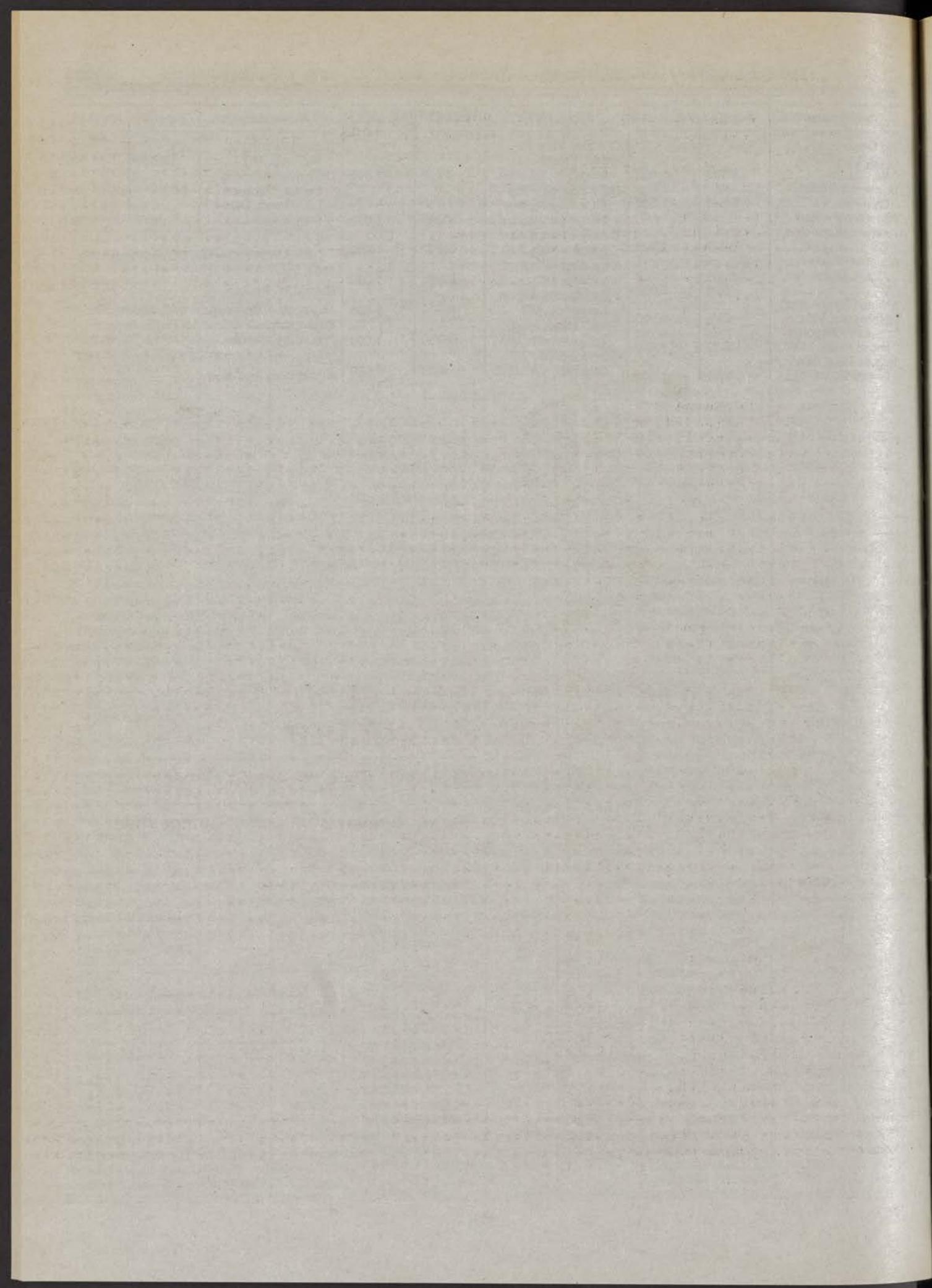
Airport name	Arpt ID	Alt. (AGL)
Hernando County Airport, Brooksville, FL	BKV	1,500
Lakeland Municipal Airport, Lakeland, FL	LAL	1,500
Zephyrhills Municipal Airport, Zephyrhills, FL	ZPH	1,500

(24) Airports within a 30-nautical mile radius of the Washington National Airport, Andrews Air Force Base Airport, Baltimore-Washington International Airport, and Dulles International Airport.

Airport name	Arpt ID	Alt. (AGL)
Albrecht Airstrip Airport, Long Green, MD	MD48	2,000
Armocost Farms Airport, Hampstead, MD	MD38	2,000
Barnes Airport, Lisbon, MD	MD47	2,000
Bay Bridge Airport, Stevensville, MD ...	W29	2,000
Carroll County Airport, Westminster, MD	W54	2,000
Castle Marina Airport, Chester, MD	OW6	2,000
Clearview Airpark Airport, Westminster, MD	2W2	2,000
Davis Airport, Laytonsville, MD	W50	2,000
Fallston Airport, Fallston, MD	W42	2,000

Airport name	Arpt ID	Alt. (AGL)
Faux-Burhans Airport, Frederick, MD	3MDO	2,000
Forest Hill Airport, Forest Hill, MD	MD31	2,000
Fort Detrick Heliport, Fort Detrick (Frederick), MD	MD32	2,000
Frederick Municipal Airport, Frederick, MD	FDK	2,000
Fremont Airport, Kemptown, MD	MD41	2,000
Good Neighbor Farm Airport, Unionville, MD	MD74	2,000
Happy Landings Farm Airport, Unionville, MD	MD73	2,000
Harris Airport, Still Pond, MD	MD69	2,000
Hybarc Farm Airport, Chestertown, MD ..	MD19	2,000
Kennerley Airport, Church Hill, MD	MD23	2,000
Kentmorr Airpark Airport, Stevensville, MD	3W3	2,000
Montgomery County Airpark Airport, Gaithersburg, MD ..	GAI	2,000
Phillips AAF, Aberdeen, MD	APG	2,000
Pond View Private Airport, Chestertown, MD	OMD4	2,000
Reservoir Airport, Finksburg, MD	1W8	2,000
Scheeler Field Airport, Chestertown, MD	OW7	2,000
Stolcrest STOL, Urbana, MD	MD75	2,000
Tinsley Airstrip Airport, Butler, MD	MD17	2,000
Walters Airport, Mount Airy, MD	OMD6	2,000
Waredaca Farm Airport, Brookeville, MD	MD16	2,000
Weide AAF, Edgewood Arsenal, MD ..	EDG	2,000
Woodbine Gliderport, Woodbine, MD	MD78	2,000
Wright Field Airport, Chestertown, MD ..	MD11	2,000
Aviacres Airport, Warrenton, VA	3VA2	1,500
Birch Hollow Airport, Hillsboro, VA	W60	1,500
Flying Circus Aerodrome Airport, Warrenton, VA	3VA3	1,500
Fox Acres Airport, Warrenton, VA	15VA	1,500
Hartwood Airport, Somerville, VA	8W8	1,500
Horse Feathers Airport, Midland, VA ..	53VA	1,500
Krens Farm Airport, Hillsboro, VA	14VA	1,500
Scott Airpark Airport, Lovettsville, VA	VA61	1,500

Airport name	Arpt ID	Alt. (AGL)	Airport name	Arpt ID	Alt. (AGL)	Airport name	Arpt ID	Alt. (AGL)
The Grass Patch Airport, Lovettsville, VA	VA62	1,500	Chimney View Airport, Fredericksburg, VA	5VA5	1,000	Stewart Airport, St. Michaels, MD	MD64	1,000
Walnut Hill Airport, Calverton, VA	58VA	1,500	Holly Springs Farm Airport, Nanjemoy, MD	MD55	1,000	US Naval Weapons Center, Dahlgren Lab Airport, Dahlgren, VA	NDY	1,000
Warrenton Air Park Airport, Warrenton, VA	9WO	1,500	Lanseair Farms Airport, La Plata, MD .	MD97	1,000			
Warrenton-Fauquier Airport, Warrenton, VA	W66	1,500	Nyce Airport, Mount Victoria, MD	MD84	1,000	Issued in Washington, DC on August 18, 1994.		
Whitman Strip Airport, Manassas, VA	OV5	1,500	Parks Airpark Airport, Nanjemoy, MD	MD54	1,000	Harold W. Becker,		
Buds Ferry Airport, Indian Head, MD ...	MD39	1,000	Pilots Cove Airport, Tompkinsville, MD .	MDO6	1,000	<i>Manager, Airspace Rules and Aeronautical Information Division, Air Traffic Rules & Procedures Service.</i>		
Burgess Field Airport, Riverside, MD	3W1	1,000	Quantico MCAF, Quantico, VA	NYG	1,000	[FR Doc. 94-20830 Filed 8-24-94; 8:45 am]		
						BILLING CODE 4910-13-M		



Federal Register

Thursday
August 25, 1994

Part VI

**Department of
Agriculture**

Cooperative State Research Service

**National Research Initiative Competitive
Grants Program; Notice**

DEPARTMENT OF AGRICULTURE**Cooperative State Research Service****National Research Initiative
Competitive Grants Program**

AGENCY: USDA, Cooperative State Research Service.

ACTION: Solicitation for applications for Fiscal Year 1995 National Research Initiative Competitive Grants Program (Competitive Research Grants Program).

Applications are invited for competitive grant awards in agricultural, forest, and related environmental sciences under the National Competitive Research Initiative Grants Program (NRICGP) administered by the Office of Grants and Program Systems, Cooperative State Research Service (CSRS), for fiscal year 1995.

Authority

The authority for this program is contained in Section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture (USDA). Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

It is expected that Congress, in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1995, will prohibit CSRS from using the funds available for the NRICGP for fiscal year 1995 to pay indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively-awarded research grants.

Applicable Regulations and Statutory Guidance

Regulations applicable to this program include, but are not limited to, the following: (a) the regulations governing the NRICGP, 7 CFR Part 3200, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015; (c) the USDA Uniform Administrative

Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR Part 3016; (d) Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by (7 U.S.C. 3101), which sets forth purposes that research supported by the NRICGP should address; and (e) Section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by (7 U.S.C. 3103), which defines "sustainable agriculture."

Project Types

The project types for which proposals are solicited include:

I. Conventional Projects

(a) Standard Research Grants: Research will be supported that is fundamental or mission-linked, conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual may apply. Proposals from scientists at non-United States organizations will not be considered for support.

(b) Conferences: Scientific meetings that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual is an eligible applicant in this area. Proposals from scientists at non-United States organizations will not be considered for support.

II. Agricultural Research Enhancement Awards

In order to contribute to the enhancement of research capabilities in the research program areas described herein, applications are solicited for Agricultural Research Enhancement Awards. Such applications may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Applications from scientists at non-United States organizations will not be considered for support. Agricultural Research Enhancement Awards are available in the following categories:

(a) Postdoctoral Fellowships: In accordance with Section 2(b)(3)(D) of

the 1965 Act, as amended, for individuals who have received their doctoral degree after January 1, 1992, and no later than June 15, 1995.

(b) New Investigator Awards: Pursuant to Section 2(b)(3)(E) of the 1965 Act, as amended, for investigators or co-investigators who have completed graduate or post-doctoral training, and are beginning their independent research careers.

(c) Strengthening Awards: Pursuant to Section 2(b)(3)(D) and (F) of the 1965 Act, as amended, proposals are solicited that request funds for Research Career Enhancement Awards, Equipment Grants, Seed Grants, or Strengthening Standard Research Project Awards.

Funding Categories for Fiscal Year 1995

CSRS is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following research categories (anticipated FY 1995 funding follows in parentheses):

- Natural Resources and the Environment (\$15.288 M)
- Nutrition, Food Quality, and Health (\$6.797 M)
- Plant Systems (\$33.962 M)
- Animal Systems (\$21.238 M)
- Markets, Trade, and Policy (\$3.386 M)
- New Products and Processes (\$6.359 M)
- Water Quality (\$4.311 M)
- Integrated Pest Management (\$2.126 M)
- Pesticide Impact Assessment (\$1.194 M)

Support for research areas listed below may be derived from one or more of the above funding categories based on the nature of the scientific topic to be supported.

Pursuant to the provisions of Section 2(b)(10) of the Act of August 4, 1965, as amended by Section 1615 of the FACT Act, no less than 10 percent (anticipated FY 1995 funding, \$9.466 M) of the available funds listed above will be made available for Agricultural Research Enhancement Awards (excluding New Investigator Awards), and no more than 2 percent (anticipated FY 1995 funding, \$1.893 M) of the available funds listed above will be made available for equipment grants. Further, no less than 30 percent (anticipated FY 1995 funding, \$28.399 M) of the funds listed above shall be made available for grants for research to be conducted by multidisciplinary teams, and no less than 20 percent (anticipated FY 1995 funding, \$18.933 M) of the funds listed above shall be

made available for grants for mission-linked research.

The funds appropriated as listed above will be used to support research grants in the following areas:

Natural Resources and the Environment

Plant Responses to the Environment
Forest/Range/Crop/Aquatic Ecosystems
Soils and Soil Biology
Water Resources Assessment and Protection

Nutrition, Food Safety, and Health

Improving Human Nutrition for Optimal Health
Ensuring Food Safety

Animals

Enhancing Animal Reproductive Efficiency
Improving Animal Growth and Development
Identifying Animal Genetic Mechanisms and Gene Mapping
Sustaining Animal Health and Well-Being

Pest Biology, Biological Control, and Integrated Pest Management

Plant Pathology
Entomology
Nematology
Weed Science
Biological Control Research
Assessing Pest Control Strategies

Plants

Genomes, Genetics, and Diversity
Plant Genome
Plant Genetic Mechanisms
Plant Growth and Development
Energy and Metabolism
Photosynthesis and Respiration
Nitrogen Fixation/Nitrogen Metabolism

Markets, Trade, and Rural Development

Markets and Trade

Rural Development

Enhancing Value and Use of Agricultural and Forest Products

Value-Added Products Research
Food Characterization/Process/Product Research
Non-Food Characterization/Process/Product Research
Biofuels Research
Improved Utilization of Wood and Wood Fiber

Agricultural Systems

The solicitation, which contains research topic descriptions, and the NRICGP Application Kit, which contains detailed instructions on how to apply and the requisite forms, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted NRICGP proposals for fiscal year 1994 or who have recently requested placement on the list for fiscal year 1995 will automatically receive a copy of the fiscal year 1995 solicitation and any supplements.

Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250-2245, telephone: (202) 401-5048.

Requests for solicitations and application materials may also now be made via Internet by sending a message with your name, complete mailing address, phone number, and materials that you are requesting to psb@darh.esusda.gov. Materials will be mailed as quickly as possible.

Materials Available on Internet Gopher

The following materials are available on the USDA Extension Service Internet Gopher (courtesy of the USDA Extension Service). To reach these items using a gopher, starting with "Gopher Servers in the USA," make the following selections:

"Washington, DC"

"Extension Service USDA Information"

"USDA and Other Federal Agency

* * *

NRICGP Program Description ("CSRS-NRI Program Description")

This document is available for the current fiscal year, and describes all of the NRICGP funding programs. To apply for a grant, it is also necessary to obtain the NRICGP Application Kit as described above (not available electronically).

NRICGP Abstracts of Funded Research ("CSRS-NRI Funded Research * * * Searchable")

The abstracts available on this searchable database are nontechnical abstracts written by the principal investigator of each individual grant, starting with Fiscal Year 1993. Each entry also includes the title, principal investigators, awardee institution, dollar amount, and proposal number for each grant. The first two digits of the proposal number indicate the fiscal year in which the proposal was submitted.

NRICGP Annual Reports ("CSRS-NRI Annual Reports")

The NRICGP Annual Reports starting with Fiscal Year 1993 are available. These reports include descriptions of the program concept, the authorization, policy, inputs to establish research needs, program execution, and outcomes, including relevant statistics. Also included are examples of recent research funded by the NRICGP.

The Extension Service USDA Gopher is on port 70 of zeus.esusda.gov.

To be considered for funding during FY 1995, proposals must be shipped by the following dates (as indicated by postmark or date on courier bill of lading):

Postmarked dates	Program areas	Contacts (202)
Nov. 14, 1994	Improving Human Nutrition for Optimal Health	205-0250
	Plant Genome	401-1901
	Plant Genetic Mechanisms	401-5042
Nov. 21, 1994	Plant Responses to the Environment	401-4871
Dec. 5, 1994	Plant Pathology	401-4310
	Photosynthesis and Respiration	401-6030
Dec. 12, 1994	Soils and Soil Biology	401-4082
Dec. 19, 1994	Water Resources Assessment and Protection	401-4504
	Biological Control Research	401-5114
Jan. 9, 1995	Entomology	401-5114
	Nematology	401-5114
	Weed Science	401-4310
	Sustaining Animal Health and Well-Being	401-6303
Jan. 17, 1995	Food Characterization/Process/Product Research	401-1952
	Non-Food Characterization/Process/Product Research	401-1952
	Biofuels Research	401-1952
	Enhancing Animal Reproductive Efficiency	401-6234

Postmarked dates	Program areas	Contacts (202)
Jan. 23, 1995	Forest/Range/Crop/Aquatic Ecosystems	401-4082
	Plant Growth and Development	401-5042
Jan. 30, 1995	Ensuring Food Safety	401-4399
	Assessing Pest Control Strategies	401-5114
	Agricultural Systems	401-1901
		401-6303
Feb. 6, 1995	Nitrogen Fixation/Nitrogen Metabolism	401-6030
	Markets and Trade	401-4772
	Rural Development	401-4425
Feb. 13, 1995	Improved Utilization of Wood and Wood Fiber	401-4871
Feb. 21, 1995	Improving Animal Growth and Development	205-0250
	Identifying Animal Genetic Mechanisms and Gene Mapping	401-4399
Feb. 27, 1995	Research Career Enhancement Awards	401-6234
	Equipment Grants	401-6234
	Seed Grants	401-6234

Done at Washington, DC, this 22 day of
August 1994.

William D. Carlson,

*Associate Administrator, Cooperative State
Research Service.*

[FR Doc. 94-20992 Filed 8-24-94; 8:45 am]

BILLING CODE 3410-22-M

federal register

Thursday
August 25, 1994

Part VII

Department of Education

National Institute on Disability and
Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Years 1995-1996 for Rehabilitation Engineering Research Centers.

SUMMARY: The Secretary proposes funding priorities for new Rehabilitation Engineering Research Centers (RERCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1995-1996. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before September 26, 1994.

ADDRESSES: All comments concerning these proposed priorities should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue, S.W., Switzer Building, Room 3424, Washington, D.C. 20202-2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205-8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-5516.

SUPPLEMENTARY INFORMATION: This notice contains three proposed priorities under the RERC program for research on children with orthopedic impairments, research on low vision and blindness, and research on universal telecommunications access.

Authority for the RERC program of NIDRR is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760-762). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

These proposed priorities support the National Education Goals that call for all children in America to start school ready to learn and for every adult

American to possess the skills necessary to compete in a global economy.

Under the regulations for this program (see 34 CFR 353.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

The Secretary will announce the final priorities in a notice in the *Federal Register*. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the *Federal Register* concurrent with or following the notice of final priorities.

Description of the Rehabilitation Engineering Research Center Program

RERCs carry out research or demonstration activities by: (1) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (a) solve rehabilitation problems and remove environmental barriers, and (b) study new or emerging technologies, products, or environments; (2) demonstrating and disseminating (a) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas, and (b) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or (3) facilitating service delivery systems change through (a) the development, evaluation, and dissemination of consumer-responsive and individual and family centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services, and (b) other scientific research to assist in meeting the employment and independent needs of individuals with severe disabilities.

The statute requires that each applicant for a grant, including an RERC, demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities. Each RERC must provide training opportunities to

individuals, including individuals with disabilities, to become researchers of rehabilitation technology and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations.

General

The Secretary proposes that the following requirements apply to the RERCs pursuant to these absolute priorities unless noted otherwise:

The RERC (except the RERC on universal telecommunications access) must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to the marketplace. The RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

The RERC must provide graduate-level research training to build capacity for engineering research in the rehabilitation field and to provide training in the applications of new technology to service providers and to individuals with disabilities and their families.

The RERC must develop all training materials in formats that will be accessible to individuals with various types of disabilities and communication modes, and widely disseminate findings and products to individuals with disabilities and their families and representatives, service providers, manufacturers and distributors, and other appropriate target populations.

The RERC must involve individuals with disabilities, persons from minority backgrounds with disabilities and, if appropriate, their family members in planning and implementing the research, development, and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

The RERC must share information and data, and, as appropriate, collaborate on research and training with other NIDRR-supported grantees including, but not limited to, the Americans with Disabilities Act (ADA) Disability and Business Technical Assistance Centers and other related RERCs and RRTC's. The RERC must work closely with the RERC on Technology Evaluation and Transfer at the State University of New York at Buffalo.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition

only applications that meet these absolute priorities.

Proposed Priority 1: Technology for Children With Orthopedic Disabilities

Background

Children who sustain traumatic injury, congenital anomalies or disease-induced anomalies may require prosthetic devices for missing limbs and orthotic devices for support and correction. Because children are growing rapidly, their prosthetic and orthotic devices must be designed to satisfy their special developmental needs. Too often, children's devices are scaled-down versions of adult devices.

New composite materials such as graphite, carbon fiber/carbon matrix, and fiber-reinforced ceramics have much to offer in prosthetic and orthotic design and practice because they are lightweight and durable. These factors are especially important for young children. However, composite materials require different manufacturing techniques than those used to form metals. The special configurations of these devices require special construction methods to produce devices that are safe and effective and competitively priced. In addition, most composite materials are hard to re-shape once they are made. This interferes with the fitting of devices that need to be adjusted for each child. Techniques for adjusting the shape of composite material devices need to be developed.

The neuromuscular and musculoskeletal development of growing children presents a significant challenge to those practitioners who provide children with prosthetic and orthotic devices. The devices must meet the prevailing needs of the child as well as adjust to the child's physical growth for a reasonably long period of time.

Most orthotic/prosthetic facilities have difficulty meeting these challenges. This is compounded by the fact that children who need these services are not evenly distributed throughout the country, and there are few service providers in some geographic areas. In addition, some practitioners and parents have limited access to a variety of devices. As a result, they are not in a position to sample a number of devices and select the one that is most appropriate. For example, the electric hand often appeals to a parent because it looks and acts like a real hand. An experimental fitting and practical comparison may persuade parents and child that benefits of hook design outweigh the cosmetic appeal of the electric hand. Inexpensive

opportunities to try out various prostheses need to be increased.

Proposed Priority

An RERC on technology and children with orthopedic disabilities shall—

- Develop and evaluate prosthetic and orthotic devices and related orthopedic procedures to meet the changing needs of growing children with neuromuscular and musculoskeletal impairments;
- Identify and assess the suitability of materials for use in these devices, including composite materials, considering the weight, strength, durability, adaptability, techniques of fabrication, cost and cosmetic acceptability;
- Develop improved methods for fabricating assistive devices for children, including those using composite materials;
- Evaluate the effectiveness of the systems of delivery of prosthetic and orthotic devices and closely related assistive technology to children with orthopedic impairments and develop recommendations to improve the current systems;
- Identify, develop, and evaluate models to enable children and families, as well as clinicians, to test prosthetic and orthotic devices for suitability prior to purchase;
- Identify the unique barriers to effective service delivery for prosthetic and orthotic devices facing families of children with orthopedic disabilities from minority backgrounds and develop strategies for overcoming those barriers; and
- Develop and implement strategies to increase the participation of children with orthopedic impairments and their parents in identifying user needs for prosthetic and orthotic devices and future areas of research.

Proposed Priority 2: Technology for Low Vision and Blindness Background

The National Center for Health Statistics and other authorities variously estimate the number of legally blind persons in the United States at 400,000 to 600,000, with another 1.4 million persons severely visually impaired. More than 10 million others have some visual impairment that cannot be further improved with corrective lenses. There are also large and rapidly increasing numbers of older individuals with impairments in contrast, binocularly, and adaptation, which significantly limit their performance in a wide variety of everyday tasks.

Technological innovations arising from the development of new scientific and medical knowledge can have a

positive impact on the lives of persons with low vision or blindness. While progress has been made regarding educational and vocational aids, optical amplifiers for low vision, orientation and mobility aids, and improved functional vision assessment, the need remains for improvements in these areas. For example, there is a need for new and innovative adaptive devices and development of systems engineering solutions to assist in our efforts to prepare all children with low vision and blindness to enter school ready to learn through early identification, monitoring, and treatment of visual impairments in neonates and infants.

A report of the Technology Research Working Group stemming from the NIDRR Project Directors Meeting in January 1994, identified the need for technology to improve access to visual displays, including flat panel displays and devices that use liquid crystal displays with low contrast. Research is also needed to maintain access to new products with advancing technology used in the home, workplace, and the community, such as solid state displays, keypads, and compact disc technology.

Vision-related research is needed to provide access to public facilities and mass transit. One of the main problems for persons who are blind or visually impaired is locating the facility in question (e.g., the bus stop, the subway entrance, ticket vending machine, telephone, bathrooms, etc.), or for orientation and mobility in large open areas or closed crowded spaces. New techniques for orientation and mobility will increase independent mobility for persons with blindness and low vision and decrease dependence on others for information and assistance. There is also a need to research, develop, and evaluate new and adaptive technology for persons with deaf-blindness, including tactile communications for devices such as emergency alarms, doorbells, and TDD phones.

Captioning technology and systems have been developed to provide audio information in visual form for persons who are deaf. A need exists for these same types of technology and systems to provide visual information in audio form for persons who are blind. As technology becomes increasingly graphic in nature, especially with the proliferation of computer-generated imagery, persons who are blind or who have low vision are increasingly at risk of being denied access to communication formats that are high in graphic content.

The feasibility of descriptive video has been investigated (Technical

Viability of Descriptive Video Services, June 1990, prepared for U.S. Department of Education, Office of Special Education Programs). A need exists to advance this technology in order to increase utilization of descriptive video by persons with low vision and blindness.

Proposed Priority

An RERC on low vision and blindness shall—

- Develop technology and methods for the detection, monitoring, and diagnosis of visual impairments in neonates and infants;
- Develop technology and methods for orientation and mobility in large open areas, including map reading, or crowded rooms for persons with blindness or low vision;
- Develop reduced-cost engineering solutions for increasing utilization of descriptive video;
- Develop technology and methods for improving access to visual displays, including flat panel displays (e.g., develop an adaptive template overlay technology for flat panel displays), found in the home, in the community, and at work such as automatic teller machines, home appliances, stereo equipment, and other devices that use LCD and LED technologies;
- Develop technology to maintain access to new products with advancing technology used in the home, workplace, and the community, such as solid state displays, keypads, and compact disc technology;
- Develop technology, such as emergency alarms, doorbells, and TDD phones, for persons with deaf-blindness to assist them in their activities of daily living;
- Develop technology and methods for improving access by persons with low vision or blindness to electronic information systems; and
- Develop an engineering design review method for application to proposed new technology projects that first considers commercially available or universal design interfaces before developing orphan technology for individuals with low vision and blindness.

Proposed Priority 3: Universal Telecommunications Access Background

Generally speaking, individuals with communication disabilities are those with a hearing, vision, speech, or neurological impairment, or a combination of such impairments. This priority proposes a program of research to promote greater access to emerging telecommunications technology by

individuals who have communication disabilities.

The coming decade is likely to bring advances in the way people communicate over distances. Access to greater bandwidth in the telephone network will lead to new advances, new devices and new services, such as switched video, TV-phones, or voice-to-print (Hinton, OSEP Final Report, "Advanced Technologies for Benefit to Persons with Sensory Disabilities," 1992). Already low-cost facsimile technology, answering machines, and voice mail are changing office communications. Computer-based information services abound, and telephones themselves are no longer standard. Persons with speech impairments are increasingly at a disadvantage with voice recognition and voice mail telecommunication systems because they are designed for standard speech which is clear and contains prosody information. The employment status, social, and family life of persons with disabilities could be affected by their access to advances in telecommunications.

The Americans with Disabilities Act (ADA) requires private employers, State and local governments, employment agencies, labor unions, and joint labor-management committees to provide reasonable accommodations to qualified individuals with disabilities, including those with communication disabilities. The ADA also requires State and local governments and public accommodations to make available auxiliary aids and services available where necessary to ensure effective communication.

Section 508 of the Rehabilitation Act of 1973, as amended, requires the Secretary, through the Director of the National Institute on Disability and Rehabilitation Research, and the Administrator of the General Services Administration, to "develop and establish guidelines for Federal agencies for electronic and information technology accessibility designed to ensure, regardless of the type of medium, that individuals with disabilities can produce information and data, and have access to information and data, comparable to the information and data, and access, respectively, of individuals who are not individuals with disabilities." Section 508 also provides that the guidelines "shall be revised, as necessary, to reflect technological advances or changes."

Past efforts in opening up developing technology to include access for persons with communication disabilities have been retrospective rather than prospective. Too frequently

telecommunications technologies are developed and become widely used before consumers who have communication disabilities become aware of the barriers they inadvertently contain. There is a need to affect the development of telecommunications technology, regulations, and standards in order to promote the incorporation of universal design features. Furthermore, there is a need to communicate information routinely to appropriate researchers, manufacturers, and other major contributors to communication technology that will contribute to the development of accessible telecommunications devices and systems. The need for special customer premised equipment will be reduced when international standards include features that make general-market products accessible to persons with communications disabilities.

Technological advances in the field of telecommunications, both in this country and internationally, have the potential to represent either new opportunities to disabled people or new barriers. This proposed RERC shall work closely with developers and manufacturers to enhance awareness of how emerging telecommunications developments can be modified to incorporate features that are directly responsive to the special needs of individuals with communication disabilities.

Applicants for this priority must demonstrate knowledge of the history and present roles of various Government agencies in telecommunications and electronic equipment accessibility, such as NIDRR, the Office of Special Education Programs (OSEP), the General Services Administration (GSA), the Federal Communications Commission (FCC), the National Science Foundation (NSF), the National Institute of Standards and Technology (NIST), and the National Telecommunications Information Administration (NTIA). Applicants must also demonstrate a knowledge of other NIDRR-funded programs studying issues of persons with communications impairments as well as related information databases, private national and international organizations, such as the United States Telephone Association and the Telecommunications Industries Association and the International Telecommunication Union's Technology unit (ITU-T).

Proposed Priority

An RERC on universal telecommunications access shall—

- Undertake a systems engineering analysis of emerging

telecommunications technology (such as signal compression, analog to digital systems transitions, satellite transmission, development of a national information infrastructure, telecommunity living, voice-to-print, Mosaic and Windows multimedia interfaces, etc.) to identify potential technological barriers and marketplace disincentives for persons with communication disabilities, and, based on these analyses, identify and develop universal design strategies to avoid these barriers;

- Develop an engineering design review methodology for dissemination to designers that encourages universal access designs in the development of technology;

- Develop or evaluate innovative applications of telecommunication technology to enable individuals with disabilities to be more independent at home, in the community, and at work, including, but not limited to, voice mail, videophones, cellular phones, descriptive video, speech clarification, etc;

- Identify and develop accessible design characteristics for telecommunications technology and services and provide appropriate industries and agencies with the results of this research;

- Develop engineering test methods and labeling requirements to facilitate development of improved technical specifications to enhance accessibility in equipment, services, signaling, transmission, and other aspects of telecommunications, with immediate emphasis on improving relay devices and cooperating with agencies responsible for national and international and other industry group standards;

- Develop model training programs and materials on the use and capacities of new and emerging telecommunications technologies; and

- In the second year of the grant, investigate applications of telecommunications technology to improve access to mainstream educational programming for students with disabilities, especially students in economically disadvantaged areas.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR Parts 350 and 353.

Program Authority: 29 U.S.C. 760-762.

Dated: August 22, 1994.

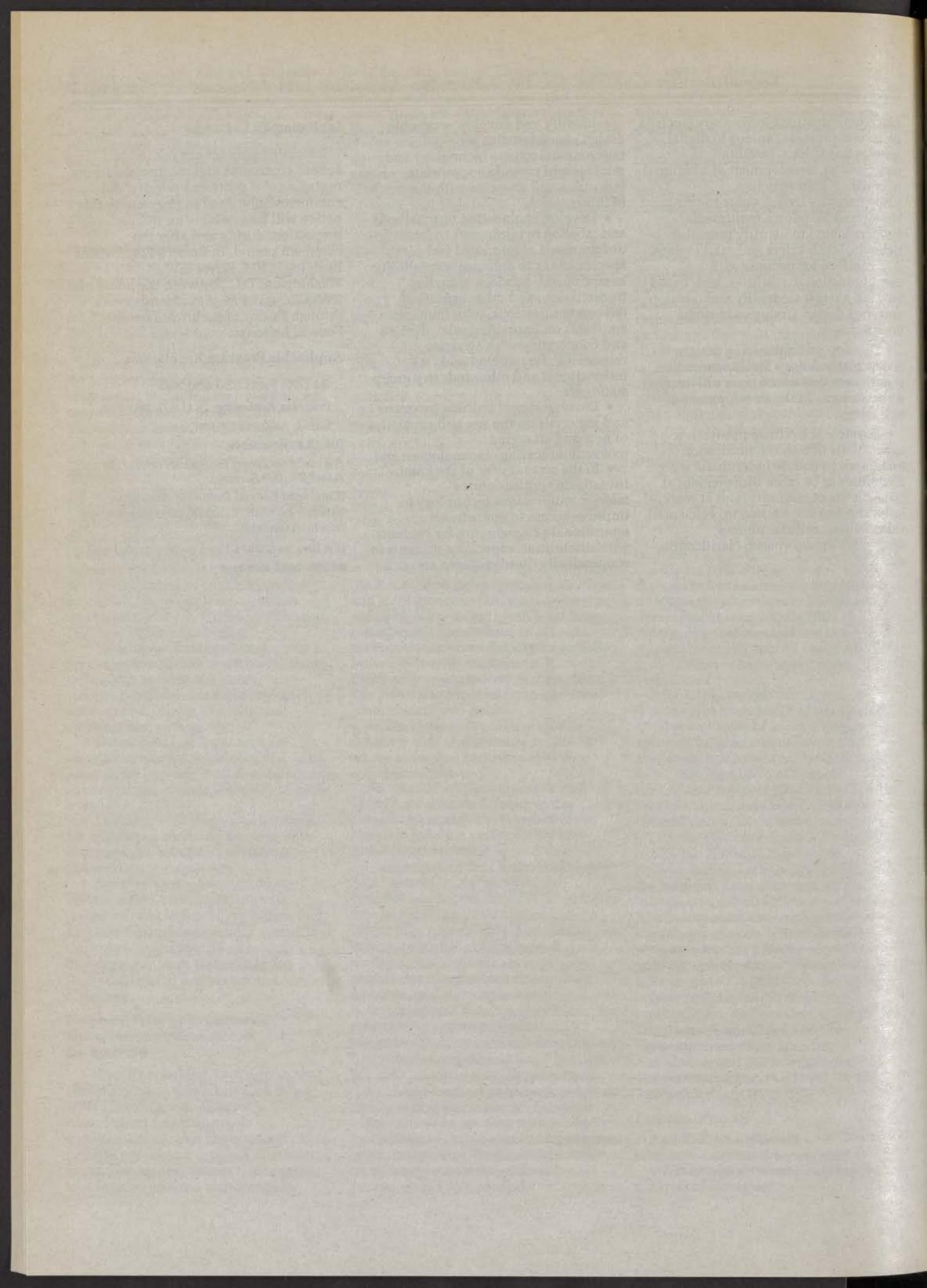
Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Research Centers).

[FR Doc. 94-20971 Filed 8-24-94; 8:45 am]

BILLING CODE 4000-01-P



Thursday
August 25, 1994

FRIDAY
AUGUST 26, 1994

Part VIII

**Department of the
Interior**

Bureau of Indian Affairs

25 CFR Part 46
Adult Education Program; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 46

RIN 1076-AA15

Adult Education Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing a new regulation that will establish procedures for the operation of the BIA's Adult Education Program.

DATES: Public comments must be received November 23, 1994.

ADDRESSES: Mail or hand deliver comments to the Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, Main Interior, Room 3530, Code 500, 1849 C St. NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ruby Cozad, at telephone number: (202) 208-4871.

SUPPLEMENTARY INFORMATION: On December 30, 1987, the Bureau published proposed Adult Education Program rules in the *Federal Register*. These regulations are being re-proposed because of the considerable passage of time since that publication. In January, 1991, the Bureau conducted consultation meetings with tribes, parents, school boards, and other interested parties concerning the Adult Education Program regulations. Oral testimony and written statements were received in the Office of Indian Education Programs until February 26, 1991. The Bureau considered the comments, objections, and suggested changes received in response to the 1987 *Federal Register* publication and the 1991 consultation meetings in re-proposing these regulations.

This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The information and record keeping requirements contained in this rule will be submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until approved by the Office of Management and Budget.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written

comments regarding the proposed rule to the location identified in the ADDRESSES section of this document.

The Department of the Interior has determined that this proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The Department of the Interior has determined that this regulation is a major rule under Executive Order 12866 and therefore will be reviewed by the Office of Management and Budget.

This rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These regulations will affect only the delivery of adult education services to eligible individual Indian adults. They will not have an impact on small entities as defined in the Act.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

In accordance with Executive Order 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects.

The primary author of this document is Mr. Harvey Jacobs, Education Specialist, Branch of Post Secondary Education, Office of Indian Education Programs.

The eligibility of Indian adults participating in this program is contained within 25 U.S.C. Section 2008(f)(1). The Bureau feels the definition "eligible Indian student" stated in the aforementioned statute should be extended to Indian adults participating in this program. Comments are especially desired on this section of eligibility.

List of Subjects in 25 CFR Part 46

Indian adults, Adult Education, Record keeping requirements. For the reasons set out in the preamble, a new Part 46 of Subchapter E of Chapter I, Title 25 of the Code of Federal Regulations is proposed to be added as set forth below.

PART 46—ADULT EDUCATION PROGRAM

Sec.

- 46.1 Purpose and scope.
- 46.2 Definitions.
- 46.3 Information collection.

- 46.10 Eligible activities.
- 46.20 Program requirements.
- 46.30 Records and reporting requirements.
- 46.40 Appeals.

Authority: 43 U.S.C. 1457; 25 U.S.C. 2, 9, and 13.

§ 46.1 Purpose and scope.

The Adult Education Program, administered under the authority of the Snyder Act of November 2, 1921 (25 U.S.C. 13), provides assistance to eligible Indian adults. The purpose of the program is to:

(a) improve educational opportunities for Indian adults who lack the level of literacy skills necessary for effective citizenship and productive employment;

(b) expand and improve existing programs for delivering adult education services, including delivery of these services to educationally disadvantaged Indian adults; and

(c) encourage the establishment of adult education programs that will:

(1) enable Indian adults to acquire the basic educational skills necessary for literate functioning;

(2) provide Indian adults with sufficient basic education to enable them to benefit from job training and retraining programs and to obtain and retain productive employment so that they might more fully enjoy the benefits and responsibilities of citizenship; and

(3) enable Indian adults, who so desire, to continue their education to at least the level of completion of secondary school.

§ 46.2 Definitions.

As used in this Part:

Adult means an individual who has attained the age of sixteen.

Adult Education means services or instruction below the college level for adults who:

(1) Lack sufficient mastery of basic educational skills to enable them to function effectively in society; or

(2) Do not have a certificate of graduation from a school providing secondary education and have not achieved an equivalent level of education.

Adult Basic Education (ABE) means instruction designed for an adult who:

(1) Has minimal competence in reading, writing, and computation;

(2) Is not sufficiently competent to speak, read, or write the English language to allow employment commensurate with the adult's real ability; or

(3) Is not sufficiently competent to meet the educational requirements of adult life.

(4) Is included in grades 0 through 8.

Adult Secondary Education means instruction designed for an adult who:

- (1) Is literate and can function in everyday life, but is not proficient; or
- (2) Does not have a certificate of graduation (or its equivalent) from a school providing secondary education.
- (3) Is included in grades 9 through 12.

Adult Education Office means the Area Office administering funds appropriated to the Bureau for Adult Education programs.

Assistant Secretary means the Assistant Secretary-Indian Affairs, Department of the Interior, or his/her designee.

Bureau means the Bureau of Indian Affairs.

Department of Education (ED) means the U.S. Department of Education.

Director means the Director, Office of Indian Education Programs, Bureau of Indian Affairs.

Indian means a person who is a member, or is at least a one-fourth degree Indian blood descendent of a member, of a federally recognized Indian tribe, eligible to receive services from the Department of the Interior.

Indian Priority System (IPS) means the Bureau's budget formulation process that allows direct tribal government involvement in the setting of relative priorities for local operating programs.

Indian tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 668) that is Federally recognized by the United States Government through the Secretary for the special programs and services by the Secretary to Indians because of their status as Indians.

Secretary means the Secretary of the Department of the Interior.

Service area means the geographic area served by the local Adult Education Program.

§ 46.3 Information collection.

(a) The information and record keeping requirements contained in this rule will be submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of information will not be required until it has been approved by the Office of Management and Budget.

(b) This information is being collected to determine eligibility of Indian applicants and will be used to prioritize programs. Response to this request is voluntary. No action will be taken

against you for refusing to supply the information requested. Public reporting burden for this form is estimated to average three hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the BIA Information Collection Clearance Officer, Division of Management Support, 1849 C Street, NW, Washington, DC 20245; and the Office of Management and Budget, Paperwork Reduction Project (OMB #), Washington, DC 20503.

§ 46.10 Eligible activities.

(a) Subject to the availability of funds, funds appropriated for the Bureau's Adult Education Program may be used to support local projects or programs designed to:

- (1) Enable Indian adults to acquire basic educational skills, including literacy;
- (2) Enable Indian adults to continue their education through the secondary school level;
- (3) Establish career education projects intended to improve employment opportunities; and
- (4) Provide educational services or instruction for elderly, disabled or incarcerated Indian adults;
- (5) Prepare individuals to benefit from occupational training; and
- (6) Teach employment-related skills.

(b) Funds should not be used to support programs designed solely to prepare Indian adults to enter a specific occupation or cluster of closely related occupations.

(c) The BIA's Adult Education Program shall be implemented for the benefit of eligible adult Indians, in accordance with a plan established by tribe(s) affected by the program. The tribe(s) may determine to set standards in addition to those established in this Part.

§ 46.20 Program requirements.

(a) The Adult Education Office shall implement the program or project that is designed to address the needs of the Indian adults in the service area. In determining the needs of Indian adults in the area, the Adult Education Office shall consider:

- (1) Elementary and secondary school dropout or absentee rates;
- (2) Average grade level completed;
- (3) Unemployment rates; or

(4) Other appropriate measures.

(b) The Adult Education Office, to ensure efforts that no duplication of services exists, shall identify other services in the area, including those offered by the tribe(s), that are designed to meet the same needs as those to be addressed by the project, and the number of Indian adults who receive those services.

(c) The Adult Education Office shall establish and maintain an evaluation plan.

(1) The plan shall be designed to measure the project's effectiveness in meeting each objective and the impact of the project on the adults involved; and

(2) The plan shall provide procedures for periodic assessment of the progress of the project and, if necessary, modification of the project as a result of that assessment.

(d) Subject to the availability of funds, the project is to be supported under the funding level established for Adult Education in the formulation of the budget under the Indian Priority System process.

§ 46.30 Records and reporting requirements.

(a) The Adult Education Office shall annually submit a report on the previous project year's activities to the Director. The Report shall include the following information:

(1) The type of eligible activity, under Sec. 46.10, conducted under the project(s).

(2) The number of participants acquiring the GED, high school diploma, and other certificates of performance.

(3) A narrative summary of the activities conducted under the project.

(4) Each Adult Education Office shall submit any records and information that the Director requires in connection with the administration of the program and shall comply with such requirements as the Director may find necessary to ensure the accuracy of such reports.

(b) [Reserved]

§ 46.40 Appeals.

A decision of any Bureau official under this Part can be appealed pursuant to the procedures in 25 CFR part 2.

Dated: June 3, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94-20970 Filed 8-24-94; 8:45 am]

BILLING CODE 4310-02-P

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H.R. 4426/P.L. 103-306

Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1995, and making supplemental appropriations for such programs for the fiscal year ending September 30, 1994, and for other purposes. (Aug. 23, 1994; 108 Stat. 1608; 51 pages)

H.R. 4453/P.L. 103-307

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H.J. Res. 131/P.L. 103-308

Designating December 7 of each year as "National Pearl Harbor Remembrance Day". (Aug. 23, 1994; 108 Stat. 1669; 1 page)

H.J. Res. 175/P.L. 103-309

Designating October 1994 as "Italian-American Heritage and Culture Month". (Aug. 23, 1994; 108 Stat. 1670; 2 pages)

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