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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 93–121–4]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting the amendatory language that appeared in a final rule published in the **Federal Register** on August 10, 1994, and effective on September 9, 1994 (59 FR 40794–40797, Docket No. 93–121–3). In amendatory language regarding a nonsubstantive editorial change to the fruits and vegetables regulations, we inadvertently deleted regulations regarding the importation of peppers from Israel.

EFFECTIVE DATE: September 9, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Harabin, Head, Permit Unit, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–8645.

PART 319—FOREIGN QUARANTINE NOTICES

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

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).

2. In FR Doc. 94–19511, page 40796, third column, amendatory instruction number 7 is corrected as follows:

§319.56–2u [Corrected]

7. In § 319.56–2u, the heading is amended by removing the phrase "pummelo and" and paragraph (a) is removed and reserved.

Done in Washington, DC, this 1st day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–22157 Filed 9–7–94; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV94–981–1FIR]

Almonds Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Almond Board of California (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Martin Engeler, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981, both as amended (7 CFR part 981), regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California almonds are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds handled during the 1994–95 crop year, which began July 1, 1994, and ends June 30, 1995. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 7,000 producers of California almonds under this marketing order, and approximately 115 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR

121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California almond producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 crop year was prepared by the Almond Board of California, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected receipts of California almonds. Because that rate will be applied to handlers' actual receipts, a rate must be established that will provide sufficient income to pay the Board's budgeted expenses.

The Board met on May 16, 1994, and unanimously recommended a 1994–95 budget of $9,435,262, $1,631,808 more than the previous year. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Research conference, $25,000 ($12,000), office rent, $90,000 ($73,562), Board's financial audit, $12,500 ($9,900), data processing, $6,000 ($5,000), telephone, $31,000 ($30,000), utilities, $13,500 ($10,000), postage and delivery, $32,000 ($30,000), repairs and maintenance, $12,500 ($9,000), miscellaneous expenses, $10,000 ($5,000), dues, subscriptions, and registration fees $7,500 ($5,000), alliances with other organizations to provide information on almonds to consumers, $20,000 ($5,000), production research, $489,134 ($485,854), promotional activities, $6,575,000 ($5,400,000), crop estimate, $85,600 ($75,000), office equipment, $15,000 ($7,000), and the addition of $35,310 for an acreage survey, $300,000 for reserve replenishment, $150,000 for program accountability analyses to assess the effectiveness of the advertising and market development programs, and $50,000 for new product and issues research, for which no funding was recommended last year. Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Salaries, $795,318 ($796,378), travel, $100,000 ($126,500), Board travel, $22,500 ($25,000), meetings, $35,000 ($40,000), equipment rent, $5,000 ($8,000), Board insurance, $40,000 ($45,000), security, $2,500 ($3,000), office supplies, $15,000 ($20,000), printing, $12,000 ($18,000), publications, $3,500 ($3,750), newsletter and releases, $25,000 ($35,000), econometric model and statistical analysis, $40,000 ($75,000), vehicles, $15,000 ($29,500), computers and software, $25,000 ($40,000), and furniture and fixtures, $10,000 ($46,500).

The Board also unanimously recommended an assessment rate of 2.25 cents per kernel pound, the same as last year. The Board further recommended that handlers should be eligible to participate in credit-back for their own market promotion activities for up to 1.00 cent of the 2.25 cents assessment rate, the same as last year. Revenues are expected to be $7,396,250 from administrative assessments (591,700,000 pounds @ 1.25 cents per pound), $1,065,060 from the portion of assessments eligible for credit but received by the Board from handlers who do not obtain credit for their own activities, $40,000 from interest, and $16,000 from the almond industry conference, for a total of $8,517,310.

These projections would result in a $917,952 shortfall in revenue based on current estimates of the 1994 crop yield. In light of this projected revenue shortfall, the Board recommended that any shortfall of up to $150,000 be applied against reserve replenishment and that the amount of money for this item be reduced accordingly. The Board also recommended that any additional shortfall be applied against its consumer TV activities and that the amount of money spent for these activities be reduced accordingly. However, the Board decided not to reduce the total amount for these two items by the amount of the expected shortfall because it expects additional revenue to accrue if the crop is larger than estimated. In the event a larger crop results in revenue in excess of the $9,435,262 budgeted, the Board recommended that consumer public relations activities be increased up to a total of $840,000, from $650,000.

Unexpended funds from 1994–95 may be carried over to cover expenses during the first four months of the 1995–96 crop year.

An interim final rule was published in the **Federal Register** on July 14, 1994 (59 FR 35847). That interim final rule added § 981.341 to authorize expenses and establish an assessment rate for the Board. That rule provided that interested persons could file comments through August 15, 1994. No comments were received.

This rule will impose an obligation to pay assessments on handlers. The assessments are uniform for all handlers and are the same as those imposed last year. The assessment cost will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

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

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 crop year began on July 1, 1994. The marketing order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year. In addition, handlers are aware of this action which was unanimously recommended by the Board at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 981

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

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

PART 981—ALMONDS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 981 which was published at 59 FR 35847 on July 14, 1994, is adopted as a final rule without change.

Dated: September 1, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–22041 Filed 9–7–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1230

RIN 0581–AB17

[No. LS–94–002]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Order issued thereunder, this final rule increases the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1993 six market average price for domestic barrows and gilts. This action brings the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. This rule also revises the Harmonized Tariff System (HTS) numbers which identify imported live porcine animals, pork, and pork products to conform with recent changes in these numbers made by the United States Customs Service (USCS). These changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

EFFECTIVE DATE: October 11, 1994.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION: The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which such person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This final rule increases the amount of assessments on imported pork and pork products subject to assessment by two-hundredths of a cent per pound, or as expressed in cents per kilogram, four-hundredths of a cent per kilogram. Adjusting the assessments on imported pork and pork products would result in an estimated increase in assessments of $143,000 over a 12-month period. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. This final rule also revises HTS numbers for imported porcine animals, pork, and pork products subject to assessment from 11 digits to 10 digits to conform to a change in those HTS numbers made by USCS. The change made in the number of digits in HTS numbers is merely a technical change and will not impose any new requirements on importers.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay USCS, upon importation, the assessment of 0.35 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.35 percent of the market value of the live porcine animals from which such pork and pork products were produced. This final rule increases the assessments on all of the imported pork and pork products subject to assessment listed in 7 C.F.R. § 1230.110 (September 8, 1993; 58 FR 47205). This increase is consistent with the increase in the annual average price of domestic barrows and gilts for calendar year 1993 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This increase in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This final rule will not change the current assessment rate of 0.35 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by USDA, AMS, LGMN Branch. The annual average price, which was based on price data from seven major markets, is now based on only six markets. One of the seven markets—Kansas City—closed in 1991; and thus the 1992 and 1993 annual average prices are based on price data from only six markets. This average

price is published on a yearly basis during the month of January in LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.35 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price increased from $42.11 in 1992 to $45.32 in 1993, an increase of about 7 percent. This increase will result in a corresponding increase in assessments for all HTS numbers listed in the table in § 1230.110 of an amount equal to two-hundredths of a cent per pound, or as expressed in cents per kilogram, four-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the total dollar value of imported pork and pork products subject to the assessment in 1993 the proposed increase in assessment amounts would result in an estimated $143,000 increase in assessments over a 12-month period.

USCS recently revised HTS numbers to conform with changes in importation procedures. The change is only a minor technical change which revises all HTS numbers for live porcine animals, pork, and pork products listed in the table found at § 1230.110 (58 FR 47205) by changing them from 11 digit numbers to 10 digit numbers by dropping the last digit. The live porcine animals, pork, and pork products subject to assessment and HTS article descriptions listed in a chart contained in the Supplementary Information section on page 15914 of the final rule (54 FR 15914) will not change. A comparison of the 11 digit numbers and the proposed 10 digit numbers are listed in the following chart.

LIVE PORCINE ANIMALS

11-digit No.	10-digit No.
0103.10.00004	0103.10.0000
0103.91.00006	0103.91.0000
0103.92.00005	0103.92.0000

PORK AND PORK PRODUCTS

11-digit No.	10-digit No.
0203.11.00002	0203.11.0000
0203.12.10107	0203.12.1010
0203.12.10205	0203.12.1020
0203.12.90100	0203.12.9010
0203.12.90208	0203.12.9020
0203.19.20108	0203.19.2010
0203.19.20901	0203.19.2090
0203.19.40104	0203.19.4010
0203.19.40907	0203.19.4090
0203.21.00000	0203.21.0000
0203.22.10007	0203.22.1000
0203.22.90000	0203.22.9000
0203.29.20008	0203.29.2000
0203.29.40004	0203.29.4000
0206.30.00006	0206.30.0000
0206.41.00003	0206.41.0000
0206.49.00005	0206.49.0000
0210.11.00101	0210.11.0010
0210.11.00209	0210.11.0020
0210.12.00208	0210.12.0020
0210.12.00404	0210.12.0040
0210.19.00103	0210.19.0010
0210.19.00906	0210.19.0090
1601.00.20105	1601.00.2010
1601.00.20908	1601.00.2090
1602.41.20203	1602.41.2020
1602.41.20409	1602.41.2040
1602.41.90002	1602.41.9000
1602.42.20202	1602.42.2020
1602.42.20408	1602.42.2040
1602.42.40002	1602.42.4000
1602.49.20009	1602.49.2000
1602.49.40005	1602.49.4000

This change will permit USCS to continue to collect assessments due on imported live porcine animals, pork, and pork products in conjunction with its regular importation processing and collection system.

On May 13, 1994, AMS published in the **Federal Register** 59 FR 24971 a proposed rule which would increase the per pound assessment on imported pork and pork products consistent with increases in the 1993 average prices of domestic barrows and gilts to provide comparability between imported and domestic assessments. The proposed rule also would change all HTS numbers for live porcine animals, pork, and pork products from 11 digit numbers to 10 digit numbers to conform with changes in USCS importation procedures. The proposal was published with a request for comments by June 13, 1994. No comments were received. However, a review of the cents per kilogram assessments for 18 HTS numbers listed in the table in § 1230.110 were incorrect due to a typographical error. The incorrect cents per kilogram for the 18 HTS numbers was .507028. The correct cents per kilogram is .507058. The 18 HTS numbers for which this correction is made are 0203.12.1020, 0203.12.9010, 0203.12.9020. 0203.19.4010, 0203.19.4090, 0203.21.0000, 0203.22.1000, 0203.22.9000, 0203.29.4000, 0206.30.0000, 0206.41.0000, 0206.49.0000, 0210.11.0010, 0210.11.0020, 0210.12.0020, 0210.12.0040, 1602.41.9000, and 1602.42.4000. In this final rule, the cents per kilogram assessments in the table in § 1230.110 for these 18 numbers are correct.

Accordingly, this final rule establishes the per-pound and per-kilogram assessments on imported pork and pork products and the new 10 digit HTS numbers as proposed and corrected herein.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR Part 1230 be amended as set forth below:

PART 1230–PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. Subpart B—Rules and Regulations is amended by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on Imported Pork and Pork Products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000 ..	0.35 percent Customs Entered Value.
0103.91.0000 ..	0.35 percent Customs Entered Value.
0103.92.0000 ..	0.35 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.0000	.23	.507058
0203.12.1010	.23	.507058
0203.12.1020	.23	.507058
0203.12.9010	.23	.507058
0203.12.9020	.23	.507058
0203.19.2010	.26	.573196
0203.19.2090	.26	.573196
0203.19.4010	.23	.507058
0203.19.4090	.23	.507058
0203.21.0000	.23	.507058
0203.22.1000	.23	.507058
0203.22.9000	.23	.507058
0203.29.2000	.26	.573196
0203.29.4000	.23	.507058
0206.30.0000	.23	.507058
0206.41.0000	.23	.507058
0206.49.0000	.23	.507058
0210.11.0010	.23	.507058
0210.11.0020	.23	.507058
0210.12.0020	.23	.507058
0210.12.0040	.23	.507058
0210.19.0010	.26	.573196
0210.19.0090	.26	.573196
1601.00.2010	.31	.683426
1601.00.2090	.31	.683426
1602.41.2020	.34	.749564
1602.41.2040	.34	.749564
1602.41.9000	.23	.507058
1602.42.2020	.34	.749564
1602.42.2040	.34	.749564
1602.42.4000	.23	.507058
1602.49.2000	.31	.683426
1602.49.4000	.26	.573196

Dated: September 1, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–22042 Filed 9–7–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. 94–14]

RIN 1557–AA92

Description of Office, Procedures, Public Information; Minority, Women and Individuals With Disabilities-Owned Business; Contracting Outreach Program

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends Office of the Comptroller of the Currency (OCC) regulations regarding the description of its office, procedures, and policies regarding public information to adopt a Minority-, Women- and Individuals with Disabilities-Owned Business Contracting Outreach Program (Outreach Program). This final rule is intended to ensure that business concerns owned and controlled by members of minority groups, women and individuals with disabilities are provided the opportunity to participate in the OCC's contracting processes. It also designates the official responsible for implementing the Outreach Program and its oversight. This action, with respect to minority- and women-owned businesses, is required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and is necessary to promote participation of minority groups and women in contracting programs. The inclusion of individuals with disabilities is consistent with the intent of the Rehabilitation Act of 1973, as amended.

EFFECTIVE DATE: This final rule is effective on October 11, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Dorsey, Outreach Program Specialist, Acquisitions Branch, (202) 874–5040; Patricia S. Grady, Senior Attorney, Legislative, Regulatory, and International Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC, as the Federal financial institution regulatory agency responsible for the supervision of national banks, has, since its inception, engaged in the procurement of goods and services necessary to accomplish its duties. Historically, the OCC has awarded a significant number of contracts to minority- and women-owned businesses. The OCC's Outreach Program promotes the participation of minorities, women and individuals with disabilities in the OCC's contracting activities.

Section 1216(c) of FIRREA (12 U.S.C. 1833e(c)) is intended to further the participation of certain designated groups in the OCC's contracting processes. FIRREA requires the OCC and certain other Federal regulatory agencies (*e.g.*, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and including the Resolution Trust Corporation, and the Federal Housing Finance Board) to prescribe regulations to establish and oversee a minority outreach program within each agency.

The OCC has established its Outreach Program which is intended to ensure inclusion, to the maximum extent possible, of minorities, women and individuals with disabilities and entities owned by minorities, women and individuals with disabilities in all contracts entered into by the agency with such persons or entities, public and private, to perform functions authorized by law.

The OCC is not required by FIRREA to include individuals with disabilities in its Outreach Program. However, the OCC believes that the inclusion of individuals with disabilities is consistent with the intent of the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*) as amended by the Rehabilitation, Comprehensive Service, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602), and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506). The OCC believes that by encouraging participation by individuals with disabilities, it will further the intent of the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*). The definition of the term "individual with disabilities" is derived from the definition of the term "individual with handicaps" in the Rehabilitation Act of 1973, as amended.

The OCC, in an effort to ensure that the benefits of the Outreach Program accrue to entities owned by minorities, women and individuals with disabilities, is requiring that the participants in the Outreach Program be minorities, women or individuals with disabilities. Further, the participants must unconditionally own the business entities participating in the Outreach Program.

On November 10, 1993, the OCC published a proposed rule to amend its 12 CFR part 4 regulations on Office, Procedures, Public Information to adopt a Minority-, Women- and Individuals with Disabilities-Owned Business Contracting Outreach Program. *See* 58 FR 59686.

This final rule creates in part 4 a new subpart B and reserves it. It also creates a new subpart C containing information on the Outreach Program and revises the address for the Comptroller of the Currency in § 4.1a(a). Certain other changes have been made to the final rule for clarification purposes.

Comments on Proposed Rule

The OCC received two comments on the proposed rule. Commenters included a minority-owned compliance management firm and a national bank. One commenter supported the proposal. One commenter recommended that firms owned by recent veterans be included in the Outreach Program.

The OCC has not included veterans in this final rule. However, the OCC does include a veterans preference clause in some of its contracts that requires

vendors who contract with the OCC to take affirmative action in hiring veterans.

The commenter further suggested that the OCC coordinate its contract requirements with the Small Business Administration (SBA) so that the OCC may utilize the SBA's 8(a) Business Development Program. The OCC already coordinates its requirements with the SBA and utilizes the SBA's 8(a) Business Development Program. As a result, the final rule does not include this suggestion.

The commenter also suggested that the OCC contact community banks for names of minority contractors and notify community banks of OCC's contracting requirements so that the community banks can notify minority contractors of OCC contracting requirements. The OCC believes that its current coordination with the SBA of its contracting requirements and use of the national directories of minority-owned and women-owned businesses is a broad base from which to determine minority- and women-owned businesses. Therefore, the OCC has not included a requirement that it obtain lists of contractors from community banks and inform community banks of OCC contracting requirements.

Executive Order 12866

The OCC has determined that this document is not a significant regulatory action.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation is intended to promote participation of minority-, women- and individuals with disabilities-owned businesses, regardless of size, in the OCC contracting program. The Outreach Program does not alter the OCC's established procurement process for goods and services, and this rule, should have a beneficial, although not significant, impact on small entities.

List of Subjects in 12 CFR Part 4

Freedom of information, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women and minority businesses.

Authority and Issuance

For the reasons set forth in the preamble, part 4 of chapter I of title 12 of the Code of Federal Regulations is amended as set out below:

PART 4—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION, CONTRACTING OUTREACH PROGRAM

1. The part heading for part 4 is revised to read as set forth above.

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

Authority: 5 U.S.C. 552; 12 U.S.C. 1 *et seq.*, 93a and 1833e.

§§ 4.1 through 4.19 [Amended]

3. Part 4 is amended by designating §§ 4.1 through 4.19 as subpart A and adding a subpart A heading to read as follows:

Subpart A—Office, Procedures, Public Information

§ 4.1 [Amended]

4. In § 4.1a(a)(1), fourth sentence, "490 L'Enfant Plaza East" is changed to "250 E Street SW."

Subpart B—[Reserved]

5. Part 4 is amended by adding and reserving subpart B.

6. Part 4 is amended by adding a new subpart C to read as follows:

Subpart C—Minority-, Women- and Individuals With Disabilities-Owned Business Contracting Outreach Program; Contracting for Goods and Services

Sec.
4.61 Purpose.
4.62 Definitions.
4.63 Policy.
4.68 Promotion.
4.72 Certification.
4.74 Oversight and monitoring.

Subpart C—Minority-, Women- and Individuals With Disabilities-Owned Business Contracting Outreach Program; Contracting for Goods and Services

§ 4.61 Purpose.

Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Sec. 1216(c), Pub. L. 101–73, 103 Stat. 183, 529 (12 U.S.C. 1833e(c)) and consistent with the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 et seq.), this subpart establishes the OCC Minority-, Women- and Individuals with Disabilities-Owned Business Contracting Outreach Program (Outreach Program). The Outreach Program is intended to ensure that firms owned and operated by minorities, women, and individuals with disabilities have the opportunity to participate, to the maximum extent possible, in all contracting activities of the OCC.

§ 4.62 Definitions.

(a) *Minority- and/or women-owned (small and large) businesses and entities owned by minorities and women (MWOB)* means firms at least 51 percent unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. Additionally, for the foregoing cases, the management and daily business operations must be controlled by one or more such individuals.

(b) *Minority* means any African American, Native American (means American Indian, Eskimo, Aleut and Native Hawaiian), Hispanic American, Asian-Pacific American, or Subcontinent-Asian American.

(c) *Individual with disabilities-owned (small and large) businesses and entities owned by individuals with disabilities (IDOB)* means firms at least 51 percent unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members who are individuals with disabilities and who are citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. Additionally, for the foregoing cases, the management and daily business operations must be controlled by one or more such individuals.

(d) *Individual with disabilities* means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of this part, it does not include an individual who is currently engaging in the illegal use of drugs nor an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or

infection, is unable to perform the duties of the job as defined by the IDOB.

(e) *Unconditional ownership* means ownership that is not subject to conditions or similar arrangements which cause the benefits of the Outreach Program to accrue to persons other than the participating MWOB or IDOB.

§ 4.63 Policy.

The OCC policy is to ensure that MWOBs and IDOBs have the opportunity to participate, to the maximum extent possible, in contracts awarded by the OCC. The OCC awards contracts consistent with the principles of full and open competition and best value acquisition, and with the concept of contracting for agency needs at the lowest practicable cost. The OCC ensures that MWOBs and IDOBs have the opportunity to participate fully in all contracting activities that the OCC enters into for goods and services, whether generated by the headquarters office in Washington, DC, or any other office of the OCC. Contracting opportunities may include small purchase awards, contracts above the small purchase threshold, and delivery orders issued against other governmental agency contracts.

§ 4.68 Promotion.

(a) *Scope.* The OCC, under the direction of the Deputy Comptroller for Resource Management, engages in promotion and outreach activities designed to identify MWOBs and IDOBs capable of providing goods and services needed by the OCC, to facilitate interaction between the OCC and the MWOBs and IDOBs community, and to indicate the OCC's commitment to doing business with that community. The Outreach Program is designed to facilitate OCC's participation in business promotion events sponsored by other government agencies and attended by minorities, women and individuals with disabilities. Once the OCC has identified a prospective participant, it will assist the minority- or women-owned business or individual with disabilities-owned business in understanding the OCC's needs and contracting process.

(b) *Outreach activities.* OCC's Outreach Program includes the following:

(1) Obtaining various lists and directories of MWOBs and IDOBs maintained by government agencies;

(2) Contacting appropriate firms for participation in the OCC's Outreach Program;

(3) Participating in business promotion events comprised of or attended by MWOBs and IDOBs to explain OCC contracting opportunities and to obtain names of potential MWOBs and IDOBs;

(4) Ensuring that the OCC contracting staff understands and actively promotes this Outreach Program; and

(5) Registering MWOBs and IDOBs in the Department of the Treasury's database to facilitate their participation in the competitive procurement process for OCC contracts. This database is used by OCC procurement staff to identify firms to be solicited for OCC procurements.

§ 4.72 Certification.

(a) *Objective.* To preserve the integrity and foster the Outreach Program's objectives, each prospective MWOB or IDOB must demonstrate that it meets the ownership and control requirements for participation in the Outreach Program.

(b) *Process—MWOB.* A prospective MWOB may demonstrate its eligibility for participation in the Outreach Program by:

(1) Submitting a valid MWOB certification received from another government agency whose definition of MWOB is substantially similar to that specified in § 4.62(a);

(2) Self-certifying MWOB ownership status by filing with the OCC a completed and signed certification form as prescribed by the Federal Acquisition Regulation, 48 CFR 53.301–129; or

(3) Submitting a valid MWOB certification received from the Small Business Administration.

(c) *Process—IDOB.* A prospective IDOB may demonstrate its eligibility for participation in the Outreach Program by:

(1) Submitting a valid IDOB certification received from another government agency whose definition of IDOB is substantially similar to that specified in § 4.62(c); or

(2) Self-certifying IDOB ownership status by filing with the OCC a completed and signed certification as prescribed in the Federal Acquisition Regulation, 48 CFR 53.301–129, and adding an additional certifying statement to read as follows:

I certify that I am an individual with disabilities as defined in 12 CFR 4.62(d), and that my firm, *(Name of Firm)* qualifies as an individual with disabilities-owned business as defined in 12 CFR 4.62(c).

§ 4.74 Oversight and monitoring.

The Deputy Comptroller for Resource Management shall appoint an Outreach Program Manager, who shall appoint an Outreach Program Specialist. The Outreach Program Manager is primarily responsible for program advocacy, oversight and monitoring.

Dated: August 2, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94–22058 Filed 9–7–94; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AEA–10]

Modification of Class D Airspace and Establishment of Class E Airspace; Various Locations, State of Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Newport News, VA, by amending the area's effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace in this area when the associated control tower is closed. Additionally, this action establishes and/or modifies Class E airspace areas at Lynchburg, VA, Manassas, VA, and Wallops Island, VA. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers at these locations are closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed.

DATES: *Effective Date:* 0901 u.t.c. December 8, 1994.

Comment Date: Comments must be received on or before October 15, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AEA–500, Airspace Docket Number 94–AEA–10, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jordan, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments, and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to amend the regulation or to extend the effective date of the rule.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Newport News, VA, by amending this area's effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace in this area when the associated control tower is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the associated air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. This action also establishes Class E airspace during the hours the control tower is closed. Additionally, this action establishes Class E airspace areas at Lynchburg, VA, Manassas, VA, and Wallops Island, VA. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Lynchburg, VA, Manassas, VA, and Wallops Island, VA, when the control towers are closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D and establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000—General

* * * * *

AEA VA D Newport News, VA [Revised]

Newport News/Williamsburg International Airport, Newport News, VA
(Lat. 37°07'55" N., long. 76°29'35" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Newport News/Williamsburg International Airport, excluding the portion that coincides with the Hampton Roads, VA, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AEA VA E2 Lynchburg, VA [New]

Lynchburg Municipal-Preston Glenn Field Airport, Lynchburg, VA
(Lat. 37°19'37" N., long 79°12'01" W.)
(Lynchburg VORTAC
(Lat. 37°15'17" N., long. 79°14'11" W.)
Falwell Airport, VA
(Lat. 37°22'41" N., long. 79°01'20" W.)

Within a 4.5-mile radius of Lynchburg Municipal-Preston Glenn Field Airport; and that airspace extending upward from the surface within 2.7 miles each side of the Lynchburg VORTAC 020° and 200° radials extending from the 4.5-mile radius to 1 mile south of the VORTAC and within 1.8 miles each side of the Lynchburg VORTAC 022° radial extending from the 4.5-mile radius to 11.3 miles northeast of the VORTAC and excluding the portion within a 0.5-mile radius of Falwell Airport. This Class E airspace area is effective during the special dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

* * * * *

AEA VA E2 Manassas, VA [New]

Manassas Municipal/Harry P. Davis Airport, Manassas, VA
(Lat. 38°43'17" N., long. 77°30'57" W.)

Within a 4-mile radius of the center of the Manassas Municipal/Harry P. Davis Airport, Manassas, VA and within 2.6 miles either side of a bearing 025° from the airport extending from the 4-mile radius to 7.5 miles northeast of the airport, excluding that

airspace within the Washington Tri-Area Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA VA E2 Wallops Island, VA [New]

NASA Wallops Flight Facility, Wallops Island, VA
(Lat. 37°56'30" N., long. 75°27'44" W.)
Snow Hill VORTAC
(Lat. 38°03'24" N., long. 75°27'50" W.)

Within a 4.4-mile radius of NASA Wallops Flight Facility and within 1.8 miles each side of the Snow Hill VORTAC 181° radial, extending from the 4.4-mile radius to 2.2 miles south of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on August 25, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94–22090 Filed 9–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AAL–9]

Revocation of Class D Airspace and Establishment of Class E Airspace; Shemya, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace and establishes Class E airspace at Shemya, Alaska. The Eareckson Air Force Station (AFS) air traffic control tower (ATCT), operated by the United Air Force (USAF), was permanently closed the first week of August 1994. The standard instrument approach procedures (SIAP's) based on the Very High Frequency Omnidirectional Range/Tactical Air Navigational Aid (VORTAC), Microwave Landing System (MLS) and Instrument Landing System (ILS) will remain. Controlled airspace to the surface is needed to provide adequate Class E airspace for instrument approach procedures at Eareckson Airport.

EFFECTIVE DATE: September 8, 1994.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, System Management Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue #14, Anchorage, AK 99513–7587; telephone number: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the Class D airspace and establishes Class E airspace at Shemya, AK, to provide adequate controlled airspace to the surface for operators executing the established SIAP's.

The United States Air Force advised the Federal Aviation Administration of their decision to close the Eareckson ATCT in June 1994. The U.S. Air Force no longer required the airport traffic control tower (ATCT), ground control approach (GCA), or the airport surveillance radar (ASR) after August 1, 1994. The VORTAC, MLS, and ILS remain, providing instrument flight rules (IFR) approach and departure procedures to the Eareckson Airport. The U.S. Air Force has informed the FAA that they intend to maintain a 24 hours basic weather watch. This action is a minor technical amendment. Since there is no longer an Eareckson ATCT, the Class D airspace to the surface at Shemya must be removed. Class E surface area airspace must be established to provide airspace for IFR operators executing established SIAP, is to avoid confusion on the part of the pilots flying in the vicinity of the Eareckson Airport, and to promote safe and efficient handling of air traffic in the area. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b), are impracticable and good cause, pursuant to 5 U.S.C. 553(d), exists for making this amendment effective in less than thirty days.

The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace designations are published in paragraph 5000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace area listed in this document will be removed subsequently from the Order and the Class E airspace area listed in this document will be added to the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Regulations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

AAL AK D Shemya, AK [Removed]

* * * * *

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

* * * * *

AAL AK E2 Shemya, AK [New]

Eareckson AFS Airport, AK
(Lat. 52°42'44" N., long. 174°06'49" E.)
Shemya VORTAC
(Lat. 52°43'06" N., long, 174°02'55" E.)

Within a 4.4-mile radius of the Eareckson AFS Airport, within 1.6 miles each side of the 104° radial from the Shemya VORTAC extending from the 4.4-mile radius to 4.5 miles east of the airport and within 2.3 miles north and 1.3 miles south of the Shemya VORTAC 275° radial extending from the 4.4-mile radius to 5.2 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published Airport/Facility Director.

* * * * *

Issued in Anchorage, AK, on August 23, 1994.

Gene Cowgill,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 94–22089 Filed 9–7–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27879; Amdt. No. 1620]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 26, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective December 8, 1994*

Orland, CA, Haigh Field, VOR–A, Amdt 6
San Bernardino, CA, San Bernardino International, NDB RWY, 6, Orig
Santa Maria, CA, Santa Maria Pub/Capt G. Allan Handcock Fld, ILS RWY 12, Amdt 9

Rockford, IL, Greater Rockford, VOR RWY 13, Amdt 4, Cancelled
Rockford, IL, Greater Rockford, RADAR–1, Admt 8
Fort Madison, IA, Fort Madison Muni, VOR/DME RNAV RWY 16, Amdt 4
Fort Madison, IA, Fort Madison Muni, VOR/DME RNAV RWY 34, Amdt 4
Portsmouth, OH, Greater Portsmouth Regional, NDB RWY 36, Amdt 3, Cancelled
San Marcos, TX, San Marcos Muni, VOR/DME–A, Amdt 5
San Marcos, TX, San Marcos Muni, NDB RWY 12, Amdt 4
San Marcos, TX, San Marcos Muni, ILS RWY 12, Amdt 5
Burlington, VT, Burlington Intl, VOR RWY 1, Amdt 11
Burlington, VT, Burlington Intl, NDB RWY 15, Amdt 19
Burlington, VT, Burlington Intl, ILS RWY 15, Amdt 21
Burlington, VT, Burlington Intl, RADAR–1, Amdt 5

** * * Effective November 10, 1994*

Garden City, KS, Garden City Regional, ILS RWY 35, Amdt 1

** * * Effective October 13, 1994*

Danielson, CT, Danielson, VOR or GPS–A, Amdt 4
Madison, CT, Griswold, VOR or GPS–A, Amdt 8
Russell, KS, Russell Muni, VOR/DME–A, Amdt 4
Hyannis, MA, Barnstable Muni-Boardman/Polando Field, VOR or GPS RWY 6, Amdt 7
Cape Girardeau, MO, Cape Girardeau Muni, VOR RWY 10, Amdt 2
Cape Girardeau, MO, Cape Girardeau Muni, VOR or GPS RWY 2, Amdt 10
Cape Girardeau, MO, Cape Girardeau Muni, LOC/DME BC RWY 28, Amdt 6
Cape Girardeau, MO, Cape Girardeau Muni, NDB or GPS RWY 10, Amdt 9
Cape Girardeau, MO, Cape Girardeau Muni, ILS RWY 10, Amdt 10
New Madrid, MO, County Memorial, VOR/DME–A, Amdt 3
New Madrid, MO, County Memorial, NDB RWY 18, Amdt 2
New Madrid, MO, County Memorial, RNAV RWY 18, Amdt 1
Middletown, NY, Randall, NDB RWY 26, Orig. Cancelled
Rutherfordton, NC, Rutherfordton County, VOR RWY 36, Amdt 3, Cancelled
Newport, OR, Newport Muni, ILS RWY 16, ORIG
Highgate, VT, Franklin County State, VOR/DME RWY 19, Amdt 2

** * * Effective September 15, 1994*

Tarboro, NC, Tarboro-Edgecombe, NDB RWY 27, ORIG

** * * Effective Upon Publication*

Daytona Beach, FL, Daytona Beach Regional, NDB or GPS RWY 7L, Amdt 25

** * * Effective Upon Publication*

Savannah, GA, Savannah INTL, ILS RWY 36, Amdt 6

[FR Doc. 94–22092 Filed 9–7–94; 8:45 am]
BILLING CODE 4910–01–M

14 CFR Part 97

[Docket No. 27880; Amdt. No. 1621]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight

safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedures before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 26, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 utc on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
08/11/94	GA	Covington	Covington Muni	FDC 4/4406	VOR/DME RWY 9 AMDT 2...
08/11/94	GA	Covington	Covington Muni	FDC 4/4407	NDB RWY 27 ORIG...
08/15/94	GA	Atlanta	Fulton County Airport-Brown Field.	FDC 4/4511	ILS RWY 8, AMDT 15A...
08/18/94	CA	Fullerton	Fullerton Muni	FDC 4/4644	VOR or GPS–A AMDT 6...
08/19/94	CA	Fullerton	Fullerton Muni	FDC 4/4645	LOC RWY 24 AMDT 3...
08/19/94	VA	Wise	Lonesome Pine	FDC 4/4649	SDF/DME RWY 24, AMDT 3...
08/22/94	MA	Boston	General Edward Lawrence Logan Intl.	FDC 4/4726	VOR/DME RWY 33L AMDT 2...
08/22/94	OR	Eugene	Mahlon Sweet Field	FDC 4/4749	VOR–A AMDT 6...
08/22/94	OR	Eugene	Mahlon Sweet Field	FDC 4/4752	VOR/DME or TACAN or GPS RWY 34, AMDT 2...
08/22/94	OR	Eugene	Mahlon Sweet Field	FDC 4/4753	VOR/DME or TACAN or GPS RWY 3, AMDT 2...
08/23/94	MI	Bellaire	Antrim County	FDC 4/4783	NDB RWY 2 AMDT 2...
08/23/94	NC	Rutherfordton	Rutherford County	FDC 4/4762	NDB RWY 36, AMDT 4A...
08/23/94	NC	Rutherfordton	Rutherford County	FDC 4/4763	VOR or GPS RWY 36, AMDT 3...
08/25/94	WY	Jackson	Jackson Hole	FDC 4/4825	VOR or GPS–A AMDT 6. DELETE TERMINAL ROUTE...

[FR Doc. 94–22093 Filed 9–7–94; 8:45 am]
BILLING CODE 4910–01–M

14 CFR Part 129

Public Disclosure of the Results of Foreign Civil Aviation Authority Assessments

AGENCY: Federal Aviation Administration, DOT.

ACTION: Policy statement.

SUMMARY: On August 24, 1992, the Federal Aviation Administration announced a new policy and procedures related to the assessment of foreign Civil Aviation Authorities that certificate foreign air carriers operating into the United States. This document announces a modification to that policy. Under the modified policy, the FAA is adopting measures to be observed regarding the public disclosure of the results of foreign Civil Aviation Authority (CAA) assessments. Comments by concerned parties are invited.

EFFECTIVE DATE: This policy modification is effective on September 8, 1994. Comments on this policy must be received on or before October 11, 1994.

ADDRESSES: Send comments to Federal Aviation Administration, Office of Public Affairs, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. John Lynch, Flight Standards International Programs Office, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20501; (202) 267–3844.

SUPPLEMENTARY INFORMATION:

Background

The international standards governing air safety are embodied in the Convention on International Civil Aviation, 61 Stat. 1180 (Chicago Convention), and its related Annexes. The effectiveness of the Convention as a means of assuring aviation safety depends upon adherence to its requirements by the United States and the other parties to the treaty. The FAA believes that most, but not all, countries

that have accepted the Convention's obligations generally endeavor to carry them out faithfully. However, the FAA also believes that the efficacy of the Convention can be enhanced. This belief is based on the FAA's observations both of foreign air carrier operations at points within the United States and over 30 assessments of foreign CAAs.

Under the policy announced at 57 FR 38342, August 24, 1992, the FAA establishes formal contact with a CAA of a foreign air carrier that possesses or seeks approval to operate to or from the United States. The purpose of such contacts is to ensure that the aviation safety standards set forth in the Chicago Convention and in any applicable bilateral air transport agreements are met.

The primary means of ensuring compliance with international safety standards is through the on-site assessment of a CAA. The FAA has conducted over 30 such assessments with mixed results. Upon initial assessment, fully two-thirds of the CAAs assessed were deficient in some manner relative to their obligations under the Chicago Convention. The FAA entered into direct consultations with many of the CAAs (governments) found deficient. As a direct result of these consultations, many CAAs have updated and enhanced their safety oversight resources and infrastructure to comply fully with their obligations under the Chicago Convention. However, several CAAs initially found to be deficient still are not complying with their international aviation safety obligations. Countries unwilling or unable to comply with their obligations under the Chicago Convention are our immediate concern.

Public Disclosure

The purpose of the public disclosure policy adopted by the FAA at this time is to allow the public to make informed travel decisions by providing information regarding international aviation safety standards and compliance. General assessment program findings, as they relate to the capability of a respective CAA to meet international aviation standards, will be released to the public through the Department of State Consular Information System and the FAA Hotline.

The FAA has established three categories of ratings to signify the status of a foreign CAA's compliance with ICAO safety standards: acceptable, conditional, and unacceptable.

Category I, *Acceptable*, applies to a foreign CAA that has been assessed by FAA inspectors and has been found to license and oversee air carriers in accordance with ICAO safety standards.

Category II, *Conditional*, applies to a foreign CAA where FAA inspectors found areas of non-compliance with ICAO safety standards and the FAA is negotiating actively with the CAA to implement corrective measures. During such negotiations, the FAA permits flights to operate into the United States and the FAA conducts heightened surveillance of the flights.

Category III, *Unacceptable*, applies to a foreign CAA found to be in non-compliance with ICAO standards for aviation safety. Unacceptable ratings apply if the country or CAA has not developed or implemented laws or regulations in accordance with ICAO standards; if the CAA lacks the technical expertise or resources to license or oversee civil aviation; if it lacks the flight operations capability to certify, oversee, and enforce air carrier operations requirements; if it lacks the aircraft maintenance capability to certify, oversee, and enforce air carrier maintenance requirements; or if it lacks the appropriately trained inspector personnel required by ICAO standards. Operations to and from the United States by foreign air carriers whose oversight is provided by these CAAs are not permitted.

Future Assessments

The desire to ensure that foreign air carriers operating into the United States are indeed receiving all the regulatory oversight by their respective governments mandated by the Chicago Convention will remain the driving force behind the assessment program.

When the FAA is notified that a foreign air carrier is seeking authority to initiate operations into the United States, the FAA will continue its policy of verifying that the responsible CAA is providing sufficient oversight to ensure continuous safe international air carrier operations in accordance with the Chicago Convention and any applicable bilateral air transport agreement. If the FAA is satisfied that the foreign CAA is providing adequate oversight, the FAA will notify the Office of the Secretary of Transportation (OST). After OST issues the carrier its foreign air carrier permit or exemption, the FAA will issue Part 129 operations specifications. Conversely, if the FAA is not satisfied, then the FAA will recommend to OST that a foreign air carrier permit or exemption not be issued, and the FAA will not issue Part 129 operations specifications to the foreign air carrier.

The FAA also will continue to verify information regarding CAA's with foreign air carriers already holding FAA operations specifications. When the capability of a CAA is in question, the FAA will take all appropriate and necessary actions within its jurisdiction and discretion, including the public release of the assessment findings and a recommendation to the DOT for revocation or suspension of the air carrier's economic authority.

Issued in Washington, DC, on September 2, 1994.

Anthony J. Broderick,

Associate Administrator for Regulation & Certification.

[FR Doc. 94–22141 Filed 9–7–94; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CGD09–94–029]

RIN–2115–AE47

Drawbridge Operation Regulations; Sturgeon Bay, WI

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: At the request of the Wisconsin Department of Transportation, the Coast Guard is changing the operating regulations governing the Michigan Street highway bridge at mile 4.3 across the Sturgeon Bay in Sturgeon Bay, Wisconsin, by reducing the number of bridge openings for recreational vessels.

This action will reduce the number of bridge openings while still providing for the reasonable needs of navigation.

DATES: This rule is effective September 8, 1994. Comments must be submitted on or before November 7, 1994.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, or may be delivered to room 2083D at the above address between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 522–3993.

The Commander, Ninth Coast Guard District maintains the public docket for this rulemaking. Comments will become part of the docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Chief, Bridge Branch at (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Fred H. Mieser, Project Manager, and Lieutenant Karen E. Lloyd, Project Counsel, Ninth Coast Guard District.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD09–94–029) and the specific section of this rule to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Robert W. Bloom, Jr. at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Discussion of Interim Rule

Presently, the Michigan Street bridge opens on signal for the passage of vessels from March 15 through May 14, September 15 through December 31, and between the hours of 6 p.m. and 6:30 a.m. from May 15 through September 15. Between the hours of 6:30 a.m. and 6 p.m., from May 15 through September 15, the draw need open only on the hour and half-hour. However, public vessels of the United States and commercial vessels are passed through the draw without delay during the scheduled opening periods. From 1 January through 14 March, the draw need not open unless notice is given to the owner at least 12 hours in advance of a vessel's time of intended passage through the draw.

This interim final rule reduces the number of openings for recreational vessels from March 15 through December 31. From 8 a.m. to 6 p.m., seven days a week, the owner of the bridge shall be required to open the bridge for recreational vessels only on the hour. However, the bridge will open as soon as possible when 20 or more vessels have accumulated. From 6 p.m. to 10 p.m., the draw need open only on the hour and half-hour for recreational vessels. From 10 p.m. to 8 a.m. the draw shall open on signal. At all times, the bridge shall open on signal for the passage of public vessels of the United States, state or local vessels used for public safety, commercial vessels, vessels in distress, and vessels seeking shelter from severe weather.

The Wisconsin Department of Transportation requested that openings for recreational vessels be reduced because of severe stress cracks developing in. Wisconsin engineers attribute the cracks to fatigue amplified by more than 3,000 openings during the navigation season. Although the cracks will be repaired, the engineers are concerned that opening the bridge with the frequency currently required will cause more severe cracks thereby causing the bridge to become permanently disabled in the closed position.

The Coast Guard reviewed bridgetender logs of bridge openings and data concerning the cracks to the rolling girder, and has determined that this final rule is necessary. Further, the Coast Guard has determined that the rule will accommodate the reasonable needs of both recreational and commercial vessels.

Regulatory Evaluation

This rule is not major under Executive Order 12886 and not significant under the regulatory policies and procedures of the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory evaluation is unnecessary. This rule is not expected to have any substantial effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operation.

This schedule change was requested by the State of Wisconsin on short notice after stress cracks were detected in the rolling girder of the bridge. Failure to change the bridge operating schedule could cause more severe cracking, resulting in public endangerment should an accident occur. Additionally, if bridge use continues in accordance with the current schedule, the bridge could become permanently disabled in the closed position, thereby affecting the navigability of this waterway. Therefore, under 5 U.S.C. 553, the Coast Guard certifies that good cause exists to issue this rule without providing prior notice and opportunity to comment, and for this rule to be effective upon publication.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether proposed rules, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This Interim final rule allows the owner of the Michigan Street highway bridge to reduce the number of openings without interfering with commercial use of the waterway. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the interim rule does not raise sufficient federalism implications to warrant preparation of a Federalism Assessment. The authority to regulate the operating schedules of drawbridges is conferred upon the Coast Guard by statute. Therefore, the Coast Guard does not expect any preemption with respect to state actions on the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. § 117.1101 is revised to read as follows:

§ 117.1101 Sturgeon Bay.

The draw of the Michigan Street highway bridge, mile 4.3 at Sturgeon Bay, shall open as follows:

(a) From March 15 through December 31—

(1) Between the hours of 8 a.m. and 6 p.m., the draw need open for recreational vessels only on the hour. However, if more than 20 vessels have accumulated at the bridge, the draw shall open as soon as possible.

(2) Between the hours of 6 p.m. and 10 p.m., the draw need open for recreational vessels only on the hour and half-hour.

(3) Between the hours of 10 p.m. and 8 a.m., the draw shall open on signal.

(b) The draw shall open on signal for commercial vessels. Additionally, the draw shall open on signal for all vessels seeking shelter from severe weather.

(c) From January 1 through March 14, the draw shall open on signal if notice is given at least 12 hours in advance of a vessel's time of intended passage through the draw.

Dated: August 19, 1994.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 94–22164 Filed 9–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–94–131]

RIN 2115–AA97

Safety and Security Zones; Presidential Visit, Martha's Vineyard, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones, with identical boundaries, off of the south shore of Martha's Vineyard, Massachusetts, while the President of the United States vacations at the Freidman residence on Oyster Pond, Martha's Vineyard, Massachusetts. The safety and security zones are needed to safeguard the President of the United States from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port or the Coast Guard President Security Senior Duty Officer.

EFFECTIVE DATES: This regulation is effective from August 26, 1994, to September 12, 1994, or for the duration of the President's visit, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT David Dolloff, Marine Safety Field Office Cape Cod (508) 968–6556.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LT D.H. Dolloff, Project Manager, and LCDR J.D. Stieb, Project Counsel, First District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the sensitive nature as well as the unpredictability of the President's schedule, this office received insufficient notice to publish proposed rules in advance of the event. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to prevent injury to the President. Any harm to the President would have far-reaching negative impacts on all people of the United States.

Background and Purpose

From August 26, 1994, to September 12, 1994, President Clinton will be vacationing on Martha's Vineyard, MA. While vacationing, he and his family will reside at the Freidman residence which is located on Oyster Pond, just inland of the south shore of Martha's Vineyard.

The safety and security zones are needed to protect the President from harmful or subversive acts in the vicinity of the Freidman residence. The safety and security zones have identical boundaries. Both are necessary since a civil penalty cannot be assessed for security zone violations but can be for safety zone violations. They encompass a rectangular area of water extending approximately one-half mile along the beach and 500 yards out into the water. The safety and security zones will be marked by buoys indicating an exclusionary area. The safety and security zones apply to all persons within the designated area.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies of DOT is unnecessary. The entities most likely to be affected are individuals or pleasure craft engaged in recreational activities, or wishing to view the President. These vessels and people have ample space outside of the safety and security zones to engage in these activities and therefore they will not be subject to undue hardship. Commercial vessels do not normally transit the area of the safety and security zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominate in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The environmental impact of this rule has been evaluated using the Coast Guard's procedures for implementing the National Environmental Policy Act (Commandant Instruction M16474.1B)

Under section 2.B.2.(e) of these procedures, it is concluded that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–131 is added to read as follows;

§ 165.T01–131 Safety and Security Zone: Presidential Visit, Martha's Vineyard, MA.

(a) *Location.* The following area is both a safety zone and a security zone: From a point on land at Latitude 41° 20′ 54″ N and Longitude 070° 36′ 34″ W; thence eastward along the shoreline to a point on land at Latitude 41° 20′ 57″ N and Longitude 070° 35′ 45″ W; thence south 500 yards to an offshore point at Latitude 41° 20′ 42″ N and Longitude 070° 46″ W; thence west to an offshore point at Latitude 41° 20′ 42″ N and Longitude 070° 36′ 29″ W; thence north to the beginning point. The aforementioned offshore points will be marked by buoys indicating the security zone.

(b) *Effective date.* This section is effective from August 26, 1994 to September 12, 1994, or for the duration of the President's visit to Martha's Vineyard, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations governing safety and security zones contained in 33 CFR 165.23 and 165.33 of this part, entry into any portion of the described zones is prohibited unless authorized by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer, as necessary to protect the President.

Dated: August 26, 1994.

P.A. Turlo,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 94–22165 Filed 9–7–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–94–132]

RIN 2115–AA97

Safety and Security Zones; Presidential Visit, Martha's Vineyard, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing moving safety and security zones, with identical boundaries, around the President of the United States during his vacation on Martha's Vineyard, Massachusetts. The safety and security zones are needed to safeguard the President from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into the zones are prohibited unless authorized by the Captain of the Port, Providence Rhode Island or the Coast Guard Presidential Security Detail Senior Duty Officer.

EFFECTIVE DATES: This regulation is effective from August 26, 1994, to September 12, 1994, or for the duration of the President's visit, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT David Dolloff, Marine Safety Field Office, Cape Cod, MA (508) 968–6556.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LT D.H. Dolloff, Project Manager, and LCDR J.D. Stieb, Project Counsel, First District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the sensitive nature as well as the unpredictable nature of the President's schedule, this office received insufficient notice to publish proposed rules in advance of the event. Publishing a NPRM and delaying its effective date would be contrary to publish interest since immediate action is needed to prevent injury to the President. Any harm to the President would cause far-reaching negative impacts on all people of the United States.

Background and Purpose

From August 26, 1994, to September 12, 1994, President Clinton will be vacationing on Martha's Vineyard, MA. While vacationing, the President may be involved in a myriad of activities including boating or fishing trips, jogs along the beach, dinners at waterfront restaurants, golfing, etc.

This regulation establishes moving safety and security zones around the President which extend 500 yards in all directions. The zones are needed to protect the President from sabotage or other subversive acts. It is not presently possible to predict the President's exact movements on Martha's Vineyard. Accordingly, the Coast Guard Captain of the Port will activate these 500 yard safety and security zones in all directions around the President when necessary to protect the President. The zones will be activated when the President is on or near the waters of the United States and may be expanded or reduced as necessary to protect the President. The safety and security zones have identical boundaries. Both are necessary since a civil penalty cannot be assessed for security zone violations but can be for safety zone violations. All persons, other than those approved by the Captain of the Port, will be prohibited from these zones. The activation and enforcement of these zones will be coordinated with the Secret Service.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The entities most likely to be affected are landside individuals wishing to view the President and pleasure craft engaged in recreational activities or wishing to view the President. These individuals and vessels have ample space outside of the safety and security zones to engage in these activities and therefore they will not be subject to undue hardship. The safety and security zones may also be adjusted if it becomes impracticable to keep the public 500 yards from the President. The zones may impact ferries or other commercial vessels if the President is onboard a vessel transiting to various ports and through various waters. In this case, however, it is

expected that vessels will be allowed by the Captain of the Port to transit through the zones as necessary so as not to place undue hardship on these vessels. Any hardships experienced by persons or vessels due to these zones are considered minimal compared to the national interest in protecting the President.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certificates under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The environmental impact of this rule has been evaluated using the Coast Guard's procedures for implementing the National Environmental Policy Act (Commandant Instruction M16474.1B). Under Section 2.B.2.(e) of these procedures, it is concluded that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–132 is added to read as follows:

§ 165.T01–132 Safety and Security Zones: Presidential Visit; Martha's Vineyard, MA.

(a) *Location.* The following area is a moving safety and a moving security zone: A 500 yard radius around the President of the United States at all times designated by the Captain of the Port during the President's vacation on Martha's Vineyard. The extent of these zones may be expanded or reduced by the Captain of the Port, Providence, R.I., as necessary to protect the President.

(b) *Effective dates.* This regulation is effective during the President's vacation from August 26, 1994 to September 12, 1994, or for the duration of the President's visit to Martha's Vineyard. The security and safety zones established by this regulation will be activated by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer as necessary to protect the President. As appropriate, notice of the activation of this zone may be made via loud hailer, Channels 16 and 22 VHF, or possibly through Safety Marine Information Broadcasts.

(c) *Regulations.* In accordance with the general regulations governing safety and security zones contained in 33 CFR 165.23 and 165.33, entry into the zones is prohibited unless authorized by the Captain of the Port Providence.

Dated: August 26, 1994.

P.A. Turlo,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 94–22166 Filed 9–7–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG85

Evidence Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning the evidence requirements to establish birth, death, marriage or relationship. This amendment is necessary to expedite the payment of benefits by allowing VA to accept photocopies of documents necessary to establish birth, death, marriage or relationship. The intended effect of this amendment is to improve the efficiency and timeliness of claims processing.

DATES: Comments must be received on or before November 7, 1994. Comments will be available for public inspection until November 17, 1994.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 119, at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration (202) 233–3005.

SUPPLEMENTARY INFORMATION: A number of recent developments, including military downsizing, judicial review of VA decisions concerning benefit claims, and changes in due process procedures, have had a major impact on the volume of claims filed with the VA. The growing backlog of pending claims has created additional delays for claimants, and in June 1993 VA established a Blue Ribbon Panel on Claims Processing (the Panel) to develop recommendations on eliminating this backlog and improving the timeliness of claims processing.

One recommendation by the Panel was to revise the regulations to allow the acceptance of photocopies of documents necessary to establish birth, death, marriage or relationship. Current VA regulations provide, in general, that, in order to establish birth, death, marriage or relationship for VA purposes, a claimant must submit a copy of the required document certified over the signature and official seal of the person having custody of the record.

It has been our experience that many claimants are not certain of the definition of a "certified copy" and often submit photocopies of notarized copies, or fail to respond to a request for evidence because of difficulty in obtaining certified copies. Such actions

by claimants result either in additional requests from VA for certified copies—further delaying the authorization of benefits—or in benefits to which a claimant may be entitled being denied.

Accepting photocopies would reduce not only delays but also the frustrations experienced by claimants who have difficulty obtaining certified copies. The Panel was of the opinion that 38 CFR 3.216, which requires claimants to furnish VA with the social security numbers for all dependents on whose behalf benefits are claimed or received, and 38 U.S.C. 5317, which authorizes data exchanges between VA and other federal agencies, are adequate safeguards against the possibility that VA would erroneously award benefits based upon acceptance of altered photocopies. Additionally, VA would retain the option of requesting certified documentation if not satisfied that the photocopies are genuine or free from alteration.

The Secretary of Veterans Affairs has accepted this recommendation of the Panel, and we have amended 38 CFR 3.202(c), 3.204 (b) and (c), 3.205(a), 3.207(b), 3.209 (a) and (b), 3.210 (b) and (c), and 3.211 (a) and (d) to implement the Secretary's decision. We have also amended § 3.205(a)(4) to remove the restrictions to the submission of an original certificate of marriage, which are unnecessary in view of the determination to accept a photocopy. Additionally, we have amended § 3.210(b)(3)(i) to reflect gender-neutral terminology in accordance with 38 CFR 1.13. In light of the Secretary's commitment to reduce the backlog of pending claims and provide timely claims adjudication to all claimants, and since this action cannot work to the detriment of any claimant and is an agency rule of practice or procedure, we have elected to publish this rule as an interim rule with request for comments rather than a proposed rule.

This amendment is effective the date of publication of the interim rule. The Secretary finds good cause for doing so since this amendment will work to the advantage of those who will be affected without working to the detriment of any other claimant. This decision is fully consistent with VA's longstanding policy to administer the law under a broad interpretation for the benefit of veterans and their dependents (38 CFR 3.102). Although this amendment is effective immediately, any comments received will be carefully considered and another rule document will be published, if indicated.

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

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

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

Approved: July 14, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

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

PART 3—ADJUDICATION

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

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

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

§ 3.202 [Amended]

2. In § 3.202(c), remove the words "certified in accordance with § 3.204(c)" and insert, in their place, the words "they satisfy the requirements of § 3.204".

3. In § 3.204, paragraph (c) is removed, and paragraph (b) is revised to read as follows:

§ 3.204 Evidence other than evidence of service.

* * * * *

(b) *Acceptability of photocopies.* Photocopies of documents necessary to establish birth, death, marriage or relationship under the provisions of §§ 3.205 through 3.215 of this part are acceptable as evidence if the Department of Veterans Affairs is satisfied that the copies are genuine and free from alteration. Otherwise, VA may request a copy of the document certified over the signature and official seal of the person having custody of such record.

4. In § 3.205, paragraphs (a)(1) and (a)(4) are revised to read as follows:

§ 3.205 Marriage.

(a) * * *

(1) Copy or abstract of the public record of marriage, or a copy of the church record of marriage, containing sufficient data to identify the parties, the date and place of marriage, and the number of prior marriages if shown on the official record.

* * * * *

(4) The original certificate of marriage, if the Department of Veterans Affairs is satisfied that it is genuine and free from alteration.

* * * * *

§ 3.207 [Amended]

5. In § 3.207(b), remove the words "A certified copy, or certified abstract, of the decree of annulment." and insert, in their place, the words "A copy or abstract of the decree of annulment."

§ 3.209 [Amended]

6. In § 3.209 (a) and (b), remove the words ", certified by the custodian of such records" where they appear.

7. In § 3.210, paragraphs (c) introductory text and (c)(1)(i), the word "certified" is removed where it appears, and paragraph (b)(3)(i) is revised to read as follows:

§ 3.210 Child's relationship.

* * * * *

(b) * * *

(3) * * *

(i) A copy of the public record of birth or church record of baptism, showing that the veteran was the informant and was named as parent of the child; or

* * * * *

§ 3.211 [Amended]

8. In § 3.211, paragraph (a)(1), the words "certified by the custodian of such records" are removed; in paragraphs (a)(2) and (d)(2), the word "certified" is removed where it appears.

[FR Doc. 94–21849 Filed 9–7–94; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 4

RIN 2900–AG97

Schedule for Rating Disabilities; Genitourinary System (Special Monthly Compensation)

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) has amended its Schedule for Rating Disabilities of the Genitourinary System by adding a note at the beginning of § 4.115b requiring rating specialists to refer to § 3.350 any time they evaluate a claim involving loss or loss of use of a creative organ and by adding a footnote at three diagnostic codes to ask the rater to

review for entitlement to special monthly compensation (SMC). The intended effect of this change is to ensure that potential entitlement to SMC is considered in every case where there is loss or loss of use of a creative organ.

DATES: This amendment is effective September 8, 1994.

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

SUPPLEMENTARY INFORMATION: VA published a final revision to the section of the Schedule for Rating Disabilities on the Genitourinary System in the **Federal Register** on January 18, 1994 (59 FR 2523–29). In the preamble to the final revision, in response to a comment urging that we place a note under diagnostic code (DC) 7522 (Penis, deformity, with loss of erectile power) indicating entitlement to special monthly compensation under 38 U.S.C. 1114(k), we stated our belief that such a note was not warranted because we preferred that raters refer to the regulations governing special monthly compensation rather than relying on cross-references in the rating schedule. We noted that the criteria regarding entitlement to special monthly compensation are extensive, very complicated, and seldom correspond exactly to evaluation criteria in the rating schedule.

Upon further review we have determined that the addition of indications under diagnostic codes where there might be entitlement to SMC would improve the revision by enhancing the likelihood of consideration for SMC.

While it is impractical to provide detailed information at every location in the rating schedule where the potential for entitlement to SMC might arise, we have added a note at the beginning of § 4.115b requiring rating specialists to refer to § 3.350 any time they evaluate a claim involving loss or loss of use of a creative organ. In addition to the note, we have added a footnote at DC's 7522 (Penis, deformity, with loss of erectile power), 7523 (Testis, atrophy, complete), and 7524 (Testis, removal) instructing raters (in a note at the bottom of the page) to review for entitlement to SMC. While those conditions clearly call for review for entitlement to SMC, there are other conditions in this portion of the rating schedule where there might also be entitlement to SMC. The lack of a footnote does not relieve the rating specialist of the responsibility of recognizing additional circumstances where SMC might be warranted. We believe that the combination of the regulatory requirement contained in the note and the footnotes is the best method of making sure that potential entitlement to SMC is considered.

This amendment does not represent a substantive change from the final rule on the Genitourinary System published in the **Federal Register** on January 18, 1994. It is an amendment to ensure that provisions for special monthly compensation already in place will be fully considered in every case. Therefore we are publishing this as a final rule.

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

Since this is not considered to be a significant regulatory amendment, we have not prepared a Costs and Benefits analysis in accord with Executive Order 12866 of September, 1993, and the Office of Management and Budget has reviewed this rule.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved July 28, 1994.

Jesse Brown,

Secretary for Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

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

Authority: 38 U.S.C. 1155.

2. Section 4.115b is amended by adding an introductory note before diagnostic code 7500 and by revising diagnostic codes 7522, 7523, and 7524, to read as follows:

§ 4.115b Ratings of the genitourinary system—diagnoses.

Note: When evaluating any claim involving loss or loss of use of one or more creative organs, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation. Footnotes in the schedule indicate conditions which potentially establish entitlement to special monthly compensation; however, there are other conditions in this section which under certain circumstances also establish entitlement to special monthly compensation.

* * * * *

7522 Penis, deformity, with loss of erectile power—20 [1]

7523 Testis, atrophy complete:
Both—20 [1]
One—0 [1]

7524 Testis, removal:
Both—30 [1]
One—0 [1]

Note: In cases of the removal of one testis as the result of a service-incurred injury or disease, other than an undescended or congenitally undeveloped testis, with the absence or nonfunctioning of the other testis unrelated to service, an evaluation of 30 percent will be assigned for the service-connected testicular loss. Testis, underscended, or congenitally undeveloped is not a ratable disability.

* * * * *

[FR Doc. 94–21853 Filed 9–7–94; 8:45 am]

BILLING CODE 8320–01–P–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5052–3]

RIN 2060–AC 12

National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates final standards that limit the discharge of chromium compound air emissions from industrial process cooling towers (IPCT's) pursuant to section 112 of the Clean Air Act as amended in 1990 (the Act). Chromium compounds are among the 189 hazardous air pollutants (HAP's) listed for regulation under section 112 of the Act. Industrial process cooling towers that use chromium-based water treatment programs have been identified by the EPA as significant emitters of chromium compounds to the

[1] Review for entitlement to special monthly compensation under § 3.350 of this chapter.

atmosphere. The purpose of the final rule is to effectively eliminate chromium compound air emissions from IPCT's through the prohibition of chromium-based water treatment chemicals in affected new and existing IPCT's.

DATES: These regulations are effective September 8, 1994.

The incorporation by reference of certain publications in this standard is approved by the Director of the Office of the Federal Register as of September 8, 1994.

ADDRESSES: *Docket.* Docket No. A–91–65, containing information considered by the EPA in developing the promulgated IPCT NESHAP is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, except for Federal holidays, at the EPA's Air and Radiation Docket and Information Center, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

Background Information Document

A background information document (BID) for the promulgated ITCT national emission standards for hazardous air pollutants (NESHAP) may be obtained from the docket; the U.S. EPA Library (MD–35), Research Triangle Park, NC 27711, telephone number (919) 541–2777; or from National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487–4650. Please refer to "National Emission Standards for Hazardous Pollutants for Industrial Process Cooling Towers—Background Information for Promulgated Standards" (EPA–453/R–94–041b). The BID contains a summary of the public comments made on the proposed IPCT standard and EPA responses to the comments.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine of the Industrial Studies Branch, Emissions Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–5289.

SUPPLEMENTARY INFORMATION: Under section 307(b)(1) of the Act, judicial review of NESHAP is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. Background
II. Summary
  A. Summary of Promulgated Standards
  B. Summary of Major Changes Since Proposal
III. Summary of Environmental, Energy, Cost, and Economic Impacts
  A. Environmental Impacts
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IV. Public Participation
V. Significant Comments and Responses
  A. Selection of Regulatory Authority
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  G. Interaction of the IPCT NESHAP and the General Provisions
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IV. Administrative Requirements
  A. Docket
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  C. Paperwork Reduction Act
  D. Regulatory Flexibility Act
  E. Miscellaneous

I. Background

Section 112(b) of the Act lists 189 HAP's and requires the EPA to establish national emission standards for all major sources and some area sources of those HAP's. Among the listed pollutants are chromium compounds. On July 16, 1992 ((57 FR 31576), EPA published a list of major and area sources for which NESHAP are to be promulgated and on December 3, 1993 (58 FR 83941), EPA published a schedule for promulgation of those standards. The IPCT source category is included in the list of major sources to be regulated for which the EPA is to establish national emission standards by November 1994.

The IPCT rule was proposed in the **Federal Register** on August 12, 1993 (58 FR 43028). No public hearing on this rule was requested, but 41 comment letters were received.

II. Summary

A. Summary of Promulgated Standards

The standard being promulgated today will eliminate emissions of chromium compounds from new and existing IPCT's that are major sources or are integral parts of major sources by prohibiting the use of chromium-based water treatment chemicals in those IPCT's.

1. Affected Sources

Cooling towers are devices that are used to remove heat from a cooling fluid, typically water, by contacting the fluid with ambient air. The IPCT source category includes cooling towers that are used to remove heat that is produced as an input or output of chemical or industrial processes. The IPCT source category also includes cooling towers that cool industrial processes in combination with heating, ventilation, and air conditioning (HVAC) systems. Standards to control chromium emissions from cooling towers that cool HVAC systems exclusively (comfort cooling towers (CCT)) were promulgated on January 3, 1990, under section 6 of the Toxic Substances Control Act (TSCA), (55 FR 222).

This rule is applicable only to those IPCT's in which chromium-based water treatment chemicals are used on or after [Insert date of publication of this final rule] and which are major sources or are integral parts of major sources as defined in § 112(a)(1) of the Act. A major source is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP's.

This rule is not applicable to area source IPCT's, which are IPCT's that are neither major sources nor integral parts of major sources. However, owners or operators of area source IPCT's should take note of two specific requirements of the General Provisions to part 63 of the Code of Federal Regulations (CFR) that are applicable to area sources. First, § 63.6(a) of the General Provisions states that if an area source increases its emissions of HAP's (or its potential to emit HAP's) such that the source now qualifies as a major source, that source would then become subject to any relevant standards promulgated under part 63 for major sources. Thus, any area source IPCT that is operated with chromium-based water treatment chemicals and that later becomes a major source or becomes an integral part of a major source is subject to this subpart. Second, as required by § 63.10(b)(3) of the General Provisions, owners or operators of area source IPCT's that use chromium water treatment chemicals on or after September 8, 1994, must keep on file a record of the determination that the IPCT is an area source IPCT.

2. Format of the Standard

As authorized under section 112(h) of the Act, this standard is a work practice standard rather than an emission standard. The standard regulates emissions of chromium from affected IPCT's by prohibiting the use of chromium-based water treatment chemicals in those IPCT's.

3. Compliance Date

The compliance date of this rule for existing IPCT's is March 8, 1996. All affected existing IPCT's must discontinue the use of chromium-based water treatment chemicals by that date. The compliance date for new IPCT's that are placed into operation before September 8, 1994 is September 8, 1994. The compliance date for new IPCT's that are placed into operation after September 8, 1994 is the date that circulation of water through the IPCT is initiated.

In accordance with § 63.6(c)(5) of the General Provisions, the compliance date for existing area source IPCT's that become major sources or integral parts of major sources is 18 months from the date on which the IPCT becomes a major source or integral part of a major source. In accordance with § 63.6(b)(7) of the General Provisions, the compliance date for new area source IPCT's that become major sources or integral parts of major sources is the date that the IPCT becomes a major source or integral part of a major source.

4. Compliance Demonstrations

This rule contains no requirements for performance testing or for monitoring IPCT emissions or any other parameter. However, regulatory agencies have the option of requiring cooling water sampling for residual hexavalent chromium (Cr^{+6}) if warranted. This rule specifies methods for sampling and analyzing cooling water for Cr^{+6} and a de minimis Cr^{+6} concentration of 0.5 parts per million (ppm) by weight. Any affected IPCT with a cooling water Cr^{+6} concentration in excess of 0.5 ppm would be considered in violation of this standard. Because it may require several weeks for the concentration of Cr^{+6} in cooling water to decline below 0.5 ppm, the final rule allows a 3 month time period following the compliance date before a Cr^{+6} concentration in excess of 0.5 ppm is considered to be a violation of the standard.

5. Notification Requirements

Owners or operators of affected IPCT's are required to submit two notifications: an initial notification and a notification of compliance status. The initial notification will enable enforcement personnel to identify the population of IPCT's subject to the standard. This notification must include the name and address of the owner or operator, the address of the affected IPCT, and information on the types of water treatment chemicals used in the IPCT. For existing IPCT's or new IPCT's that are in operation on the effective date of this rule, the initial notification must be submitted by September 8, 1995. Owners or operators of new IPCT's that are not yet in operation are required to submit the initial notification within 12 months of initial startup of the IPCT. This rule overrides the requirement of § 63.9(b) of the General Provisions which requires that the initial notification be submitted 120 days later than the compliance date.

The notification of compliance status is a one-time certification that must be submitted no later than 60 days after the compliance date. This rule overrides the requirement of § 63.9(h) of the General Provisions that requires owners or operators of affected sources to submit annual notifications of compliance status. The notification of compliance status must state that the source is in compliance with this standard and must be signed by a responsible official. In addition, the notification of compliance status must include information on the type of cooling water treatment chemicals used in the affected IPCT.

6. Reporting and Recordkeeping Requirements

This rule requires no routine or periodic reporting by owners or operators of affected IPCT's. The only records that owners or operators of affected IPCT's are required to keep under this rule are the initial notification and the notification of compliance status. These records must be retained for a minimum of 5 years onsite. In addition, as stated previously, owners or operators of area source IPCT's that use chromium water treatment on or after September 8, 1994 must keep on file for a minimum of 5 years the documentation that substantiates that the IPCT is an area source IPCT and is not subject to this rule.

B. Summary of Major Changes Since Proposal

1. Applicability

The final rule is applicable only to those IPCT's that are major sources or are integral parts of major sources and are operated with chromium-based water treatment chemicals on or after the effective date of the rule. Under the proposed rule, all IPCT's that are major sources or are integral parts of major sources would have been subject to the standard, regardless of the type of water treatment program used in those IPCT's.

2. Definitions

In the final rule, several definitions were modified or added to clarify the rule and to eliminate the need to reference the Act or the General Provisions to part 63.

3. Compliance Date

In the proposed rule, § 63.403(a) specified a compliance date for existing IPCT's of 6 months after promulgation. In the final rule, the compliance date for existing IPCT's was changed to 18 months following promulgation of the rule.

4. Compliance Demonstrations

Section 63.404 of the proposed rule was titled "Monitoring requirements." In the final rule, § 63.404 is titled "Compliance demonstrations" to more accurately reflect the content of the section. The final rule also includes a second approved method for sampling and analyzing cooling water samples for Cr^{+6}: Method 3500–Cr D, Colorimetric Method, Standard Methods for the Examination of Water and Wastewater, American Public Health Association. The second approved method is based on the same analytical procedure as Method 7196, which was the only EPA-approved method specified in the proposed rule. In addition, the final rule specifies a de minimis concentration of 0.5 ppm by weight Cr^{+6} in IPCT cooling water; the proposed rule did not specify a de minimis level for chromium. Furthermore, the final rule allows a 3 month time period following the compliance date before a Cr^{+6} concentration in excess of 0.5 ppm is considered to be a violation of the standard.

5. Notification Requirements

In the proposed rule, recordkeeping requirements were addressed in § 63.405 and notification requirements were addressed in § 63.406, which was titled "Reporting." In the final rule, these sections have been reorganized to conform with the organization of the General Provisions to part 63: notification requirements are addressed in § 63.405, and recordkeeping and reporting requirements are addressed in § 63.406.

The final rule requires two one-time notifications for each affected IPCT: One initial notification and one notification of compliance status. The proposed rule referenced § 63.9 of the General Provisions to part 63 regarding the

requirements of the initial notification and notification of compliance status but did not list the specific requirements of the notifications. The final rule specifies the types of information required in each notification and specifies deadlines for submittals of both notifications. The initial notification must be submitted by owners or operators of existing IPCT's by September 8, 1995 and by owners or operators of new IPCT's within 12 months of the initial startup of the affected IPCT. The notification of compliance status must be submitted within 60 days of the date of the IPCT is brought into compliance with this subpart. The proposed rule required annual submissions of the notification of compliance status.

6. Recordkeeping and Reporting Requirements

As stated previously, recordkeeping requirements were moved from § 63.405 in the proposed rule to § 63.406 in the final rule. The proposed rule required IPCT owners or operators to maintain records of water treatment chemical purchases. Owners or operators of IPCT's that were operated with chromium-based water treatment chemicals also were required to maintain an inventory of the chromium chemicals that are onsite and to document the disposition of those chromium chemicals. In the final rule, these recordkeeping requirements have been eliminated. However, the final rule still requires IPCT owners or operators to keep copies of the initial notifications and the notifications of compliance status in accordance with § 63.10 of the General Provisions.

The proposed rule did not specify a minimum record retention period, but referenced § 63.10 of the General Provisions to part 63 regarding general requirements for recordkeeping. The final rule specifies a minimum record retention period of 5 years.

III. Summary of Environmental, Energy, Cost, and Economic Impacts

A. Environmental Impacts

The environmental impacts for this rule were not affected by changes made to the rule between proposal and promulgation. These impacts are summarized below.

1. Air

This standard prohibits the use of chromium-based water treatment programs in affected IPCT's. The total baseline Cr^{+6} emissions from all existing IPCT's are estimated to be 23 megagrams per year (Mg/yr) (25 tons/yr). The standard will achieve a 99 percent reduction of Cr^{+6} emissions nationwide by eliminating all Cr^{+6} emissions from existing IPCT's that are major sources or are integral parts of major sources. None of the nonchromium chemicals that are used as substitutes for chromium chemicals in cooling water are listed as HAP's under § 112(b) of the Act.

The standard will also prevent emission of 1.6 Mg/yr (1.8 tons/yr) of Cr^{+6} from the 870 new IPCT's projected by 1998 (the fifth year of the standards). This estimate is based on the assumption that, in the absence of a standard, chromium use would remain at current levels (i.e., 10 percent or 87 of new IPCT's would be placed on chromium-based programs).

Substitute nonchromium-based treatment programs typically require higher levels of phosphates and polymeric dispersants than do chromium-based treatment programs. Nonchromium treatment programs may also contain molybdates. Thus, emissions of these compounds would increase under the standard. However, none of these compounds are listed HAP's. Total baseline emissions of phosphates for all existing IPCT's are estimated to be 104 Mg/yr (114 tons/yr). Under the standard, phosphate emissions from existing IPCT's would increase by 46 Mg/yr (50 tons/yr) to approximately 150 Mg/yr (165 tons/yr).

Zinc, which is not a listed HAP, is a common corrosion inhibitor present in many cooling water treatment programs. Almost all current chromium-based programs contain zinc because the two metals act synergistically to inhibit corrosion. Nonchromium treatments may also contain zinc at levels similar to those in the chromium/zinc programs that they replace. As chromium/zinc treatments are replaced by nonchromium treatments, zinc emissions are not expected to change significantly.

Molybdate-based programs currently have a very small share (less than 1 percent) of the water treatment market. Although the market for molybdate programs is expected to grow modestly under the standard, molybdate usage is expected to remain limited because these programs are more expensive than other treatment programs. Consequently, molybdate emissions are not expected to increase significantly.

Under the standard, particulate matter (PM) emissions from existing IPCT's will not change from baseline levels of approximately 10,000 Mg/yr (11,000 tons/yr). New source PM levels will also be unaffected by these standards.

In the absence of the standard, phosphate emissions from new sources in 1998 would be approximately 4 Mg/yr (4.4 tons/yr). Under the standard, phosphate emissions from new IPCT's in the fifth year will increase to 5.8 Mg/yr (6.4 tons/yr), and total nationwide phosphate emissions for new and existing IPCT's in the fifth year of the standard will be 156 Mg/yr (172 tons/yr).

2. Water

Blowdown from existing IPCT's is pretreated to remove Cr^{+6} before discharge. Any Cr^{+6} removed from treated IPCT blowdown is handled as solid waste. The standard will eliminate any accidental water discharges of Cr^{+6} from IPCT blowdown pretreatment programs.

Under the standard, nationwide phosphate discharges from existing IPCT's will increase by as much as 830 Mg/yr (910 tons/yr), and new sources that will go into operation by 1998 will discharge an additional 610 Mg/yr (670 tons/yr). As a result, total phosphate discharges will increase from the baseline level of 7,700 Mg/yr (8,470 tons/yr) to 9,140 Mg/yr (10,050 tons/yr). In the absence of the standard, new sources that will go into operation by 1998 would increase nationwide phosphate water discharges by 550 Mg/yr (610 tons/yr). As a result, total phosphate discharges will increase from the baseline of 7,700 Mg/yr (8,470 tons/yr) to 8,250 Mg/yr (9,075 tons/yr). These increases in phosphate discharges are extremely small in comparison to phosphate discharges from cropland and pastureland runoff. Consequently, there are no significant impacts associated with these increased phosphate discharges.

Nonchromium treatments contain levels of zinc similar to those in baseline chromium programs. Therefore, zinc discharges are not expected to increase under the standard. Although data are limited, increases in the amount of molybdate discharged under the standard are expected to be negligible.

3. Solid Waste

The only impacts of the standard on solid waste will result from eliminating all Cr^{+6} in the solid waste from IPCT blowdown treatment processes. Disposal of all other forms of solid waste removed from IPCT blowdown would remain at current levels.

Blowdown from cooling towers may be treated to reduce the concentrations of corrosion inhibitors (e.g., chromium, zinc, phosphates, and molybdenum). The concentration of these elements in

the resulting sludge is likely to be higher than the concentrations in the blowdown before treatment. Chromium-containing solid waste (i.e., the treatment sludge) is sometimes identified as a hazardous waste, the EPA hazardous waste No. D007, under Resource Conservation and Recovery Act (RCRA) part 261, subpart C—Characteristics of Hazardous Waste; it is considered a hazardous waste if its leachate contains greater than 5 milligrams per liter (mg/L) total chromium as determined by the Toxicity Characteristic Leaching Procedure. Chromium-containing waste is also subject to the Land Disposal Restrictions in RCRA part 268, which allows land disposal only if the hazardous waste is treated in accordance with subpart D—Treatment Standards. Land disposal of the waste is allowed if the chromium concentration in the waste does not exceed 5 mg/L total chromium. Hazardous wastes also must be handled and stored according to specific RCRA procedures.

Baseline blowdown discharges are estimated to contain a maximum of 400 mg/yr (440 tons/yr) of Cr^{+6}. Consequently, the standard will eliminate solid waste disposal of a maximum of 400 Mg/yr (440 tons/yr) of Cr^{+6} by eliminating all Cr^{+6} from IPCT's. Zinc-, molybedenum-, and phosphate-containing wastes are not identified as hazardous wastes and, therefore, do not have the same solid waste disposal requirements as chromium-containing wastes. Under the standard, the solid waste impacts due to zinc-, molybdenum-, and phosphate-containing wastes will be negligible.

B. Energy Impacts

The energy impacts, which are described below, were not affected by changes made to the rule between proposal and promulgation. The only energy impacts for the standard over baseline will result from the energy required to operate the additional chemical feed and regulation equipment that is required for nonchromium-based water treatment programs. The nationwide energy impacts associated with the standard are small.

Nonchromium-based water treatment programs typically require tighter control of chemical feed and recirculating water quality parameters than do chromium-based programs. The components required for a basic nonchromium-based chemical feed and regulation system include a pH controller, conductivity controller, and metering chemical feed pumps.

For existing sources, a nationwide increase of up to 3,500 megawatt-hours per year (MWh/yr) (12,000 million British thermal units per year (Btu/yr)) will result from the use of additional automated instrumentation/controller equipment under the standard. This represents an increase of approximately 0.01 percent of the energy required to operate these IPCT's. For new sources, a nationwide increase of up to 370 MWh/yr (1,300 million Btu/yr) will result under the standard.

Typical baseline automated instrumentation/controllers for an IPCT currently on a chromium-based water treatment program consume approximately 1.5 MWh/yr (50 million Btu/yr). Energy consumption for instrumentation/controllers for this IPCT will increase to 4.4 MWh/yr (150 million btu/yr) under the standard.

C. Cost Impacts

The cost impacts, which are described below, were not affected by changes made to the rule between proposal and promulgation. Cost components of the nonchromium control measure include the increased cost of nonchromium chemicals over the cost for chromium chemicals and the cost to install, operate, and maintain automated chemical feed and regulation equipment. When properly controlled, nonchromium-based water treatment programs perform comparably to chromium-based programs. Therefore, it is assumed that corrosion rates, heat exchanger lifetimes, cleaning frequencies and costs, and other maintenance requirements are similar for both types of water treatment programs, and no significant cost result from conversion.

Total annualized baseline costs for model towers range from $5,100 to $485,000 respectively for model towers with recirculation rates of 1,000 gallons per minute (gal/min) to 105,000 gal/min. These costs include annualized capital costs for the cooling tower and baseline instrumentation/controller equipment and annual operating costs for the instrumentation/controller equipment and chromium-based water treatment chemicals.

Nationwide annualized incremental cost for the standard is $14 million. This corresponds to a projected increase of about 6 percent over the annualized costs to operate all IPCT's nationwide. To comply with the standard, the total incremental annualized costs above baseline for model towers range from $4,270 to $144,000 for model towers with recirculation rates of 1,000 gal/min to 105,000 gal/min, respectively. These costs include the incremental annualized capital costs for additional instrumentation/controller equipment and the incremental annual operating costs for the additional equipment and the nonchromium-based water treatment chemicals. The total nationwide increase in annual chemical costs to switch existing IPCT's on chromium-based treatment programs to nonchromium-based programs is $12.5 million. This corresponds to an increase of only 2.5 percent above the total nationwide annual cost of water treatment programs for all IPCT's and CCT's, which is about $500 million.

Under the standard, the estimated nationwide annualized cost in 1998 of prohibiting new sources from using chromium is $1.2 million. This corresponds to a projected increase of about 0.5 percent over the nationwide annualized costs in the absence of regulation.

D. Economic Impacts

The economic impacts, which are described below, were not affected by changes made to the rule between proposal and promulgation. Economic impacts were assessed by examining the effect of the elimination of chromium-based water treatment programs on the final end product prices for each affected industry. The results of this assessment indicate that there are no significant economic impacts on the industries to be affected by this regulation.

Typical price increases range from 0.001 percent to 0.04 percent for the affected industries. The industries that have the highest percentage of IPCT's using chromium corrosion inhibitors will bear higher control costs and experience greater economic impacts than relatively minor users of chromium chemical programs. The chemical manufacturing industry, a relatively major user of chromium, will bear the highest compliance cost and, therefore, is the industry that will experience the greatest economic impact with a typical price increase of 0.011 percent and a projected worst-case scenario price increase of 0.33 percent. All other affected industries will experience maximum price increases less than those predicted for the chemical manufacturing industry.

The following criteria are used to determine what constitutes a significant adverse economic impact for small businesses: (1) Annualized compliance costs increase total cost of production by more than 5 percent; (2) capital costs of compliance represent a significant portion of capital available to small entities; (3) requirements of the regulation are likely to result in closures of small entities; and (4) compliance costs as a percentage of sales for small

polants are at least 10 percent higher than for large plants. The standard will not have any significant impacts on a substantial number of small entities since none of the above criteria are triggered by this regulation.

IV. Publication Participation

Prior to proposal of the IPCT rule, interested parties were advised by public notice in the **Federal Register** (56 FR 54576, October 22, 1991) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the draft IPCT rule recommended for proposal. That meeting was held on November 19–21, 1991. This meeting was open to the public and each attendee was given an opportunity to comment on the draft IPCT rule.

The proposed rule was published in the **Federal Register** on August 12, 1993 (58 FR 43028). The preamble to the proposal discussed the availability of the proposal BID (Chromium Emissions from Industrial Process Cooling Towers—Background Information for Proposed Standards" (EPA–450/R–93–022)), which describes in detail the regulatory alternatives considered and the impacts associated with those alternatives. Public comments were solicited at the time of proposal, and copies of the proposal BID were made available to interested parties.

The public comment period officially ended on October 12, 1993. A public hearing was not requested; however, 41 comment letters were received. The comments were carefully considered, and where determined to be appropriate by the Administrator, changes were made in the final IPCT rule.

V. Significant Comments and Responses

Comments on the proposed rule were received from IPCT users, industry trade groups, the U.S. Department of Energy, a chromium chemical supplier, and two air pollution control agencies. A detailed discussion of these comments and responses can be found in the promulgation BID (see **ADDRESSES** section). The summary of comments and responses in the promulgation BID serves as the basis for the revisions that have been made to the rule between proposal and promulgation.

A. Selection of Regulatory Authority

Several commenters stated that the EPA should have regulated IPCT's under TSCA, which was the authority used for the CCT rule promulgated in 1990 (55 FR 222). Most of these commenters noted that part of the rationale for selecting TSCA as the authority for the CCT rule was that it was more efficient to place the regulatory burden on a small number of chemical distributors than on the large number of cooling tower owners and operators. These commenters suggested that this same rationale is even more appropriate in the case of IPCT's because the impacted vendor population is even smaller than it was at the time the CCT rule was promulgated, and the enforcement system under TSCA is already in place. In addition, prohibiting sales of chromium water treatment chemicals for use in IPCT's under TSCA would result in the elimination of chromium emissions from all IPCT's, not just those at major sources.

The primary reason the EPA regulated CCT's under TSCA was to simplify enforcement. At the time the CCT rule was promulgated, there were an estimated 250,000 CCT's in operation and fewer than 200 water treatment chemical distributors. By banning the sale and distribution of chromium water treatment chemicals for CCT use under TSCA, the focus of enforcement was directed at the relatively small number of distributors rather than the very large number of potential chromium water treatment chemical users. In the case of IPCT's, the number of affected sources is much smaller, numbering fewer than 800.

The TSCA is an alternative regulatory authority in that, before a standard can be promulgated under TSCA, section 9(b) of TSCA requires the EPA to determine if the risk associated with the action can be prevented or sufficiently reduced under another (primary) regulatory authority. If the risk can be prevented or adequately reduced under another authority, the regulation can be promulgated under TSCA only if the Administrator determines that it is in the "public interest" to protect against that risk under TSCA rather than under the primary regulatory authority.

In the case of IPCT's, the risk associated with emissions of chromium from IPCT's can be eliminated under the authority of the Act; therefore, the Administrator would have to find that regulation of IPCT's under TSCA would satisfy other public interest factors. The primary reason to consider regulating IPCT's under TSCA would be regulatory efficiency. As was the case with CCT's, the number of vendors is much smaller than the population of sources. Thus, it might appear to be more efficient to regulate IPCT's in a fashion similar to CCT's. However, because IPCT's will be permitted under title V of the Act, a permitting system is or will be established for sources with affected IPCT's. Thus, regulating IPCT's under the authority of the Act provides a simple mechanism for enforcement that does not involve significant additional burden on either the regulated sources or enforcement personnel. Although the population of IPCT's is relatively large, the fact that the affected IPCT's are located at permitted facilities is in sharp contrast to the case of CCT's, which are predominantly located at facilities that are not permitted. For these reasons, the Administrator determined that the advantages for regulating IPCT's under TSCA were not compelling enough to satisfy the public interest criteria of section 9(b) of TSCA.

The Administrator acknowledges that not all IPCT's are regulated under this rule. However, the number of IPCT's that use chromium-based water treatment chemicals and are not covered by this regulation is estimated to be less than 1 percent of all IPCT's, and chromium emissions from these area source IPCT's constitute no more than 1 percent of total nationwide chromium emissions from IPCT's.

B. Selection of Pollutant to be Regulated

One commenter suggested that the EPA should regulate other HAP's from IPCT's in addition to Cr^{+6}. This commenter states that cooling towers that use chlorine to prevent biological growth are also sources of chloroform, dioxin, and other chlorinated organic compounds, which may be emitted in sufficient quantities to pose a health risk. However, the commenter provided no supporting information or documentation.

Currently, the EPA has no information other than this comment that indicates that other listed HAP's are emitted from IPCT's. If, at a later date, however, the regulation of emissions of other HAP's from IPCT's is determined to be warranted, this regulation on IPCT's could be amended to include additional standards that limit other HAP emissions from IPCT's.

C. Selection of Sources to be Regulated

Fourteen commenters suggested that the standard should apply only to IPCT's that are using chromium-based water treatment chemicals at the time the standard was proposed or is promulgated because these are the only IPCT's that emit HAP's. Several commenters noted that the Act only authorizes the EPA to develop NESHAP for sources of HAP's, which could not include IPCT's using nonchromium water treatment programs. One commenter stated that by making the NESHAP applicable to all IPCT's, even those that have never used or no longer use chromium-based water treatment

chemicals, the EPA would put complying sources in the position of possibly incurring a violation of the standard simply for failure to maintain records to prove that chromium had not been used. The commenters believed that there is no balance between the burden of the recordkeeping proposed and the benefits that supposedly would flow from those requirements.

Two commenters noted that the applicability statement in the recently promulgated NESHAP for perchloroethylene emissions from dry cleaning facilities states that the standard applies to owners or operators of each dry cleaning facility that uses perchloroethylene. Narrowing the applicability of the IPCT NESHAP in a similar fashion would not affect the environmental benefit to be obtained.

After reviewing the comments received and considering other factors, the EPA has concluded that the applicability of the IPCT rule should be limited to those IPCT's that are operated with chromium-based water treatment chemicals. No environmental benefit would be gained by making the rule applicable to IPCT's that are not operated with chromium-based water treatment chemicals because those IPCT's do not emit chromium compounds. In addition, if the rule were applicable to all major source IPCT's as proposed, owners and operators of IPCT's that have stopped using or have never used chromium-based water treatment chemicals could be subject to fines and penalties despite being in compliance with the standard. For these reasons, the EPA has decided to limit the applicability of the IPCT rule to those major source IPCT's that are operated with chromium-based water treatment chemicals on or after the effective date of the rule.

One commenter believes that the applicability of the standard should be limited to IPCT's operating at or below 65 °C (149 °F). The commenter suggested that all high-temperature IPCT's should be placed in a separate subcategory because of the technical problems that accompany switching high-temperature IPCT's using high-solids makeup water to nonchromium water treatment programs. The commenter has been told by vendors of settling agents that at about 70 °C (158 °F), polymeric dispersants will decompose and cause fouling of systems and increased corrosion. In addition, as the cooling water fouls, the process must operate at higher temperatures, which results in higher emissions of nitrogen oxides (NO_X) from the reactor.

Between the period 1989 and 1992, the EPA conducted an investigation specifically targeted at evaluating the feasibility of using nonchromium-based water treatment programs in IPCT's that serve high temperature processes. Based on information obtained from water treatment chemical vendors, manufacturers of high-temperature-process chemicals, and petroleum refineries, the overwhelming body of evidence indicates that nonchromium water treatment programs are comparable to chromium water treatment programs in overall performance. Therefore, the EPA concluded and continues to believe that there is no basis for exempting IPCT's serving high temperature processes from the rule or to subcategorize the IPCT source category for high temperature processes.

Several commenters suggested that the applicability of the standard be extended to all IPCT's, including area source IPCT's. One commenter stated that South Coast Air Quality Management District (SCAQMD) Rule 1404, which was adopted in April 1990, is applicable to all cooling towers.

Section 112 of the Act allows the EPA to regulate emissions from both major and area sources of HAP emissions. However, prior to regulating area sources, § 112(c) of the Act requires the EPA to make a finding of a threat of adverse effects to human health or the environment due to HAP emissions from those area sources. The EPA has made no such finding for area source IPCT's. Area source IPCT's are estimated to contribute less than 1 percent of nationwide emissions of chromium from all IPCT's. Therefore, the final rule applies only to IPCT's that are major sources or are integral parts of major sources.

D. Compliance Dates

Seven commenters suggested alternative compliance dates ranging from 18 months to 5 years after the effective date for a number of reasons. Owners or operators of IPCT's will need time to work with vendors of nonchromium treatment programs to determine the range of acceptable operating conditions that would accomplish the objectives of water treatment and process cooling. Testing regimes could include numerous changeouts of heat exchanger surfaces over periods of several months to determine rates of corrosion under varying conditions of temperature and quality of makeup water. Potential construction or reconstruction could involve unit shutdown and maintenance and would warrant more time for compliance. Chromium may have soaked into the wooden components of the IPCT's and may be present in the sediment in the recirculating basins. Facilities using makeup water with a high iron concentration may have difficulty switching to nonchromium water treatment programs because iron removal equipment may be required on each cooling tower.

The proposed 6-month compliance period is not long enough to allow for the extensive modifications to IPCT systems, such as the installation of new chemical feed and water quality monitoring equipment, that may be required to switch to nonchromium water treatment systems. Six months may not provide enough time for large industrial complexes with numerous cooling towers to convert to nonchromium-based water treatment chemicals.

To respond to these comments, the Agency reviewed the available information and contacted industry representatives about the length of time required to convert IPCT's that are operating with chromium-based water treatment to nonchromium water treatment. The available information indicates that the actual conversion from chromium to nonchromium-based water treatment chemicals generally requires a period of less than 1 month. However, under worst case conditions, conversion may take as much as 18 months to allow adequate time for reconstruction of the cooling system, installation of chemical feed and control equipment, and other modifications. In addition, some facilities may have to convert as many as 20 IPCT's to nonchromium water treatment programs. The approach taken in such cases is to convert the IPCT's sequentially in groups of two to four IPCT's, and the entire process may take several months to complete.

The EPA recognizes that, to bring some facilities into compliance with the IPCT rule, IPCT owners or operators may need to redesign existing cooling towers systems; install additional pretreatment systems, chemical feed control equipment, and peripheral equipment; convert multiple IPCT's; and establish contracts with vendors for nonchromium water treatment programs. Therefore, the Agency has revised § 63.403 of the final rule to specify a compliance date of 18 months after the effective date for existing IPCT's.

In addition, the EPA recognizes that chromium may continue to leach out of wooden cooling tower components for a period of months or even years following the discontinuation of chromium-based water treatment. For that reason, the final IPCT rule specifies

a de minimis level of 0.5 ppm for residual chromium in cooling water.

E. Notification Requirements

Thirty-one commenters addressed the notification requirements of the proposed IPCT rule. The majority of the commenters objected to the requirement for annual certification of compliance status and suggested reducing or eliminating notification requirements altogether.

Several commenters suggested that a one-time notification from all affected IPCT owners and operators would be sufficient to document compliance with the NESHAP. Other commenters stated that notification requirements should be limited to a one-time notification from sources using chromium-based water treatment programs as of the effective date of the standard. Commenters also suggested limiting notification requirements to an initial notification and a one-time submission when compliance is achieved. One commenter stated that the requirement for annual compliance status reports is redundant and provides no protection of air quality.

Several commenters noted that the proposed notification requirements were especially unwarranted because they subject sources already in compliance with the standard (sources that have never used chromium-based water treatment programs and those that have suspended use) to the possibility of fines and penalties merely for violations of notification requirements that the source may have overlooked.

As discussed previously, the Agency has decided to limit the applicability of the IPCT rule to only those IPCT's in which chromium water treatment chemicals are used. Therefore, owners and operators of IPCT's that are not using chromium-based water treatment as of the effective date of the IPCT rule are not subject to the notification requirements.

The EPA has reviewed the arguments presented for eliminating the requirement for annual notification of compliance status and has concluded that annual certifications are not necessary for enforcement purposes and produce no environmental benefit. Therefore, the Agency has decided to eliminate the requirement for owners or operators of affected IPCT's to submit annual compliance status reports. However, owners or operators of IPCT's that use chromium-based water treatment are required to submit an initial notification and, when the use of chromium-based water treatment is discontinued, a notification of compliance status.

Two commenters noted that the proposed notification requirements were redundant with the title V operating permit requirements because the title V operating permit rules also will require an annual compliance certification by a responsible official stating that the source is in compliance with all applicable requirements.

In accordance with § 63.9(b)(3) of the General Provisions to part 63, notifications required under title V that contain all of the information required for part 63 notifications can serve as the part 63 notification. Therefore, owners or operators of affected IPCT's need to submit the required information once; there is no need to submit redundant notifications.

One commenter stated that if an initial notification is required, only the data necessary to demonstrate compliance should be required. The commenter noted that § 63.406(a) of the proposed rule refers sources to § 63.9(b)(2) of the General Provisions, which could be interpreted to require much more information than is required to demonstrate compliance with the IPCT NESHAP.

The Agency recognizes that much of the information specified in § 63.9 of the General Provisions that is to be included in the initial notification is not relevant to IPCT's. For this reason, the EPA has revised § 63.405 of the final IPCT rule to specify the types of information that must be included in both the initial notification and the notification of compliance status for IPCT's.

In addition, the proposed rule did not specify a deadline for submitting the initial notification, but referenced § 63.9(b) of subpart A. The final rule requires that owners or operators of affected IPCT's that have an initial startup before September 8, 1994 submit the initial notification no later than September 8, 1994, and that owners or operators of affected IPCT's that have an initial startup on or after September 8, 1994 submit the initial notification no later than 12 months following the initial startup of the IPCT. Section 63.9(b) of subpart A requires a deadline of 120 days for submitting the initial notification. However, in the case of this rule, the submittal deadline for the initial notification was extended to allow States adequate time to establish and implement title V permit programs.

F. Recordkeeping and Reporting Requirements

Nineteen commenters objected to the amount of recordkeeping required by the proposed rule. Although some commenters suggested deleting all recordkeeping requirements for some or all IPCT owners and operators, the majority of commenters objected to the requirement that IPCT owners or operators maintain records of water treatment chemical purchases. Several of the commenters stated that maintaining records of water treatment chemical purchases is unduly burdensome and would not aid enforcement; other records, such as material safety data sheets (MSDS), already maintained by facilities are adequate to demonstrate compliance with the IPCT regulation. A number of commenters suggested limiting chemical purchase recordkeeping requirements to purchases of chromium chemicals only or to purchases of corrosion control chemicals only. Two commenters suggested allowing water sample analysis as the enforcement mechanism instead of maintaining records of water treatment chemical purchases. Several commenters suggested exempting from all recordkeeping those IPCT owners or operators that do not use chromium water treatment chemicals.

Three commenters stated that maintaining records onsite or at the same file location is burdensome, time consuming, and prone to error. One commenter stated that all purchasing records are kept in a central location at each production site but are not separated for specific pieces of equipment such as IPCT's. Another stated that purchasing or invoice records are rarely kept in the same file location as environmental records or MSDS. Another commenter stated that many plants do not have onsite storage space sufficient to maintain 5 years of data. Also, in many cases, water treatment chemicals are purchased centrally, not by individual plants.

As mentioned previously, the final IPCT rule applies only to owners or operators of IPCT's that operate with chromium-based water treatment. After reviewing the comments on recordkeeping requirements for the IPCT rule, EPA has reevaluated the need to require IPCT owners or operators to maintain records of water treatment chemical purchases and has concluded that these requirements are overly burdensome and generally unjustified for this rule. Therefore, the final rule contains no requirements for owners or operators of affected IPCT's to maintain records of water treatment chemical purchases.

The only records that the final IPCT rule requires owners and operators to keep are the initial notification and the notification of compliance status. In cases in which enforcement personnel suspect that chromium water treatment

chemicals have been used in violation of the IPCT rule, IPCT owners or operators ultimately are responsible for demonstrating compliance. This demonstration could be through the use of records or other means including sampling and analysis of the IPCT recirculating water in accordance with Method 7196 or Method 3500–Cr D as specified in § 63.404 of the rule.

By eliminating the requirement for maintaining records of water treatment chemical purchases, the recordkeeping requirements for the IPCT rule have been greatly simplified. The Agency believes that the remaining recordkeeping requirements—that IPCT owners or operators maintain copies of the initial notification and the notification of compliance status—are minimal and the burden associated with maintaining these records in the same file location is not significant. Furthermore, the final IPCT rule requires that these records be maintained onsite for a minimum period of 5 years.

G. Interaction of the IPCT NESHAP and the General Provisions

Seven commenters objected to the references to the General Provisions included in the IPCT NESHAP. Six commenters stated that the IPCT NESHAP should specifically identify which sections of the General Provisions are applicable to IPCT sources and should specifically override those not applicable. The commenters believe that it is unreasonable to require sources to search through the lengthy and complex General Provisions to identify applicable requirements when the EPA is in a much better position to do this easily. The commenters noted that the length and complexity of the General Provisions, especially compared to the relative simplicity of the IPCT NESHAP, could result in unintended noncompliance if a source misses an applicable General Provisions requirement.

One of the commenters specifically identified §§ 63.5 (construction and reconstruction), 63.6 (startup, shutdown, and malfunction plans), 63.7 (performance testing), and 63.10 (recordkeeping) as sections of the General Provisions that should be specifically excluded from applicability to IPCT sources because they contain requirements that are meaningless and unnecessary when applied to IPCT's.

One of the commenters stated that all requirements of the IPCT NESHAP should be presented without reference to the General Provisions. The commenter suggested that the IPCT standard specifically state that the General Provisions do not apply to the IPCT NESHAP.

The EPA recognized that many of the requirements of the General Provisions are not relevant to this rule because they pertain to emission standards rather than to work practice standards. In consideration of the length and complexity of the General Provisions, the EPA has decided to include in the final IPCT rule a table that indicates which sections of the General Provisions are and are not applicable to IPCT's. The EPA did consider repeating relevant General Provisions in the IPCT rule, as suggested by some of the commenters to eliminate the need for owners or operators of affected IPCT's to reference the General Provisions. However, this approach would have a major disadvantage in that it would greatly increase the length of the IPCT rule by requiring the repetition of generally relevant requirements. In addition, if this approach were adopted for all NESHAP, part 63 of the CFR would consist largely of numerous repetitions of the same generally relevant requirements, thus defeating the purpose of the General Provisions.

H. Selection of Control Technology

One commenter suggested that the EPA allow high-efficiency drift eliminators (HEDE's) or other techniques to control emissions from high-temperature IPCT's using chromium water treatment programs. This commenter states that with a chromium concentration of 3 ppm in the cooling tower water, an HEDE can reduce emissions from the tower to a level that would not be harmful to human health during the extended period that would be required for conversion to nonchromium-based water treatment programs.

The feasibility of using nonchromium-based water treatment programs in IPCT's that serve high-temperature processes was investigated by the EPA. The investigation concluded that the percentage of high-temperature-process IPCT's that operate without chromium-based water treatment chemicals far exceeds the 12 percent required for establishing the maximum achievable control technology (MACT) floor under § 112(d) of the Act. Therefore, there is no basis for subcategorizing the IPCT source category by process temperature. In addition, using nonchromium water treatment is a pollution prevention measure.

Regarding the use of HEDE's in combination with low-chromium water treatment to reduce the risk associated with chromium emissions to a reasonable level, section 112(d) of the Act requires the EPA to set standards for emissions of HAP's that are no less stringent than the average emission limitation achieved by the best performing 12 percent of sources. The EPA has found MACT to be more stringent than the use of HEDE's. Further, the EPA estimates that HEDE's are used in no more than 5 percent of IPCT's nationwide, use of HEDE's and low-chromium water treatment programs would not eliminate chromium emissions as will nonchromium water treatment, and retrofitting HEDE's does not constitute a pollution prevention measure as defined in the Pollution Prevention Act.

I. Cost Impact

One commenter stated that the EPA did not fully address the impact on individual regulated facilities of the high capital cost associated with the equipment upgrade required to switch from chromium-based to nonchromium-based treatment programs. This commenter states that at one refinery, for example, the conversion to nonchromium water treatment will include adding air coolers, redesigning heat exchangers, and upgrading cooling water headers, which will result in a capital cost of more than $10 million. Production losses also are anticipated due to increases in fouling of the cooling water system. Another commenter stated that at his facility where the existing chromium systems use a single chromium storage tank and a small pump to add the chromium to the system, conversion to nonchromium treatment programs would require installation of five additional tanks with associated pumps, valves, and control systems at a capital cost of $750,000. The commenter estimated that the annual cost for several IPCT's would increase by about $200,000 per year and that the estimated annual costs associated with increased fouling when operating with nonchromium water treatment would be $600,000 at one location.

To estimate the cost of compliance for this standard, the EPA conducted an extensive investigation into the costs associated with various types of cooling water treatment programs. The information collected included comparative data on the performance of both chromium-based and nonchromium-based water treatment programs, information on costs to convert IPCT's from chromium-based water treatment programs to nonchromium-based water treatment programs, and information on costs associated with operating

nonchromium-based programs in IPCT's. The estimated cost of compliance of this rule was based on the information compiled from these investigations. Information obtained from four water treatment vendors that account for more than 60 percent of all IPCT water treatment chemical sales was used by EPA as the basis for estimating the cost of compliance with this rule.

The annualized costs to convert and operate IPCT's on nonchromium-based water treatment chemicals consists of chemical and equipment cost components. The chemical cost component represents the difference in annual chemical costs between chromium-based and nonchromium based chemicals. An average annual cost of nonchromium-based water treatment chemicals supplied by the vendors was determined to be $126 per million pounds of blowdown. The average annual chromium-based water treatment chemical cost was estimated to be $72 per million pounds of blowdown. The increase in annual chemical costs range from $1,314 for an IPCT with a recirculation rate of 1,000 gallon per minute (gal/min) to $140,937 for an IPCT with a recirculation rate of 105,000 gal/min.

The equipment cost component consists of the equipment capital cost and the annual cost of maintenance and of energy. The equipment requirements to achieve adequate control of nonchromium-based water treatment programs, as indicated by water treatment chemical vendors, include a pH controller, conductivity/blowdown controller, and some (typically two) metering chemical feed pumps. Based on the information compiled by EPA, these are the only additional types of equipment that are mandatory for operating an IPCT on nonchromium-based water treatment after conversion from chromium-based water treatment. Capital costs for this equipment are $2,000, $2,000, and $600 for a basic pH controller, conductivity controller, and metering pump, respectively. The EPA also obtained actual plant-specific information on the costs to convert from chromium-based to nonchromium-based water treatment. Some facilities indicated that no costs were incurred when IPCT's were converted to nonchromium water treatment chemicals. Other plants incurred costs that far exceeded the average equipment costs described above. However, in such cases, the conversion to nonchromium-based water treatment coincided with several other improvements to the IPCT systems and process equipment that were not requisite for the successful operation of the IPCT systems on nonchromium-based water treatment chemicals.

The equipment cost component of the average annual control costs for the IPCT rule was estimated to be $2,954. This estimate was made based on the assumption that 50 percent of IPCT's nationwide would require all three types of control equipment and 50 percent of IPCT's nationwide would require two of the three types of control equipment. Therefore, the annualized costs for nonchromium-based water treatment range from $4,300 for an IPCT with a recirculation rate of 1,000 gal/min to $144,000 for an IPCT with a recirculation rate of 105,000 gal/min. However, the EPA recognizes that the compliance costs at some facilities may be higher or lower than the average cost per IPCT system used by EPA to estimate the nationwide costs.

It should also be noted that the selection of the regulatory alternative for the IPCT standard was based on MACT. Because more than 90 percent of all IPCT's are operated with nonchromium water treatment, the MACT floor for IPCT's clearly is nonchromium water treatment. Although the Act requires the EPA to consider control costs in determining what level of control beyond the floor is achievable, selection of the standard is technology-based.

J. Wording of the Regulation

Two commenters suggested a change to the definition of "chromium-based water treatment chemicals" to clarify that chromium that appears only as an impurity in the water treatment chemicals is not included in definition. The commenters note that many chemicals contain trace amounts of chromium from natural impurities or from trace dissolution of steels, and that, as written, the definition does not distinguish between chromium-based water treatment chemicals and other chemicals used in IPCT's that may contain chromium at only trace concentrations. The commenter suggests that any water treatment chemical should not contain more than 1 percent nonhexavalent chromium and 0.1 percent Cr^{+6} by weight. According to the commenter, the 1 percent level is appropriate because, under the Occupational Safety and Health Administration (OSHA) hazard communication standard (29 CFR 1910.1200), and regulations implementing the Superfund Amendments and Reauthorization Act of 1986 (SARA), section 313 (40 CFR part 372), the presence of chromium compounds at those concentrations must be noted on the MSDS for the product. In contrast, chromium compounds present at concentrations below these levels will not necessarily be listed, and the purchaser will likely be unaware of them.

The EPA acknowledges that chromium may be present in trace amounts in water treatment chemicals. However, the specification of a minimum chromium impurity level in water treatment chemicals has no relevance to the application or enforcement of this rule. Furthermore, even if an impurity level was relevant, the commenter's suggested level of 0.1 percent Cr^{+6}, which is equivalent to 1,000 ppm, and 1.0 percent nonhexavalent chromium, which corresponds to 10,000 ppm, are hardly appropriate levels when one considers that the Cr^{+6} concentration of the recirculating water treated with a typical chromium-based program is 10 to 15 ppm.

K. De Minimis Cooling Water Chromium Concentration

Two commenters suggested that the EPA add a de minimis cooling water chromium concentration to the standard because the recirculating water in an IPCT that is not using chromium-based water treatment chemicals might contain very low but detectable levels of chromium if the components of the IPCT are wooden and chromium chemicals had been used in the tower in the past or if the fresh makeup water to the IPCT contains chromium. Including a de minimis chromium level would prevent potential enforcement actions against owners or operators who are actually in compliance with the standard. In addition, one commenter stated that although the proposed rule states that enforcement personnel could require water sample analysis on a case-by-case basis if they suspect a violation, no compliance concentration level is proposed. The commenter suggested that the EPA set a chromium compliance concentration of 0.15 mg/liter.

The EPA recognizes that some residual chromium may be present in IPCT cooling water that is not treated with chromium-based water treatment chemicals. Raw water supplies may contain trace quantities of chromium; in IPCT's in which chromium water treatment was used, chromium may leach out of wooden components following the discontinuation of chromium use; and chromium is a constituent of some types of wood preservatives and may contribute to cooling water residual chromium concentrations in IPCT's with wooden components. Therefore, the EPA has

concluded that there is justification for specifying a de minimis chromium concentration in cooling water.

To determine an appropriate de minimis level, the EPA gathered available data and consulted with industry experts. The recommended useable range for Reference Method 7196, "Hexavalent Chromium, Colorimetric," which is the analytical method specified in § 63.404 for measuring the residual chromium concentration in cooling water, is 0.5 to 50 ppm Cr^{+6} by weight. The available information on the decline of residual chromium in cooling water indicates that residual chromium concentrations are likely to be well below 0.5 ppm within a few months of the discontinuation of chromium water treatment.

Chromium-based water treatment programs can achieve acceptable results in controlling corrosion with chromate concentrations as low as 4 to 6 ppm (1.8 to 2.7 ppm as chromium). Therefore, the residual concentrations of chromium in cooling water in which these low-chromium treatment programs are used are significantly higher than the recommended lower limit of 0.5 ppm for Method 7196. The EPA concludes that a de minimis concentration of residual Cr^{+6} in cooling water of 0.5 ppm is reasonable, and this de minimis level has been incorporated into § 63.404 of the final IPCT regulation. This de minimis Cr^{+6} level is high enough to account for residual chromium concentrations that would result from the leaching of chromium from wooden IPCT components, but is well below any level at which chromium would provide effective corrosion control. Furthermore, to allow adequate time for the residual Cr^{+6} concentration in the cooling water to decline below the de minimis level, the final rule allows a 3 month time period following the compliance date before a Cr^{+6} concentration in excess of 0.5 ppm is considered to be a violation of the standard. The EPA does not believe that a de minimis level of 0.15 ppm chromium is reasonable because this concentration is below the recommended range of chromium concentrations for Reference Method 7196 and because residual chromium concentrations may be as high as 0.15 ppm for many months following the discontinuation of chromium water treatment.

VI. Administrative Requirements

A. Docket

The docket for this rulemaking is A–91–95. 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 rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

B. Executive Order 12286

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

Pursuant to the terms of the Executive Order 12866, it has been determined that this is a "significant regulatory action." As such, this action was submitted to OMB for review.

C. Paperwork Reduction Act

Information collection requirements associated with this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0268. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1625.02) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA 2136, Washington, DC 20460, or by calling (202) 260–2740.

The public reporting burden for this collection of information is estimated to average 21 hours per respondent in the first year and 6 hours per respondent in the subsequent 2 years. This includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that a Regulatory Flexibility Analysis be performed for all rules that have "significant impact on a substantial number of small entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines defined an economic impact as significant if it meets one of the following criteria:

(1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers;

(2) Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

(3) Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or

(4) Regulatory requirements are likely to result in closures of small entities. The results of an economic assessment indicated that compliance costs as a percentage of production costs or as a percentage of sales are both less than 5 percent. Also, capital availability will not be constrained because total control costs are relatively small and would not require extensive financing. Because capital availability is not a constraint, the standard is not likely to result in closure of small entities.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities because the number of

small business entities that would be affected is not significant.

E. Miscellaneous

In accordance with section 117 of the Act, publication of this promulgated rule was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: July 29, 1994.

Carol M. Browner,

Administrator.

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

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 135–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories:	
* * * * *	
63.403–63.406	2060–0268
* * * * *	

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. By adding a new subpart Q consisting of §§ 63.400 through 63.405 to read as follows:

Subpart Q—National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

Sec.

63.400 Applicability.
63.401 Definitions.
63.402 Standard.
63.403 Compliance dates.
63.404 Compliance demonstrations.
63.405 Notification requirements.
63.406 Recordkeeping and reporting requirements.

Subpart Q—National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

§ 63.400 Applicability.

(a) The provisions of this subpart apply to all new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals on or after September 8, 1994 and are either major sources or are integral parts of facilities that are major sources as defined in § 63.401.

(b) Table 1 of this subpart specifies the provisions of subpart A that apply and those that do not apply to owners and operators of IPCT's subject to this subpart.

§ 63.401 Definitions.

Terms used in this subpart are defined in the Act, in subpart A of this part, or in this section as follows:

Chromium-based water treatment chemicals means any combination of chemical substances containing chromium used to treat water.

Commenced means, with respect to construction or reconstruction of an IPCT, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

Compliance date means the date by which an affected IPCT is required to be in compliance with this subpart.

Construction means the on-site fabrication, erection, or installation of an IPCT.

Cooling tower means an open water recirculating device that uses fans or natural draft to draw or force ambient air through the device to cool warm water by direct contact.

Effective date means September 8, 1994 for this subpart.

Existing IPCT means any affected IPCT that is not a new IPCT.

Industrial process cooling tower, also written as "IPCT," means any cooling tower that is used to remove heat that is produced as an input or output of a chemical or industrial process(es), as well as any cooling tower that cools industrial processes in combination with any heating, ventilation, or air conditioning system.

Initial startup means the initiation of recirculation water flow within the cooling tower.

Major source means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

New IPCT means any affected IPCT the construction or reconstruction of which commenced after August 12, 1993.

Owner or operator means any person who owns, leases, operates, controls, or supervises an IPCT.

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Reconstruction means the replacement of components of an affected or a previously unaffected IPCT to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new IPCT.

Responsible official means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Administrator.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).

(4) For affected sources (as defined in this part) applying for or subject to a title V permit: "responsible official" shall have the same meaning as defined in part 70 of this chapter or Federal title V regulations (42 U.S.C. 7661), whichever is applicable.

Water treatment chemicals means any combination of chemical substances used to treat water in cooling towers, including corrosion inhibitors, antiscalants, dispersants, and any other chemical substances used to treat water.

§ 63.402 Standard.

No owner or operator of an IPCT shall use chromium-based water treatment chemicals in any affected IPCT.

§ 63.403 Compliance dates.

The requirements of § 63.402 of this subpart shall be applied on the following schedule:

(a) For existing IPCT's, the compliance date shall be 18 months after September 8, 1994.

(b) For new IPCT's that have an initial startup before September 8, 1994, the compliance date shall be September 8, 1994.

(c) For new IPCT's that have an initial startup on or after September 8, 1994, the compliance date shall be the date of the initial startup.

§ 63.404 Compliance demonstrations.

No routine monitoring, sampling, or analysis is required. In accordance with section 114 of the Act, the Administrator or delegated authority can require cooling water sample analysis of an IPCT if there is information to indicate that the IPCT is not in compliance with the requirements of § 63.402 of this subpart. If cooling water sample analysis is required:

(a) The water sample analysis shall be conducted in accordance with Method 7196, Chromium, Hexavalent (Colorimetric), contained in the Third Edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, (November 1986) and its Revision I, (December 1987), which are available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202) 783–3238 (document number 955–001–00000–1; or Method 3500–Cr D, Colorimetric Method, contained in the 18th Edition of "Standard Methods for the Examination of Water and Wastewaster" (1992), which is available from the American Public Health Association, 1015 15th Street, NW., Washington, DC 20005. These methods were approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected as a part of Docket A–91–65, located at the Air and Radiation Docket and Information Center, room M1500, EPA Central Docket Section, 401 M Street, SW., Washington, DC. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) On or after 3 months after the compliance date, a cooling water sample residual hexavalent chromium concentration in excess of 0.5 parts per million by weight shall indicate a violation of § 63.402.

§ 63.405 Notification requirements.

(a) *Initial notification.* (1) In accordance with § 63.9(b) of subpart A, owners or operators of all affected IPCT's that have an initial startup before September 8, 1994 shall notify the Administrator in writing. The notification, which shall be submitted not later than 12 months after September 8, 1994, shall provide the following information:

(i) The name and address of the IPCT owner or operator;

(ii) The address (i.e., physical location) of the affected IPCT;

(iii) A statement that the notification is being submitted as required by this subpart; and

(iv) A description of the type of water treatment program used in the affected IPCT, including the chemical name of each corrosion inhibitor ingredient used; the average concentration of those corrosion inhibitor ingredients maintained in the cooling water; and the material safety data sheet for each water treatment chemical or chemical compound used in the IPCT.

(2) In accordance with § 63.9(b) of subpart A, owners or operators of all affected IPCT's that have an initial startup on or after September 8, 1994 shall notify the Administrator in writing that the source is subject to the relevant standard no later than 12 months after initial startup. The notification shall provide all the information required in paragraphs (a)(1)(i) through (a)(1)(iv) of this section.

(b) *Notification of compliance status.* (1) In accordance with § 63.9(h) of subpart A, owners or operators of affected IPCT's shall submit to the Administrator a notification of compliance status within 60 days of the date on which the IPCT is brought into compliance with § 63.402 of this subpart and not later than 18 months after September 8, 1994.

(2) The notification of compliance status must:

(i) Be signed by a responsible official who also certifies the accuracy of the report;

(ii) Certify that source has complied with § 63.402 of this subpart; and

(iii) Include the information required in paragraph (a)(1)(iv) of this section.

(iv) Include the following statement: "I certify that no chromium-based water treatment chemicals have been introduced since (the initial compliance date) into any IPCT located within the facility for any purpose."

§ 63.406 Recordkeeping and reporting requirements.

To demonstrate continuing compliance with § 63.402 of this subpart, the owner or operator of each affected IPCT shall maintain copies of the initial notification and the notification of compliance status as required by § 63.405 of this subpart for a period of at least 5 years onsite.

TABLE 1 TO SUBPART Q—GENERAL PROVISIONS APPLICABILITY TO SUBPART Q

Reference	Applies to Subpart Q	Comment
63.1	Yes.	
63.2	Yes.	
63.3	No.	
63.4	Yes.	
63.5	No.	
63.6 (a), (b), (c), and (j)	Yes.	
63.6 (d), (e), (f), (g), (h), and (i)	No.	
63.7	No.	
63.8	No.	
63.9 (a), (b)(1), (b)(3), (c), (h)(1), (h)(3), (h)(6), and (j).	Yes.	
63.9 (b)(2), (b)(4), (b)(5), (b)(6), (d), (e), (f), (g), (h)(2), (h)(4), (h)(5).	No	Requirements for initial notifications and notifications of compliance status are specified in §63.405(a) and §63.405(b), respectively, of subpart Q; other provisions of subpart A are not relevant to IPCT's.
63.10 (a), (b)(1), (b)(2)(xii), (b)(2)(xiv), (b)(3), (d), and (f).	Yes	Section 63.406 requires an onsite record retention of 5 years.
63.10 (b)(2) (i) to (xi), (c), and (e)	No.	
63.11	No.	
63.12 to 63.15	Yes.	

[FR Doc. 94–21957 Filed 9–7–94; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 180

[OPP–300339A; FRL–4899–3]

RIN 2070–AB78

Definitions and Interpretations; Oriental Radish

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding a general commodity definition for oriental radish for tolerance-setting purposes to cover the wide variety of forms and cultivars that constitute oriental radishes. This regulation is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective September 8, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300339A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 222022. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 15, 1994 (59 FR 30746), EPA issued a proposed rule that gave notice that the International Research Project No. 4 (IR-4), New Brunswick, NJ 08903, had requested that 40 CFR 180.1(h) be amended to add the commodity term "oriental radish (root and tops)" to the general category of commodities in column A and to add the corresponding specific commodities "*Raphanus sativus* var. *longipinnatus* (root and tops), including Chinese or Japanese radish (both white and red), winter radish, daikon, lobok, lo pak, and other cultivars and/or hybrids of these" in column B.

The amendment was requested to establish a commodity definition for oriental radishes for tolerance-setting purposes and to identify the specific commodities that constitute the general category of oriental radishes. In February 1990, in response to a request from the Hawaii Department of Agriculture for EPA to establish a commodity definition for radish to include Japanese and other oriental radishes, the Agency determined that tolerances set for the common radish will not apply to oriental radishes but that it would be appropriate to add a general commodity definition for oriental radish for tolerance-setting purposes to cover the wide variety of forms and cultivars that constitute oriental radishes.

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

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the added definition for oriental radish (roots and tops) is appropriate. Therefore, the definition is established as set forth below.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement,

grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

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

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirement of a tolerance. Therefore, the Administrator concludes that this rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

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

Dated: August 29, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1(h) is amended by adding and alphabetically inserting the general commodity "oriental radish (root and tops)" in column "A" and the corresponding specific commodities "*Raphanus sativus* var. *longipinnatus* (root and tops), including Chinese or Japanese radish (both white and red), winter radish, daikon, lobok, lo pak, and other cultivars and/or hybrids of these" in column "B" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * * * *	
Oriental radish (root and tops)	*Raphanus sativus* var. *longipinnatus* (root and tops), including Chinese or Japanese radish (both white and red), winter radish, daikon, lobok, lo pak, and other cultivars and/or hybrids of these.
* * * * * * *	

* * * * *

[FR Doc. 94–22137 Filed 9–7–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 2E4070/R2069; FRL–4899–4]

RIN 2070–AB78

Pesticide Tolerances for Benomyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document recodifies tolerances for combined residues of the fungicide benomyl and its metabolites in or on the raw agricultural commodities avocado, dandelion, and papaya. This amendment, which was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4), would establish tolerances for regionally restricted registration of the pesticide on these commodities.

EFFECTIVE DATE: This regulation becomes effective September 8, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 2E4070/R2069], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 15, 1994 (59 FR 30748), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Brunswick, NJ 08903, had submitted pesticide petition (PP) 2E4070 to EPA on behalf of the State Agricultural Experiment Stations of Florida and Puerto Rico. The petition requested that EPA recodify tolerances established pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), for combined residues of the fungicide benomyl (methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodities avocado and papaya at 3 parts per million (ppm) and dandelion at 10 ppm. Specifically, IR-4 proposes that EPA remove the tolerances for avocado, dandelion, and papaya from 40 CFR 180.294(a) and insert these tolerances under 40 CFR 180.294(b), which lists tolerances established in support of regional registration. This amendment would regionally restrict registration for use of benomyl on dandelion and papaya to Florida and use on avocado to Florida and Puerto Rico.

IR-4's request is in response to EPA's reregistration review of benomyl, which determined that the available residue data are adequate to support continued

registration for use of benomyl on dandelion and papaya in Florida and avocado in Florida and Puerto Rico. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

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

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

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

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: August 29, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.294, by amending paragraph (a) in the table therein by removing the commodities avocado, dandelion, and papaya and by amending paragraph (b) in the table therein by adding and alphabetically inserting the same commodities, to read as follows:

§ 180.294 Benomyl; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Avocado	3
Dandelion	10
Papaya	3

* * * * *

[FR Doc. 94–22138 Filed 9–7–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5067–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the North U Drive Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces the deletion of the North U Drive Site in Springfield, Missouri, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The EPA and the State of Missouri have determined that the contaminant releases do not pose a significant threat to human health, welfare, or the environment. Therefore, no further response action is appropriate.

EFFECTIVE DATE: September 8, 1994.

FOR FURTHER INFORMATION CONTACT: Steve Sturgess, Missouri Department of Natural Resources, Hazardous Waste Program, Superfund Section, P.O. Box 176, Jefferson City, Missouri 65102, telephone (314) 751–1807 or Ronald King, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551–7568.

ADDRESSES: Comprehensive information on this site is available at the following locations: Missouri Department of Natural Resources (MDNR) Hazardous Waste Program File Room (205 Jefferson Street) in Jefferson City, Missouri; at EPA Region VII Waste Management Division Records Center, 726 Minnesota Avenue, Kansas City, Kansas; and at the Kearney Branch Library, 630 W. Kearney, Springfield, Missouri 65801.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: North U Drive site, Springfield, Missouri.

A notice of intent to delete for this site was published in the **Federal Register** June 24, 1994 (59 FR 32673). The closing date for comments on the notice of intent was July 25, 1994. No comments were received on the proposed deletion. Therefore, no responsiveness summary was prepared.

Based on a review of environmental and other data for this site, The Missouri Department of Natural Resources (MDNR) and EPA have determined that the site does not pose a significant risk to human health or the environment. The site shall continue to be monitored by the MDNR. MDNR and EPA will review the ground water monitoring as part of each five-year review.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment, and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites deleted from the NPL when conditions warrant. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 29, 1994.

Dennis Grams,

Regional Administrator.

For the reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321 (c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B is amended by removing the site for North U Drive well contamination, Springfield, Missouri.

[FR Doc. 94–22134 Filed 9–7–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 766 and 799

[OPPTS–40027; FRL–4873–4]

Technical Amendments to Test Rules and Consent Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has approved by letter certain modifications to test standards and schedules for chemical testing programs under section 4 of the Toxic Substances Control Act (TSCA). These modifications, requested by test sponsors, will be incorporated and codified in the respective test regulation or consent order. Because these modifications do not significantly alter the scope of a test or significantly change the schedule for its completion, EPA approved these requests without seeking notice and comment. EPA annually publishes a notice describing all of the modifications granted by letter for the previous year.

EFFECTIVE DATE: This rule is effective on September 8, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA issued a rule published in the **Federal Register** of September 1, 1989 (54 FR 36311), amending procedures for modifying test standards and schedules for test rules and testing consent orders under section 4 of TSCA. The amended procedures allow EPA to approve requested modifications which do not alter the scope of a test or significantly change the schedule for its completion (40 CFR 790.55 and 790.68). These modifications are approved by letter without public comment. The rule also requires immediate placement of these letters in EPA's public files and publication of these modifications in the **Federal Register**. This document includes modifications approved from January 1, 1993, through December 31, 1993. For a detailed description of the rationale for these modifications, refer to the submitters' letters and EPA's responses in the public record for this rulemaking.

I. Discussion of Modifications

Each chemical discussed in this rule is identified by a specific CAS number. Copies of correspondence relating to specific chemical modifications may be found in docket number OPPTS–40027 for this rule. The following table lists all chemical-specific modifications approved from January 1, 1993, through December 31, 1993:

MODIFICATIONS TO TEST STANDARDS AND CONSENT ORDERS JANUARY 1, 1993 THROUGH DECEMBER 31, 1993

Chemical/CAS Number	Chemical FR Cite	Test	Modifications
Final Rule Chemicals.			
pentabromodiphenyloxide (32534–81–9)	766.35	analytical testing	5
octabromodiphenyloxide (32536–52–0)	766.35	analytical testing	5
1,2-bis(tribromophenoxy)-ethane (37853–59–1)	766.35	analytical testing	5
tetrabromobisphenol-A-bisethoxylate (4162–45–2)	766.35	analytical testing	5
commercial hexane (110–54–3; 96–37–7)	799.2155	oncogenicity (mouse)	5
acetone (67–64–1)	799.5050	neurotoxicity testing	10
n-amyl acetate, technical grade (628–63–7)	799.5050	neurotoxicity testing	10
1-butanol (71–36–3)	799.5050	neurotoxicity testing	10
n-butyl acetate (123–86–4)	799.5050	neurotoxicity testing	10
diethyl ether (60–29–7)	799.5050	neurotoxicity testing	10
2-ethoxyethanol (110–80–5)	799.5050	neurotoxicity testing	10
ethyl acetate (141–78–6)	799.5050	neurotoxicity testing	10

MODIFICATIONS TO TEST STANDARDS AND CONSENT ORDERS JANUARY 1, 1993 THROUGH DECEMBER 31, 1993—Continued

Chemical/CAS Number	Chemical FR Cite	Test	Modifications
isobutyl alcohol (78–83–1)	799.5050	neurotoxicity testing	10
methyl isobutyl ketone (108–10–1)	799.5050	neurotoxicity testing	10
tetrahydrofuran (109–99–9)	799.5050	neurotoxicity testing	10
Consent Orders.			
acrylic acid (79–10–7)	799.5000	bioavailability study	5
4-vinylcyclohexene (100–40–3)	799.5000	pharmacokinetics *in vitro* metabolism in rat and mouse tissues; *in vitro* partition coefficient..	3, 5

Modifications

1. Modify sampling schedule.
2. Change to test substance (form/purity).
3. Change in non-critical test procedure or condition.
4. Add satellite group for further testing.
5. Extend test or protocol deadline, delete test initiation date.
6. Clarify and/or add specific guideline requirement.
7. Alternate specific guideline requirement approved for certain test(s).
8. CAS No. correction.
9. Test standard amendment.
10. By letter to the affected manufacturers, EPA granted certain modifications to the Multi-substance Rule for the Testing of Neurotoxicity, 40 CFR 799.5050. Subsequently, however, the rule was challenged in court. As part of the settlement of that litigation, EPA agreed to propose to revoke this rule. EPA announced that pending revocation of the rule (59 FR 33187, June 27, 1994) and negotiation of enforceable consent agreements under which testing would be performed, the rule would be stayed (59 FR 33184, June 2, 1994). Copies of the modifications that had been granted are available in docket number OPPTS–42134B. Anyone who believes they may be subject to the requirements of this test rule should contact Catherine Roman at 260-8155 regarding its status before initiating testing.

II. Public Record

EPA has established a public record for this rulemaking (docket number OPPTS–40027). The record includes the requests for modifications, information considered by EPA in evaluating the requested modifications, and EPA's responses to the requests.

The record is available for inspection from 12:00 noon to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE-G607, 401 M St., SW., Washington, DC 20460.

III. Regulatory Assessment Requirements

A. Paperwork Reduction Act

The information collection requirements associated with this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 350l et. seq., and have been assigned OMB control number 2070–0033.

EPA has determined that this rule does not change existing recordkeeping or reporting requirements nor does it impose any additional recordkeeping or reporting requirements on the public.

Send comments regarding the information collection requirements of this rule to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Recordkeeping and reporting Requirements, Testing.

Dated: August 24, 1994.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR parts 766 and 799 are amended as follows:

1. In part 766:

PART 766—[AMENDED]

a. The authority citation for part 766 continues to read as follows:

Authority: 15 U.S.C. 2603 and 2607.

b. In §766.35, by revising the following entries in the table to paragraph (b)(4)(i) and paragraph (f) to read as follows:

§766.35 Reporting requirements.

* * * * *

(b) * * *

(4) * * *

(i) * * *

Cas No.	Submitter	Chemical	Due Date
	*	* * * * * * *	
4162-45-2	Great Lakes	tetrabromobisphenol-A-bisethoxylate	June 2,1993
	*	* * * * * * *	
32534-81-9	Great Lakes	pentabromodiphenyloxide	March 22, 1993
32534-81-9	Ameribrom	pentabromodiphenyloxide	March 22, 1993
32536-52-0	Ameribrom	octabromodiphenyloxide	January 8, 1993
	*	* * * * * * *	
37853-59-1	Great Lakes	1,2-bis(tribromophenoxy)-ethane	January 31, 1993

* * * * *

(f) *Effective date.* (1) The effective date of this final rule is July 6, 1987, except for paragraphs (a)(2)(i)(B), (a)(2)(ii)(A) and (b)(4)(i) of this section.

(2) The effective date for paragraph (a)(2)(i)(B) is May 21, 1991. The effective date for paragraph (a)(2)(ii)(A) is June 12, 1992. The effective date for paragraph (b)(4)(i) is on September 8, 1994.

(3) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

PART 799—[AMENDED]

2. In part 799:

a. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. In § 799.2155 by revising paragraphs (c)(2)(ii)(A) and (d) to read as follows:

§799.2155 Commercial Hexane.

* * * * *

(c) * * *

(2)* * *

(ii) * * *

(A) The oncogenicity test shall be completed and the final report submitted to EPA within 53 months of the effective date of the final rule. The mouse portion of the oncogenicity study shall be submitted by June 5, 1993.

* * * * *

(d) *Effective date.* (1) The effective date of this final rule is November 17, 1988, except for the provisions of paragraphs (c)(2)(ii)(A), (c)(5)(i)(D), (c)(5)(ii)(A)(4), (c)(5)(ii)(C), (c)(8)(i) and (c)(8)(ii)(A) of this section. The effective date for paragraphs (c)(5)(i)(D), (c)(5)(ii)(A)(4) and (c)(5)(ii)(C) of this section is May 21, 1990. The effective date for paragraphs (c)(8)(i) and (c)(8)(ii)(A) of this section is June 12,1992. The effective date of paragraph (c)(2)(ii)(A) is September 8, 1994.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

[FR Doc. 94–21688 Filed 9–7–94; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–6

[FTR Amendment 40]

RIN 3090–AF26

Federal Travel Regulation; Increase in Maximum Reimbursement Limitations for Real Estate Sale and Purchase Expenses

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to increase the maximum dollar limitations on reimbursement for allowable real estate sale and purchase expenses incident to a change of official station. Section 5724a(a)(4)(B) of title 5, United States Code requires that the dollar limitations be updated effective October 1 of each year based on the percent change, if any, in the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component, for December of the preceding year over that published for December of the second preceding year. This final rule will have a favorable impact on Federal employees authorized to relocate in the interest of the Government since it increases relocation allowance maximums.

EFFECTIVE DATE: This final rule is effective October 1, 1994, and applies to employees whose effective date of transfer is on or after October 1, 1994. For purposes of this regulation, the effective date of transfer is the date on which the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

SUPPLEMENTARY INFORMATION: This final rule makes the annual adjustment to the maximum reimbursement limitations for the sale and purchase of an employee's residence when the employee transfers in the interest of the Government. The total amount of expenses that may be reimbursed in connection with the sale of a residence shall not exceed 10 percent of the actual sale price or $21,916, whichever is the lesser amount. The total amount of expenses that may be reimbursed in connection with the purchase of a residence shall not exceed 5 percent of the purchase price or $10,957, whichever is the lesser amount. The General Services Administration has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the FEDERAL REGISTER for notice or comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 302–6

Government employees, Relocation allowances and entitlements, Transfers

For the reasons set out in the preamble, 41 CFR part 302–6 is amended as follows:

PART 302–6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. The authority citation for part 302–6 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 302–6.2 [Amended]

2. Section 302–6.2 is amended by removing the amount "$21,340" in paragraph (g)(1) and adding in its place the amount "$21,916"; and by removing the amount "$10,669" in paragraph (g)(2) and adding in its place the amount "$10,957".

Dated: August 25, 1994.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 94–22140 Filed 9–7–94; 8:45 am]

BILLING CODE 6820–24–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

Miscellaneous Rules Relating to Common Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations, which were published Wednesday, February 5, 1992 (57 FR 4373). The regulations relate to a comprehensive system of strengthened nonstructural safeguards, including cost accounting safeguards applicable to the Bell Operating Companies (BOCs) and other Tier 1 local exchange carriers (LECs) established under Subpart I.

EFFECTIVE DATE: February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Virginia Brockington (202) 634–1861.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these corrections is new section 64.903. It was effective 30 days after it was published in the **Federal Register**, and it affects the BOCs and other Tier 1 LECs subject to the cost accounting safeguards established under subpart I. Subpart I was added to the Code by section 4 of the Communications Act of 1934, as amended.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 47 CFR Part 64

Communications common carrier, Reporting and recordkeeping requirements, Telephone.

Accordingly, 47 CFR part 64 is corrected by making the following correcting amendments:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228.

2. In Subpart I, § 64.903, paragraph (c), the term "be" is revised to read "by".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–22080 Filed 9–7–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[CS Docket No. 93–212; DA 94–829]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this action, amends its rules regarding the listing of major television markets, to change the designation of the Raleigh-Durham, North Carolina television market to include the community of Goldsboro, North Carolina. This action, taken at the request of Group H Broadcasting Corporation, licensee of television station WYED(TV), channel 17, Goldsboro, North Carolina, and after evaluation of the comments filed in this proceeding, amends the rules to designate the subject market as the Raleigh-Durham-Goldsboro, North Carolina television market. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 11, 1994.

FOR FURTHER INFORMATION CONTACT: William H. Johnson, Cable Services Bureau, (202) 416–0856.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, Docket 93–212, adopted July 28, 1994 and released August 22, 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, DC 20554.

List of Subjects in 47 CFR Part 76

Cable television.

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority for part 76 continues to read as follows:

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

§ 76.51 [Amended]

2. Section 76.51 is amended by revising paragraph (b)(73) to read as follows:

* * * * *

(b) * * *

(73) Raleigh-Durham-Goldsboro, North Carolina.

* * * * *

Federal Communications Commission.

Meredith J. Jones,

Chief, Cable Services Bureau.

[FR Doc. 94–22079 Filed 9–7–94; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1807 and 1815

NASA FAR Supplement; Addressing Costs of Contractor Facilities in Procurement Plans, Business Management Proposals, and Prenegotiation Position Memoranda

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

ACTION: Final rule.

SUMMARY: This rule amends the regulations pertaining to procurement plans, the instructions for technical and business management proposals, and the contents of the prenegotiation position memorandum in order to emphasize the importance of facilities in the contract planning and decision making process.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

Over the last several years, NASA's Office of the Inspector General has issued several reports critical of the agency and its contractors regarding facilities leasing practices. One report addressed the issue on an agency-wide basis. That report stated that NASA was paying several times over for the same facilities due to contractors entering into a series of short-term leases. This rule emphasizes the importance of facilities by requiring installation procurement plans address facilities, specifying the information needed from contractors in their business management plans for the agency to properly evaluate the proposed costs, and requiring that the prenegotiation memorandum discuss the factors considered in the evaluation of facilities. This rule also revises the current coverage on procurement plans requiring Headquarters approval to better address the major facilities issues which should be considered.

No comments were received in response to the proposed rule (59 FR 24104, May 10, 1994). No changes have been made from the proposed rule.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The information collection requirements in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) (OMB Control Number 2700–0082 expires July 31, 1997).

List of Subjects in 48 CFR Parts 1801, 1807 and 1815

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1801, 1807 and 1815 are amended as follows:

1. The authority citation for 48 CFR parts 1801, 1807 and 1815 continues to read as follows:

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

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1801.105 is amended in paragraph (a) by adding the following entry in numerical order in the table as follows:

1801.105 OMB approval under the Paperwork Reduction Act.

(a) * * *

NASA FAR supplement segment	OMB control No.
* * * * *	
1815.406–70(b)(5)(iii)	2700–0082
* * * * *	

PART 1807—ACQUISITION PLANNING

3. Section 1807.170–1 is amended by revising paragraph (b)(10)(i) to read as follows:

1807.170–1 Procurement plans requiring approval by NASA Headquarters.

(a) * * *

(b) * * *

(10) *Item 10. Contractor-owned or leased and Government-furnished property.* (i) If the proposed contract period of performance (exclusive of options) will be for a shorter period than the useful life, for the program, of any required contractor-owned or leased facilities (as defined in (FAR) 48 CFR 45.301), the facilities are unlikely to be needed by the contractor for any purpose other than the program effort being contracted for, and the facilities will represent a significant cost to the contract, then the procurement plan shall discuss the feasibility of the Government acquiring the right to use the facilities for longer than the proposed contract period, as well as the proposed procurement strategy for accomplishing this use.

(A) If program uncertainties for continuing beyond the contract period of performance (exclusive of options) are significant, it may be in the Government's best interests to acquire use of the facilities during only that time. This strategy may make the facilities more costly to the Government for the contract period than if a contractual arrangement for longer use were made. However, it should reduce the program risks associated with longer-term Government facilities obligations;

(B) If the program uncertainties for continuing beyond the contract period of performance (exclusive of options) are not significant, it may be in the Government's best interests to acquire the right to use the facilities for longer than the proposed contract period of performance (exclusive of options) in order to take advantage of economies in long-term facilities investment. In such cases, the following shall be considered:

(*1*) Whether the amount of the potential cost savings to the Government arising from the contractor entering into a long-term arrangement (lease, purchase or construction) continuing beyond the contract period of performance (exclusive of options) could be significant;

(*2*) If a long-term investment by the contractor could result in significant cost savings to the Government, the type of long-term arrangement that is believed would be most appropriate (e.g., long-term lease with the right of assignment to a third party or the Government, at the Government's option; purchase or construction of the facilities, with depreciation and cost of money either accelerated to cover the contract period of performance (exclusive of options) or over the useful life of the facilities); and

(*3*) Whether the contractor might require a financial guarantee be provided by the Government in order to enter into a long-term arrangement and, if so, what the potential amount of such a guarantee might be, should the contract end (e.g., options are not exercised, or the contractor is not selected in a recompetition).

* * * * *

4. Section 1807.170–2 is amended by adding a sentence at the end of the paragraph to read as follows:

1807.170–2 Procurement plans requiring approval at the installation level.

* * * In addition, installation prescribed formats shall ensure that plans for procurements in excess of $2,500,000 address the considerations at 1807.170–1(b)(10).

PART 1815—CONTRACTING BY NEGOTIATION

5. Section 1815.406–70 is amended by republishing paragraph (b) introductory text and paragraph (b)(5) introductory text and revising paragraph (b)(5)(iii) to read as follows:

1815.406–70 Instructions for technical proposal and business management proposal submission.

(a) * * *

(b) *Business management proposal.* Proposals should include the following:

* * * * *

(5) A statement as to—

* * * * *

(iii) The cost of any additional facilities (as defined at (FAR) 48 CFR 45.301) required to perform the work and how the costs are to be charged, with information as to whether the facilities will be contractor-furnished or Government-furnished and, if contractor-furnished, the alternatives considered (e.g., short-term lease, long-term lease with option to transfer the lease to a third party, purchase), including the long and short term benefits of each alternative, a description of any unique requirements or arrangements involved with each alternative, as well as the reasons for the alternative selected, a copy of the proposed lease or purchase agreement, identification of all costs included in the lease and ownership alternatives considered; and

* * * * *

6. Paragraph (c)(5) of section 1815.807–70 is revised to read as follows:

1815.807–70 Content of the prenegotiation position memorandum.

* * * * *

(c) * * *

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government). Although not all inclusive, the following are to be covered:

(i) The facilities needed by the contractor;

(ii) How the facilities are to be provided (Government or contractor);

(iii) If to be provided by the contractor, the alternatives considered (operating lease, capital lease, contractor purchase or construction, or other alternatives);

(iv) Whether a financial guarantee has been requested by the offeror;

(v) The reasons for the alternative selected; and

(vi) How the costs are to be charged;

* * * * *

[FR Doc. 94–21998 Filed 9–7–94; 8:45 am]

BILLING CODE 7510–01–M

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48 CFR Parts 1801, 1815, 1825, 1844, and 1852

[NASA FAR Supplement Directive 89–16]

RIN 2700–AB37

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

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

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters, such as delegation of procurement authority, removal of points of contact list, removal and revision of internal reporting requirements, and address changes.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783–3238. Cite GPO

Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Adoption of Interim Rule as Final Rule

NASA is adopting as a final rule the text set out as an interim rule at 59 FR 22521, May 2, 1994, and 59 FR 29963, June 10, 1994. The interim rule published a deviation from the cost principle in FAR 31.205–18 on independent research and development costs. NASA has considered the comments submitted by two commenters. No changes are made to the interim rule.

Impact

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

List of Subjects in 48 CFR Parts 1801, 1815, 1825, 1844, and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1815, 1925, 1844, and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1801, 1815, 1825, 1831, 1835, 1844, and 1852 continues to read as follows:

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

PART 1801—PURPOSE, AUTHORITY, ISSUANCE

1801.104–370 Dissemination of procurement regulations and related NASA publications.

2. Section 1801.104–370 is amended following the fifth sentence in paragraph (d) by revising "NASA Grant and Cooperative Agreement Handbook (G&CAHB)" to read "NASA Research Grant Handbook".

1801.302–70 Field installation regulatory implementation.

3. Section 1801.302–70 is amended by removing paragraph (b) and removing the paragraph designation in paragraph (a).

1801.370 [Removed]

4. Section 1801.370 is removed.

PART 1815—CONTRACTING BY NEGOTIATION

5. Section 1815.807–72 is amended by removing paragraphs (a) and (c), by revising and redesignating paragraph (b) as paragraph (a), and redesignating paragraph (d) as paragraph (b) as follows:

1815.807–72 Headquarters reviews.

* * * * *

(a)(1) *Advance information to be provided to Headquarters.* The installation shall provide Code HS with the following:

(i) Five copies of the PPM.

(ii) One copy each of the contractor's proposal, the Government technical evaluation, and all pricing reports (including audit reports).

(2) The required information described in paragraphs (a)(1) (i) and (ii) of this section shall be furnished to Headquarters as soon as practicable and sufficiently in advance of the planned commencement of negotiations to allow a reasonable period of time for Headquarters review.

(b) * * *

PART 1825—FOREIGN ACQUISITION

6. Section 1825.7003 is amended by revising the first sentence to read as follows:

1825.7003 Assignment of responsibility for contract negotiation.

The Headquarters Acquisition Division (Code HW), in conjunction with the International Relations Division (Code IRD) and the Office of General Counsel, is responsible for negotiating and executing contracts exceeding $25,000 with foreign governments and private foreign organizations, except for contracts funded with Space Station Program funds. * * *

7. Section 1825.7005(b) is revised to read as follows:

1825.7005 Assignment of contract administration.

(a) * * *

(b) *Contracts performed in Canada.*

(1) When, in accordance with (FAR) 48 CFR part 42, contract administration and related support service functions of the Defense Contract Management Command are desired on a contract to be performed in Canada (whether placed with Canadian Commercial Corporation or directly with a Canadian firm), a letter or delegation shall be issued to—Defense Logistics Agency, DCMAO Canada, 275 Bank St., Suite 200, Ottawa, Ontario, Canada K2P 2L6.

(2) So that DCMAO Canada can utilize the capabilities of Canadian Government agencies in performing contract administration services functions, each letter of delegation shall provide that DCMAO Canada is delegated authority to act as the contracting officer's representative, with power of further delegation for the performance of the requested services.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

1844.102–71 [Removed and reserved]

8. Section 1844.102–71 is removed and reserved.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 1852.103–70 is amended by revising the example to read as follows:

1852.102–70 Identification of modified provisions and clauses.

* * * * *

"52.232–25 Prompt Payment (MAR 1994)—as modified by NASA FAR Supplement 1832.908(a)"

[FR Doc. 94–21997 Filed 9–6–94; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 59, No. 173
Thursday, September 8, 1994

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV94-905-2-PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; and Fruits, Import Regulations (Grapefruit); Proposed Higher Grade Requirements for Florida-Grown and Imported Red and White Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the minimum grade requirements for Florida-grown and imported fresh red and white seedless grapefruit to U.S. No. 1, from the current minimum grade requirement of Improved No. 2 External-U.S. No. 1 Internal. This proposed rule is designed to improve the quality and strengthen the demand for fresh domestic, export, and import shipments of seedless grapefruit in the interest of producers, handlers, and consumers of such fruit.

DATES: Comments must be received by September 23, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: 202–720–2431; or William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 905 [7 CFR Part 905] regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule is also issued under section 8e [7 U.S.C. Section 608e–1] of the Act. Section 8e of the Act provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply regulations based on that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapegruit grown in Florida regulated under the order, and has found that the minimum grade and size requirements for imported grapefruit should be the same as those established for grapefruit under the order.

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

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this proposed rule pertaining to grapefruit import requirements issued under section 8e of the Act.

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

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

There are about 100 Florida citrus handlers subject to regulation under the order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, about 11,000 producers of these citrus fruits in Florida, and about 25 grapefruit importers. Small agricultural service firms, which includes grapefruit handlers and importers, have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of these handlers and a

majority of these producers and importers may be classified as small entities.

The Citrus Administrative Committee (committee) met on June 21, 1994, and recommended the regulatory changes for Florida citrus. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Section 905.306 [7 CFR 905.306] specifies minimum grade requirements for different varieties of fresh Florida-grown grapefruit, as authorized by § 905.52 [7 CFR 905.52] of the order. Section 905.306 specifies such grade requirements in TABLE I of paragraph (a) for domestic markets (fruit shipped from the production area to any point outside thereof in the 48 contiguous States and the District of Columbia of the United States), and in TABLE II of paragraph (b) for export markets (fruit shipped from any point in the 48 contiguous States and the District of Columbia of the United States to any destination).

This proposed rule would amend § 905.306 by revising the entries for grapefruit in TABLE I and in TABLE II, effective September 1, 1994. Under the proposal, the minimum grade requirements for domestic and export shipments of Florida-grown red and white seedless grapefruit would be increased to U.S. No. 1, from the current minimum grade requirement of Improved No. 2 External—U.S. No. 1 Internal, beginning with 1994–95 season shipments.

The current minimum size requirements for Florida-grown red and white seedless grapefruit for both domestic and export shipment would remain unchanged under this rule. Also, the current minimum grade and size requirements for Florida-grown red and white seeded grapefruit for both domestic and export shipments would remain unchanged.

This proposed rule would remove entries and seeded pink grapefruit and seedless pink grapefruit in TABLE I and in TABLE II of § 905.306. Such removal is necessary because such pink grapefruit were reclassified as red grapefruit and the entries in such tables for pink grapefruit were changed to red grapefruit by a final rule published in the **Federal Register** [55 FR 41659, October 15, 1990], but such changes were not incorporated in the Code of Federal Regulations.

The committee recommended that the minimum grade requirements for domestic and export market shipments of fresh Florida-grown red and white seedless grapefruit be increased, as specified. The committee reports that it expects that the proposed higher minimum grade requirements will result in better quality Florida-grown red and white seedless grapefruit being shipped to the fresh market, and that such fruit should receive greater consumer support, increase consumer demand, and improve grower returns. The consumer demand for such grapefruit should be strengthened, because consumers prefer the higher quality grapefruit which this proposed rule should require be shipped.

Minimum grade requirements under the order are designed to provide fresh markets with fruit of acceptable grade and maturity, thereby maintaining consumer confidence in fresh Florida-grown grapefruit. This helps create buyer confidence and contributes to stable marketing conditions.

The proposed higher grade requirements for Florida-grown red and white seedless grapefruit are based on the committee's assessment of the prospective crop and market conditions for the 1994–95 season Florida-grown seedless grapefruit crop. The proposed requirements are designed to enable Florida grapefruit shippers to ship red and white seedless grapefruit to the domestic and export markets consistent with anticipated demand in those markets.

Processing outlets are an important market for Florida-grown seedless grapefruit, with nearly one-half of the seedless grapefruit crop produced in Florida normally utilized in processing. Any grapefruit which do not meet the proposed higher grade requirements could be utilized in processing outlets.

The committee reports that it expects that more red and white seedless grapefruit will be produced in Florida during the 1994–95 season than last season. The committee also expects that supplies of fresh Florida-grown red and white seedless grapefruit meeting the higher grade requirements will adequately meet consumer demand during the entire 1994–95 season. The Florida seedless grapefruit shipping season normally begins in September and continues until the following July, but occasionally it begins in late August.

This proposed rule is designed to establish and maintain orderly marketing conditions in the United States for fresh Florida-grown red and white seedless grapefruit in the interest of producers, handlers, and consumers, and it expected to increase returns to Florida grapefruit producers.

Under the order, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from grade and size requirements. Fruit shipped in gift packages which are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from grade and size requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 [7 CFR 944.106]. This proposed rule would amend § 944.106 by revising paragraph (a) and the table in that section by modifying the entries for imported red and white seedless grapefruit. This would increase the minimum grade requirements for such grapefruit to U.S. No. 1, from the current minimum grade requirement of Improved No. 2 External—U.S. No. 1 Internal. The proposed higher grade requirements for imported red and white seedless grapefruit are the same as those being proposed in this rule under § 905.306 for red and white seedless grapefruit grown in Florida.

The current minimum size requirements for imported red and white seedless grapefruit would remain unchanged under this proposed rule. Also, the current minimum grade and size requirements for imported red and white seeded grapefruit would remain unchanged.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule, as it pertains to red and white seedless grapefruit imported into the United States.

This proposed rule reflects the committee's and the Department's appraisal of the need to increase the minimum grade requirements for fresh Florida-grown red and white seedless grapefruit, as specified. The Department's view is that this proposed rule could have a beneficial impact on Florida producers and handlers of fresh seedless grapefruit, since it would enable such producers and handlers to make available those grades of grapefruit needed to meet consumer needs consistent with 1994–95 season crop and market conditions.

This proposed rule also reflects the Department's appraisal of the need to increase the grade requirements for imported red and white seedless grapefruit, so that such fruit would meet the same higher grade requirements proposed for Florida-grown red and white seedless grapefruit, consistent with the Act.

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

A comment period of 15 days is deemed appropriate because the higher grade requirements for Florida-grown red and white seedless grapefruit need to be in effect when shipment of Florida's 1994–95 season fresh seedless grapefruit crop is expected to begin on or about September 1, 1994.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

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

For the reasons set forth in the preamble, 7 CFR Parts 905 and 944 are proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.306 is amended by revising the entries in TABLE I of paragraph (a) and in TABLE II of paragraph (b) for "seeded, except red grapefruit", "seeded, red grapefruit", "seedless, except red grapefruit", and "seedless, red grapefruit"; and by removing the entries for "seeded, except pink grapefruit", "seeded, pink grapefruit", "seedless, except pink grapefruit", and "seedless, pink grapefruit" to read as follows:

§ 905.306 Orange, grapefruit, tangerine and tangelo regulation.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	*	*
GRAPEFRUIT			
* * *	* * *	*	*
Seeded, except red	On and after 09/01/94	U.S. No. 1	3 12/16
Seeded, red	On and after 09/01/94	U.S. No. 1	3 12/16
Seedless, red	On and after 09/01/94	U.S. No. 1	3 9/16
Seedless, except red	09/01/94–11/06/94	U.S. No. 1	3 5/16
	On and after 11/07/94	U.S. No. 1	3 9/16
* * *	* * *	*	*

(b) * * *

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	*	*
GRAPEFRUIT			
* * *	* * *	*	*
Seeded, except red	On and after 09/01/94	U.S. No. 1	3 9/16
Seeded, red	On and after 09/01/94	U.S. No. 1	3 9/16
Seedless, except red	On and after 09/01/94	U.S. No. 1	3 5/16
Seedless, red	On and after 09/01/94	U.S. No. 1	3 5/16
* * *	* * *	*	*

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. Section 944.106 is amended by revising paragraph (a), and by redesignating the second appearing paragraph (h) as paragraph (i) to read as follows:

§ 944.106 Grapefruit import regulation.

(a) Pursuant to Section 8e [7 U.S.C. Section 608e–1] of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], and Part 944—Fruits; Import Regulations, the importation into the United States of any grapefruit is prohibited unless such grapefruit meet the following minimum grade and size requirements for each specified grapefruit classification:

Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (inches)
Seeded	On & after 09/01/94	U.S. No. 1	3 12/16
Seedless, red	09/01/94–11/06/94	U.S. No. 1	3 5/16
	On & after 11/07/94	U.S. No. 1	3 9/16
Seedless, except red	On & after 09/01/94	U.S. No. 1	3 9/16

* * * * *

Dated: September 6, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–22251 Filed 9–7–94; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AEA–04]

Proposed Establishment of Class E Airspace; Islip, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish additional controlled airspace extending upward from the surface at the Long Island MacArthur Airport, Islip, New York, during the hours that the Air Traffic Control Tower (ATCT) is not in operation. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "Control Zone," and airspace designated from the surface to adjacent controlled airspace is now Class E airspace. The intended effect of this proposal is to establish additional controlled airspace for aircraft operating under instrument flight rules.

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

ADDRESSES: Send comments on the proposal in triplicate to: Michael J. Sammartino, Acting Manager, System Management Branch, AEA–530, Docket No. 94–AEA–04, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Frank Jordan, Designated Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentors wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AEA–04." The postcard will be date/time stamped and returned to the commentor. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, AEA–7, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the 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, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish controlled airspace extending upward from the surface at the Long Island MacArthur Airport, Islip, New York, when the ATCT at the airport is not in operation. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "Control Zone," and airspace extending upward from the surface to adjacent controlled airspace is now Class E airspace. The intended effect of this proposal is to provide additional controlled airspace to the surface in the vicinity of the Long Island MacArthur Airport, Islip, New York, during the hours that the ATCT at the airport is closed. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The class E airspace designation

listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

AEA NY E2 Long Island MacArthur Airport, Islip, NY

Long Island MacArthur Airport
(Lat. 40°47′44″ N., long 73°05′58″ W.)
Bayport Aerodrome
(Lat. 40°45′30″ N., long. 73°03′13″ W.)

Within a 5-mile radius of the Long Island MacArthur Airport, excluding that airspace from the surface to but not including 700 feet MSL within 1 mile west of Bayport Aerodrome and parallel to Runway 18/36 from south of the Sunrise Highway southbound to the 5-mile radius of the Long Island MacArthur Airport, counterclockwise to south of Nichols Road thence northbound along Nichols Road to south of and parallel to the Sunrise Highway westbound to the beginning point.

* * * * *

Issued in Jamaica, New York, on August 25, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94–22091 Filed 9–7–94; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 800

Rules, Regulations, Statements and Interpretations Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976

AGENCY: Federal Trade Commission.

ACTION: Notice of extension of comment period.

SUMMARY: The Commission has extended until October 25, 1994, the time period within which comments will be received on the proposed amendments to the Premerger Notification and Report Form that parties are required to file with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice before consummating certain mergers and acquisitions. The proposed amendments are designed to improve the premerger notification program by requiring persons to submit certain new and more up-to-date information and also to reduce the burden of compliance by raising thresholds of several items consistent with the agencies' information needs. The original request for comments was announced in the **Federal Register** of June 14, 1994 (59 FR 30545) and a Notice of Extension of Comment Period extending the comment period until August 26, 1994, was published in the **Federal Register** of August 9, 1994 (59 FR 40492).

DATES: Written comments will be accepted on the proposed changes to the Premerger Notification and Report Form on or before October 25, 1994.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, room 136, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Victor L. Cohen, Attorney, or John M. Sipple, Jr., Assistant Director, Premerger Notification Office, Bureau of Competition, room 303, Federal Trade Commission, Washington, DC 20580 Telephone: (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–22112 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 239 and 240

[Release Nos. 33–7090; 34–34628; File No. S7–26–94]

RIN 3235–AG09

Limited Partnership Roll-up Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment proposed amendments to its rules regarding limited partnership roll-up transactions to implement provisions of the Limited Partnership Rollup Reform Act of 1993 ("Act"), which added, among other matters, new Section 14(h) of the Securities Exchange Act of 1934. The proposals would, among other things, amend the current Commission definition of "roll-up transaction" to conform more closely to the definition of that term in the Act.

DATES: Comments must be submitted on or before November 1, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters should refer to File No. S7–26–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Robert B. Toomey, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 3–12, Washington D.C. 20549, at (202) 942–2910.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend the definition of limited partnership roll-up transaction contained in Item 901(c) of Regulation S–K [1] to conform more

[1] 17 CFR 229.901(c).

closely to the definition in the Act,[2] which added new provisions regarding roll-up transactions to the Securities Exchange Act of 1934 ("Exchange Act").[3] The Commission, consistent with the Act, also is proposing to amend Exchange Act Rules 14a–2,[4] Rule 14a–6,[5] and 14a–7,[6] as well as to add new Exchange Act Rules 3b–11, 14a–15 and 14e–7, and a new notice of Exempt Preliminary Roll-up Communication. Finally, revisions to Item 911 of Regulation S–K[7] and Forms S–1,[8] S–4,[9] S–11,[10] F–1,[11] and F–4[12] under the Securities Act of 1933 ("Securities Act")[13] are proposed.

I. Discussion of Proposals

A. Regulatory and Legislative Background

In response to investor complaints and serious concerns raised in Congressional hearings about limited partnership roll-up transactions, the Commission adopted rules designed to enhance the quality of information provided to investors in connection with these transactions, and established a minimum solicitation period for them.[14] Among other things, the Commission adopted subpart 900 of Regulation S–K to enhance the disclosure submitted to investors in connection with roll-up transactions ("roll-up rules").[15] The roll-up rules require disclosure with respect to the fundamental changes and potential adverse effects arising from roll-up transactions and the conflicts of interest, reasons for, alternatives to and fairness of such transactions. These rules also require that investors be provided with individual partnership prospectus supplements with respect to their own partnerships highlighting, among other things, the effects of the roll-up transaction on investors in the particular partnership.[16] In addition to the new disclosure rules, the Commission adopted amendments to its proxy and tender offer rules[17] establishing a 60-day minimum solicitation period for roll-up transactions, or, if shorter, the maximum period permitted under state law.

The Commission acted again in the area of roll-ups in 1992, when, as part of its proxy reform, it provided rights to security holders to obtain a list of security holders in connection with a roll-up related proxy solicitation involving Section 12 registered securities. The requesting security holder has the option of receiving the list of security holders or having the issuer mail his or her material.[18]

In 1993, the Exchange Act was amended specifically to address roll-up abuses. The legislation added Section 14(h) to the Exchange Act,[19] which imposes certain disclosure and other requirements for roll-up transactions, as discussed below. While many aspects of the Act parallel the protections of the Commission's current roll-up rules, the Act does require some revisions of, and additions to, the Commission's rules.

With respect to disclosure requirements, the Act largely codifies the disclosure requirements of subpart 900 of Regulation S–K. There are only three minor revisions required by the Act in the area of disclosure, concerning appraisals, reports, and fairness opinions, as discussed below.

The legislation also requires revisions to the Commission's proxy and tender offer rules. These revisions include: an exemption for preliminary shareholder communications among security holders for the purpose of determining whether to solicit proxies, consents or authorizations in opposition to a proposed roll-up transaction; an expansion of the category of roll-up transactions in which security holder lists must be provided; and a prohibition of differential or contingent compensation in connection with roll-up transactions.

The legislation also contains a definition of "limited partnership rollup transaction." The legislation generally defines the term as a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which some or all the investors receive new securities or securities in another entity. A roll-up may be structured as an acquisition, a merger, a tender (exchange) offer or in some other fashion. The legislative definition contains a number of exclusions from its coverage, which makes it narrower than the Commission's current definition of roll-up transaction in Item 901 of Regulation S–K ("S–K Definition"). Although not required by the Act, the Commission is proposing to revise its S–K Definition of roll-up transaction in certain respects to conform more closely to the legislative definition. The S–K Definition would apply to the disclosure and certain other requirements governing roll-ups, as discussed below, while the legislative definition applies to all of the new substantive requirements imposed by the Act. Under today's proposals, the S–K Definition would continue to be broader than that in the legislation.

Finally, the legislation also amended Sections 6(b) and 15A of the Exchange Act[20] by adding new Sections 6(b)(9) and 15A(b)(12)–(13).[21] These two amendments require registered securities associations (*i.e.*, the National Association of Securities Dealers ("NASD")) to adopt rules to prevent their members from participating in any roll-up transaction unless the transaction provides specified protections for limited partners,[22] and also require national securities exchanges to promulgate rules prohibiting the listing of any national market system security resulting from a

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[2] Government Securities Act Amendments of 1993, Pub. L. 103–202, Title III, 107 Stat 2344 (1993).

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 240.14a–2.

[5] 17 CFR 240.14a–6.

[6] 17 CFR 240.14a–7.

[7] 17 CFR 229.911.

[8] 17 CFR 239.11.

[9] 17 CFR 239.25.

[10] 17 CFR 239.18.

[11] 17 CFR 239.31.

[12] 17 CFR 239.34.

[13] 15 U.S.C. 77a *et seq.*

[14] Release No. 33–6922 (October 30, 1991) [57 FR 57247]. In June 1991, the Commission issued a release providing interpretive guidance of the existing disclosure requirements applicable to roll-up transactions. See Release No. 33–6900 (June 17, 1991) [56 FR 28979].

[15] Items 901–915 of Regulation S–K [17 CFR 229.901–915]. As there is no analogue to subpart 900 in Regulation S–B [17 CFR 228.10 *et seq.*], small business issuers, as defined in Rule 405 of Regulation C [17 CFR 230.405], engaged in roll-up transactions on Form S–4 must furnish the information required by subpart 900 of Regulation S–K as well as the other requirements of that form. See General Instruction D.3 to Form S–4. An additional sentence is proposed to be added to General Instruction I.1 to Form S–4 to refer specifically to the applicability of subpart 900 of Regulation S–K to small business roll-up transactions.

[16] The disclosure requirements apply to registration statements on Form S–4 or Form F–4, the forms generally used in connection with business combinations or reorganizations. If securities to be issued in a roll-up transaction are registered on another form, but would be authorized to be registered on Form S–4 or Form F–4, the roll-up rules apply in that context. See n. 15 to Release No. 33–6922. Instructions are proposed to be added to Forms S–1, F–1 and S–11 to such effect.

[17] Exchange Act Rules 14a–6 [17 CFR 240.14a–6], 14c–2 [17 CFR 240.14c–2], and 14e–1 [17 CFR 240.14e–1].

[18] Exchange Act Rule 14a–7(b) [17 CFR 240.14a–7(b)].

[19] 15 U.S.C. 78n(h).

[20] 15 U.S.C. 78f(b) and 15 U.S.C. 78o–3.

[21] 15 U.S.C. 78f(b)(9) and 15 U.S.C. 78o–3(b)(12)–(13).

[22] The amendments also prohibit the authorization for quotation on an automated interdealer quotation system sponsored by a registered securities association of any security designated by the Commission as a national market system security resulting from a roll-up transaction that does not provide for certain investor protections.

See Release No. 34–34533 (August 15, 1994) [59 FR 43147] for recent NASD rulemaking relating to limited partnership roll-up transactions.

limited partnership roll-up transaction unless the transaction provides those protections for limited partners (collectively, "SRO rules"). For example, registered securities associations are required to promulgate rules preventing their members from participating in roll-up transactions unless a dissenting limited partner is given the opportunity to receive an appraisal and compensation for the limited partnership security, or other comparable rights are provided.[23]

B. Proposed Revisions to Regulation S–K Definition of Roll-up Transaction

1. Basic Coverage of Definition

As noted above, the current S–K Definition of "roll-up transaction"[24] applies to the Commission's existing requirements governing roll-ups—special disclosure, a 60-day proxy solicitation or tender offer period, and the security holder list requirement in proxy solicitations. The Act has a narrower definition of "roll-up transaction" than the current S–K Definition, since it applies only to limited partnerships and not all finite life entities. In addition, the legislative definition contains a number of exclusions not currently included in the S–K definition. The Commission has analyzed the legislative coverage of only limited partnerships, as well as each legislative exclusion, and what coverage and which exclusions would be appropriate for purposes of its current disclosure and procedural roll-up requirements. The Commission today is proposing to limit its S–K Definition of roll-up transaction to encompass certain, but not all, of the legislative exclusions.[25] In effect, this would narrow the current S–K Definition and reduce disclosure and procedural compliance burdens for certain entities involved in transactions that would no longer fall within the S–K Definition of roll-up transaction. The legislative definition would continue to govern the SRO rules and would be used in the rule proposals relating to differential compensation.

For purposes of disclosure provided to investors in connection with roll-up transactions, the S–K Definition would differ from the legislative definition in two principal respects, as discussed in more detail below. First, the Act applies only to transactions involving limited partnership entities, while the S–K Definition of a "roll-up transaction" covers, and would continue to cover, transactions involving finite-life entities, however organized.[26] Second, the Act includes two separate exclusions that depend upon the listed status of the securities to be issued or exchanged, which would be replaced in the S–K Definition by a different exclusion for transactions in which both the partnership securities to be exchanged and the securities to be issued in the roll-up are listed securities.[27]

Under the current S–K Definition, a roll-up transaction involves the combination or reorganization of one or more partnerships, directly or indirectly, in which some or all of the investors in any of such partnerships will receive new securities or securities in another entity. This would continue to be the basic S–K Definition,[28] but under the rules proposed today, the following transactions would be excluded from the S–K Definition for the first time:[29]

- Transactions where the interests of the partners are repurchased, recalled or exchanged, in accordance with the terms of the preexisting partnership agreement, for securities in an operating company specifically identified at the time of the formation of the original limited partnership;
- Transactions involving only issuers (both the subject partnerships and the surviving entity) that are not required to register or report under Section 12 of the Exchange Act,[30] both before and after the transaction;[31]
- Transactions involving the combination or reorganization of one or more partnerships in which a non-affiliated party succeeds to the interests of a general partner or sponsor, if not less than 66⅔% of the outstanding units of each of the participating partnerships approve the roll-up, and, as a result of the transaction, the existing general partners receive only compensation to which they are entitled as expressly provided in the preexisting partnership agreement;
- Transactions where investors receive securities of an entity formed more than 12 months before the mailing of soliciting materials, and such securities are regularly traded and do not exceed 20% of the total outstanding securities of the issuer, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity;
- Transactions in which both the securities to be issued and the securities to be exchanged in the roll-up are listed securities;
- Transactions in which the investors in none of the partnerships involved are subject to a significant adverse change with respect to voting rights, the term of existence of the entity, management compensation or investment objectives; and
- Transactions in which all investors are provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.[32]

Transactions falling within the proposed exclusions from the definition of "roll-up transaction" listed above generally are not the type that have generated the abuses giving rise to the Act and the Commission's roll-up rules. Therefore, the Commission believes it appropriate to simplify compliance burdens by more closely conforming the S–K Definition to the legislative definition. Comment is requested on the appropriateness of the proposed exclusions, and whether any or all of them should be deleted from the proposed S–K Definition, particularly in view of the disclosure requirements in the roll-up rules that would no longer apply.[33]

Consistent with the Act, Regulation S–K also would provide that the Commission may exempt by rule or order any security or class of securities,

[23] Exchange Act Section 15A(b)(12)(A)(i) [15 U.S.C. 78o–3(b)(12)(A)(i)].

[24] Item 901(c) of Regulation S–K.

[25] The S–K Definition is not proposed to be restricted to limited partnerships.

[26] "Partnership" is defined at Item 901(b) of Regulation S–K [17 CFR 229.901(b)] to mean any finite-life limited partnership, or other finite-life entity. "Finite-life" is defined at Item 901(b)(2)(i) [17 CFR 229.901(b)(2)(i)].

[27] The term "listed securities" is discussed in Part I.B.4, below.

[28] Proposed amendments to Item 901(c)(1) of Regulation S–K.

[29] The proposed S–K Definition, like the legislative definition also would specifically exclude transactions in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act. These transactions have never been subject to the Commission's roll-up requirements, since such requirements are triggered by the filing of a Securities Act registration statement.

[30] 15 U.S.C. 78*l*.

[31] If a transaction involves the issuance of a security that, after the transaction, would be convertible into a security of an issuer that is required to register or report under Section 12, this exclusion would not be available since the transaction would not involve only non-Section 12 issuers.

[32] Proposed Item 901(c)(2) of Regulation S–K. Proposed Item 901(c) of Regulation S–K would not contain the exclusion contained in Section 14(h)(5)(A) of the Exchange Act [15 U.S.C. 78n(h)(5)(A)] for transactions involving non-finite life entities, since the term "partnership" is already defined at Item 901(b)(1) of Regulation S–K [17 CFR 229.901(b)(1)] to include only "finite-life" entities.

[33] Although such transactions would be excluded from the coverage of the roll-up rules, if a transaction raises concerns addressed by the roll-up rules, whether or not excluded from the rules, the disclosure required under the rules should be considered from an anti-fraud perspective. See Release No. 33–6922, Section III.B.

any transaction or class of transactions or any person or class of persons from the definition of roll-up transaction or the requirements imposed on a roll-up transaction.[34] This would broaden the current provision, which provides for exemptive action only on a transaction by transaction basis.[35]

2. Definition of "Regularly Traded" for Purposes of Exclusion

The legislative history of the Act[36] indicates that Congress intended to include as "regularly traded" securities those securities that have a readily ascertainable market value, which are generally liquid and which investors may sell following the exchange of securities. Therefore, for purposes of the exclusion above, the Commission proposes to define the term "regularly traded" security as any security with a minimum closing price of $2.00/share or more for a majority of the business days during the preceding three-month period and a six-month minimum average daily trading volume of 1,000 shares.[37] The Commission believes that this definition would mean that only those securities that are too thinly traded to permit investors to evaluate the consideration being offered in exchange for their interest would fail to qualify for the exclusion above and that a public market will be available for those securities qualifying for the exclusion. Comment is requested as to whether the scope of the proposed definition is appropriate or whether alternative definitions would meet the goals of the Act.

In commenting on the appropriateness of the proposed definition and/or possible alternatives, commenters should address whether the proposed definition would exclude certain securities having a readily ascertainable market value and for which a public market is available. Comment also is requested as to whether the proposed definition would include certain securities not having a readily ascertainable market value or for which a public market is not readily available. In particular, the Commission seeks comment on whether the price per share and average daily trading volume should be set at a higher or lower level than currently proposed or whether the price/volume criteria should have an inverse relationship, *e.g.*, $3.00/share with average daily volume of 2,500 shares. The Commission notes that the proposed definition would exclude certain securities with a relatively high price per share but a low average daily share volume. Therefore, comment is solicited as to whether it would be appropriate to define "regularly traded" security with reference to the average daily dollar volume of a security in lieu of its average daily share volume.

3. Exclusions for No Significant Adverse Change or Provision of Option To Receive or Retain Substantially the Same Security

The sixth and seventh exclusions listed above would provide that the roll-up requirements do not apply to transactions in which, respectively, the investors are not subject to significant adverse changes or the investors have an option to receive or retain a security under substantially the same terms and conditions. Comment is solicited on whether it would be preferable to approach these classes of transactions on a case by case basis, since the availability of these exclusions can only be determined based on the particular facts and circumstances of individual transactions. Specifically, commenters should address whether the Commission, instead of adopting these two exclusions, should address these types of transactions under its Regulation S–K exemptive authority, as discussed above.

4. Statutory Exclusions Not Proposed To Be Included in S–K Definition

As noted above, unlike the legislative definition, the proposed S–K Definition of roll-up transaction would not be restricted to transactions involving limited partnerships. Rather, the proposed S–K Definition would continue to apply to all finite life entities, whether or not organized as limited partnerships. Based on the Commission's experience reviewing the disclosure documents filed in connection with roll-up transactions by finite life entities, including non-partnership entities, it appears that no differing disclosure is warranted and that the Commission's roll-up rules should apply to roll-ups of non-partnership finite life entities, such as finite life trusts, just as to roll-ups of finite life limited partnerships.

Comment is requested on the appropriateness of continuing the application of the Commission's roll-up rules to transactions involving non-partnership entities. Commenters favoring complete conformity to the legislative definition are asked to address why the technical legal structure of the participating entities would change the disclosure needed in connection with these transactions.

Also, the proposed S–K Definition would not include the two exclusions set forth in the Act for transactions where either no listed securities, as described below, would be issued or where all of the partnership interests to be exchanged are listed securities at the time of filing.[38] Instead, a separate exclusion for transactions where both the securities of the subject partnerships and the surviving entity are listed securities would be provided.[39]

The transactions encompassed by these two exclusions from the Act's definition may raise the concerns that led to the Commission's current roll-up disclosure and procedural rules. With regard to the first exclusion, it is unlikely that a transaction would be proposed where no listed securities would be issued since roll-ups historically have been proposed principally as a means to achieve liquidity. However, such a transaction still could involve significant conflicts of interest, adverse changes and differing effects for partnership investors, which would be addressed by the Commission's roll-up disclosure rules. Further, if the securities to be issued would not be listed and the limited partnership interests were not listed securities, investors would not have the alternative of disposing of their interests rather than participating. The second exclusion, for transactions where all partnership securities were listed securities, does not assure that investors who participate would be able to sell after the roll-up since it does not require that the securities to be issued be listed securities. Accordingly, rather than incorporating these exclusions into the proposed S–K Definition, the Commission proposes to exclude transactions where both the partnership interests and the securities to be issued are listed securities. In these transactions, investors should be able to dispose of their securities either to avoid participating in the roll-up or after the roll-up is completed.

Comment is requested concerning whether the two separate exclusions in the Act should be incorporated in the S–K Definition. Commenters favoring such exclusions from the regulatory coverage should address whether these transactions could raise the concerns addressed by the roll-up rules. Comment also is requested on the proposed new exclusion.

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[34] Proposed Item 901(c)(3) of Regulation S–K.

[35] Item 901(c)(2) of Regulation S–K [17 CFR 229.901(c)(2)].

[36] S. Rep. No. 121, 103d Cong., 1st Sess. 15 (1993).

[37] Proposed Item 901(c)(2)(v)(C) of Regulation S–K.

[38] Exchange Act Sections 14(h)(4)(A) and (B).

[39] Proposed Item 901(c)(2)(vi) of Regulation S–K.

The term "listed securities" encompasses securities listed on the New York Stock Exchange or the American Stock Exchange ("Amex") (including those listed on the Emerging Companies Marketplace) or authorized for quotation on Nasdaq/NM, or in some cases listed on regional exchanges that substantially meet the Amex listing criteria. The proposed rule, like the Act, refers to transactions in which all of the partnerships' securities are reported under a transaction reporting plan declared effective under Section 11A of the Exchange Act [40] by the date of the enactment of the Act. Comment is requested as to whether this is the appropriate formulation for describing the securities for which this exclusion would be available. Comment is specifically requested as to whether it would be appropriate to narrow the scope of this exclusion. For example, should the listed to listed exclusion be narrowed to exclude entities listed on the Emerging Companies Marketplace, regional exchange listed securities, or any other specified category of securities?

C. Proposed Rule Defining Terms Related to Legislative Definition

As noted above, while the S–K Definition of "roll-up transaction" governs the Commission's disclosure and procedural rules, the legislative definition establishes the scope of other requirements, such as the SRO rules. Accordingly, a new Exchange Act rule is proposed in order to define related terms used in the legislative definition for purposes of those other requirements.[41] These provisions of the Act apply to "limited partnership roll-up transactions" as defined in the Act. The related terms addressed in the proposed new rule would be as follows:

- As provided in the Act, criteria would be set forth to determine when a partnership has an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing or refinancing of assets.[42]
- An exclusion from the roll-up definition would be provided for transactions involving only entities registered under the Investment Company Act of 1940 [43] or regulated as business development companies.[44] This exclusion already is in the current S–K Definition [45] and would remain in effect under the proposal; transactions involving such entities are subject to extensive regulation, and the concerns associated with roll-ups have not been perceived in this area.
- The term "regularly traded," for purposes of the related exclusion in the Act, would be defined in the same manner as the proposed S–K definition discussed above.[46]

D. Proxy and Tender Offer Rule Revisions

1. Exemption for Preliminary Communications

The Act mandates a new proxy rule exemption to allow preliminary communications among security holders for the purpose of determining whether to solicit proxies, consents or authorizations in opposition to a proposed roll-up transaction. The Act requires that persons relying on the exemption who are in the business of buying and selling limited partnership interests in the secondary market, and who hold 5% or more of the securities subject to the roll-up, provide specified disclosure to the security holders to whom the communication is made.

The new exemption [47] would exempt preliminary communications from all the proxy rules, except the anti-fraud prohibitions of Rule 14a–9.[48] As proposed, the exemption would be available in connection with any roll-up transaction within the S–K Definition. Comment is requested as to whether the exemption should be limited to legislatively defined roll-up transactions.[49]

The proposed exemption contains two conditions. First, the exemption would be available only to a holder of a security that is the subject of a proposed roll-up transaction and who is not an affiliate of the registrant, general partner or sponsor. Second, any person relying on the new exemption who at the beginning of the solicitation owns 5% or more of any class of securities that is subject to the proposed roll-up transaction and who is engaged in the business of buying and selling limited partnership interests in the secondary market would be entitled to rely on the exemption only if specified disclosures are made. The person would be required to disclose to any security holder solicited under this exemption that person's security ownership and any relations of the person to the parties to the transaction or to the transaction itself, as set forth in a new Notice of Exempt Preliminary Roll-up Communication, and furnish or mail the notice to the Commission within three days of the first exempt communication.[50] As proposed, the information may be provided to the security holder orally, if the exempt communication is oral. Any written exempt communication would have to contain the information set forth in the Notice. The Notice would be required to be submitted to the Commission whether the exempt communication was oral or written.

The new Notice would contain the following identifying information: The name of the registrant appearing on the Securities Act registration statement for the roll-up transaction (or, if a registration statement has not been filed, the name of the entity into which partnerships are to be rolled-up); the name of the partnership that is the subject of the proposed roll-up transaction; the name of the person relying on the exemption; and the address of the person relying on the exemption. Further, pursuant to the Act, the security holder's ownership interests would have to be disclosed (including any holdings in any of the other entities involved in the roll-up transaction), as well as any relations of the holder to the parties to the transaction or to the transaction itself. With respect to the latter, the Notice would require the security holder to specify and describe these relations if:

- The business of the holder in the buying and selling of limited partnership interests in the secondary market would be adversely affected if the roll-up transaction was completed;
- The holder would suffer direct (or indirect) material financial injury if the roll-up transaction was completed since the holder is a service provider (*e.g.*, a property manager) to an affected limited partnership;

[40] 15 U.S.C. 78k–1.

[41] Exchange Act Sections 6(b)(9) and 15A(b)(12)–(13) discussed in Part I.A, above.

[42] Proposed Rule 3b–11(a). This would be accomplished by referring to the definition of "finite life" in Item 901(b)(2) of Regulation S–K [17 CFR 229.901(b)(2)]. If a partnership is not finite life as defined in 901(b)(2), then it would be a reinvesting partnership for purposes of the exclusion from the Act for transactions involving only reinvesting partnerships. See Section 14(h)(5)(A) of the Act.

[43] 15 U.S.C. 80a et seq.

[44] Proposed Rule 3b–11(b).

[45] Item 901(c)(3) of Regulation S–K [17 CFR 229.901(c)(3)].

[46] Proposed Rule 3b–11(c).

[47] Proposed Rule 14a–2(b)(4).

[48] 17 CFR 240.14a–9. The other solicitation exemptions in the proxy rules, including the exemption afforded by Rule 14a–2(b)(1) [17 CFR 240.14a–2(b)(1)], also would be available to roll-up communications meeting the conditions of those exemptions.

[49] No exemption is needed for solicitations involving securities that are not registered under the Exchange Act, since they are not subject to the proxy rules.

[50] The notice submission requirement would be set forth in proposed Rule 14a–6(n) and proposed Schedule 14a–104, "Notice of Exempt Preliminary Roll-up Communication."

• The holder is engaged in another transaction that may be competitive with the pending roll-up transaction; or

• The holder has any other relations to the parties involved in the transaction or to the transaction itself, or enjoys benefits not shared on a pro-rata basis by all other security holders of the same class.

Comment is requested as to the appropriateness of limiting the exemption to unaffiliated security holders. Comment is also requested as to the need for the Notice of Exempt Preliminary Roll-up Communication and its submission to the Commission. Should the rules require the information to be delivered in writing to all security holders receiving the exempt communication? With respect to the Notice, should the remainder of any written communication be required to be submitted, as in the current Notice of Exempt Solicitation in the proxy rules?[51] Further, comment is requested on the appropriateness of the various categories of relations of the security holder to the parties to the transaction or to the transaction itself set forth in the Notice. Should any proposed category (or categories) be excluded? Conversely, should any additional category (or categories) be included? With respect to the timing of the Notice, should the Notice be required to be submitted within a shorter period of time (*e.g.*, two days) or longer period of time (*e.g.*, five days) after the first exempt communication?

2. Security Holder Lists

The Act requires issuers to provide to holders of securities that are the subject of a roll-up a list of the holders of the securities of that entity in accordance with rules prescribed by the Commission.[52] As noted above, as part of its proxy reform adopted in 1992, the Commission provided such rights for security holders in connection with a roll-up related proxy solicitation involving Section 12 registered securities.[53] The requesting security holder has the option of receiving the list of security holders or having the issuer mail his or her material. To fully implement the Act, Rule 14a–7 is proposed to be amended to extend this provision to legislatively defined roll-ups,[54] whether or not involving entities with securities registered pursuant to Section 12.[55] As a result, the Commission's current provision would continue to apply as it has in the past; the only change would be to add to legislatively defined roll-ups involving non-Section 12 limited partnerships.

The current tender offer rules also contain a security holder list provision, but it is applicable only to bidders.[56] The proposals would add a rule requiring subject companies to provide to holders of securities that are the subject of a roll-up structured as a tender offer a list of the holders of that entity at the holder's option.[57] Both roll-up transactions involving Section 12 registered entities and legislatively defined roll-ups would be covered.

F. Differential or Contingent Compensation

The Act prohibits the compensation of a person soliciting proxies, consents or authorizations in connection with a roll-up transaction on the basis of whether or not the solicited proxy, consent or authorization either approves or disapproves the proposed transaction, or is contingent on approval, disapproval or completion of the transaction.[58] Since 1991, the rules of the NASD have forbidden members, in connection with a roll-up transaction (whether a proxy solicitation or a tender offer), from accepting compensation based upon the result of the solicitation.[59] The proposed rule[60] would make this requirement applicable to all solicitors, regardless of NASD membership, in connection with a legislatively defined roll-up transaction.[61] The limitation to legislatively defined roll-ups is consistent with the NASD's pending rule proposal in this area.[62]

As with the shareholder list provision, the differential and contingent compensation provision of the Act also would be applicable to legislatively defined roll-up transactions structured as tender offers.[63] Legislative history indicates that the Commission is to make its differential or contingent compensation rule parallel to the NASD rules.[64] At the time the Act was passed, the NASD rules referred to tender offers. Accordingly, pursuant to the Act, a new rule[65] would prohibit this type of compensation in legislatively defined roll-ups structured as tender offers. This is consistent with the comparable provision in the NASD rules.[66] Thus, as with persons seeking a proxy approving a roll-up transaction, persons seeking tenders in a roll-up transaction could not be paid based on whether the person solicited participated in the tender offer or on whether the offer was successful.

G. Disclosure Regarding Appraisals, Reports and Fairness Opinions

The statutory requirements that specific information be included in any roll-up transaction disclosure document largely parallels the current roll-up rules.[67] The only changes required by the Act[68] would affect the disclosure requirements pertaining to appraisals, reports, and fairness opinions contained in Item 911 of Regulation S–K.[69] The new requirements listed below, while not currently explicitly required by Regulation S–K, would mandate information that generally is required under Securities Act Rule 408[70] and Exchange Act Rule 12b–20.[71] The amendments would require specific disclosure of:

• Any compensation of the preparer of any opinion, appraisal or report (other than an opinion of counsel) that is contingent on the transaction's approval or completion and, if so, the

[51] 17 CFR 240.14a–103.

[52] Section 14(h)(1)(B) of the Exchange Act [15 U.S.C. 78n(h)(1)(B)].

[53] See Section I.A, above. Rule 14a–7 refers to roll-up transaction as defined in Item 901(c) of Regulation S–K. However, because Rule 14a–7 currently only applies to solicitations of shareholders of Section 12 entities, not all roll-ups as defined in Item 901(c) of Regulation S–K are subject to the rule.

[54] Legislatively defined roll-ups, as described in the proxy and tender offer rules, would consist of roll-up transactions as defined in Item 901(c) of Regulation S–K, except for transactions that do not involve limited partnerships, and transactions that meet one of the legislative exclusions not encompassed by the proposed new Regulation S–K definition.

[55] Rule 14a–2 [17 CFR 240.14a–2], which describes the scope of the proxy rules, would be amended to make it clear that the rules apply in some instances to roll-ups not involving Section 12 registered securities.

To the extent that the transaction involves only issuers that are not required to register or report under Section 12, both before and after the transaction, the transaction would be excluded from the definition of roll-up pursuant to proposed Item 901(c)(2) of Regulation S–K. See Part I.B.4, above.

[56] Exchange Act Rule 14d–5 [17 CFR 240.14d–5].

[57] Proposed Rule 14e–7(b).

[58] Section 14(h)(1)(C) of the Exchange Act [15 U.S.C. 78n(h)(1)(C)].

[59] See Article III, Section 34(b)(6) to the Rules of Fair Practice of the NASD.

[60] Proposed Rule 14a–15.

[61] See, e.g., House Report on H.R. 617, in which the Committee on Energy and Commerce noted that ". . . the bill would have the effect of both 'locking-in' this rule change [the NASD rule change] and assuring its extension to non-NASD members, such as proxy solicitation firms used to solicit consents to a roll-up."

[62] Release No. 34–34533. See Part I.A, above.

[63] Proposed Rule 14e–7(a).

[64] See House Report on H.R. 617 and Senate Report on S. 424.

[65] Proposed Rule 14e–7(b).

[66] Article III, Section 34(b)(6) of the Rules of Fair Practice of the NASD.

[67] Section 14(h)(1)(D)–(I) of the Exchange Act [15 U.S.C. 78n(h)(1)(D)–(I)].

[68] Sections 14(h)(1)(G) and (H) of the Exchange Act [15 U.S.C. 78n(h)(1)(G) and (H)].

[69] 17 CFR 229.911.

[70] 17 CFR 230.408.

[71] 17 CFR 240.12b–20.

reasons for compensating that party on a contingent basis;[72]

• Any reasons for the general partner, sponsor or affiliate placing a limitation on the scope of the outside party's investigation in connection with any opinion, appraisal, or report, including, but not limited to, access to its personnel, premises and relevant books and records;[73] and

• With respect to fairness opinions only, any reasons for the general partner or sponsor concluding that a fairness opinion was not necessary for the limited partners or shareholders to make an informed decision on the proposed transaction if such an opinion on the fairness of the proposed roll-up transaction to investors in each of the affected partnerships was not obtained.[74]

II. Request for Comment

Any interested persons wishing to submit written comments on the proposed revisions to the Commission's roll-up rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. Comments are requested on the impact of the proposals on registrants, security holders, general partners, sponsors, broker-dealers, and others. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse impact on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[75] Comment letters should refer to File No. S7–26–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

III. Transition to New Rules

If the proposed rule revisions are adopted, the Commission intends to make them effective as of their date of publication in the **Federal Register**. Pending roll-up transactions, including those that have been declared effective but have not yet completed the proxy solicitation or tender offer, would be subject to the new rules as of the date of the rules' effectiveness. The exempt communication, shareholder list and differential compensation provisions would be applicable to roll-ups in progress, but only from the effective date onward. With respect to the proposed Regulation S–K disclosure requirements, in view of the fact that the new disclosure obligations are generally required under existing rules, all pending registration statements should comply with these disclosure requirements and thus be unaffected by the immediate effectiveness of the explicit requirements.

IV. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposals, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. The proposals, which are intended to carry out the purposes of the Act, are expected to have little effect on the net costs to entities involved in a roll-up transaction. The proposals would afford investors certain procedural protections to facilitate shareholder communications and avoid conflicts of interests by persons soliciting proxies and being compensated for delivery of a certain outcome. Any additional burdens should be outweighed by the value to investors of these protections.

Further, some transactions that would be subject to the roll-up requirements under the current rules would no longer be so subject under the proposals. Thus, costs would be reduced for entities engaging in such transactions.

V. Summary of the Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis notes that the amendments are intended to comport with the requirements of the Act.

As discussed more fully in the analysis, the proposals would affect persons that are small entities, as defined by the Commission's rules, but would affect small registrants in the same manner as other registrants. The proposed amendments and new rules, however, are designed to minimize these costs to the greatest extent possible while enhancing the ability of security holders to analyze roll-up transactions.

Written comments are encouraged with respect to any aspect to the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting Robert B. Toomey, Office of Disclosure Policy, Division of Corporation Finance, Mail Stop 3–12, 450 Fifth Street, N.W., Washington, D.C. 20549.

VI. Statutory Basic for Rules

The amendments to Regulation S–K and Forms S–4 and F–4 are being proposed pursuant to sections 6, 7, 8, 10, and 19 of the Securities Act, as amended,[76] and Section 14 of the Exchange Act, as amended.[77]

The amendments to the proxy and tender offer rules are being proposed pursuant to Sections 14 and 23 of the Exchange Act, as amended.[78]

List of Subjects in 17 CFR Parts 229, 239 and 240

Reporting and recordkeeping requirements, Securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for Part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By revising § 229.901(c) to read as follows:

§ 229.901 (Item 901) Definitions.

* * * * *

(c)(1) Except as provided in paragraph (c)(2) or (c)(3) of this Item, *roll-up transaction* means a transaction involving the combination or reorganization of one or more partnerships, directly or indirectly, in which some or all of the investors in any of such partnerships will receive new securities, or securities in another entity.

(2) Notwithstanding paragraph (c)(1) of this Item, *roll-up transaction* shall not include:

(i) A transaction wherein the interests of all of the investors in each of the partnerships are repurchased, recalled, or exchanged in accordance with the

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[72] Proposed Item 911(a)(2)(vii) of Regulation S–K.

[73] Proposed amendment to Item 911(a)(2)(vi) of Regulation S–K.

[74] Proposed Item 911(b)(2) of Regulation S–K.

[75] 15 U.S.C. 78w(a).

[76] 15 U.S.C. 77f, 77g, 77h, 77j, 77s.

[77] 15 U.S.C. 78n.

[78] 15 U.S.C. 78n, 78w.

terms of the preexisting partnership agreement for securities in an operating company specifically identified at the time of the formation of the original partnership;

(ii) A transaction in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*);

(iii) A transaction that involves only issuers that are not required to register or report under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), both before and after the transaction;

(iv) A transaction that involves the combination or reorganization of one or more partnerships in which a non-affiliated party succeeds to the interests of a general partner or sponsor, if:

(A) Such action is approved by not less than 66⅔% of the outstanding units of each of the participating partnerships; and

(B) As a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the preexisting partnership agreements;

(v) A transaction in which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1), if:

(A) Such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; *and*

(B) The securities of that entity issued to investors in the transaction do not exceed 20% of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity;

(C) For purposes of subparagraph (c)(2)(v) of this Item (§ 229.901(c)(2)(v)), a *regularly traded* security means any security with a minimum closing price of $2.00 or more for a majority of the business days during the preceding three-month period and a six-month minimum average daily trading volume of 1,000 shares.

(vi) A transaction in which all of the investors' partnership securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1) and such investors receive new securities or securities in another entity that are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1);

(vii) A transaction in which the investors in any of the partnerships involved in the transaction are not subject to a significant adverse change with respect to voting rights, the terms of existence of the entity, management compensation or investment objectives; or

(viii) A transaction in which all investors are provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

(3) The Commission, upon written request or upon its own motion, may exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the definition of roll-up transaction or the requirements imposed on roll-up transactions by Items 902–915 of Regulation S–K (§§ 229.902–915), if it finds such action to be consistent with the public interest and the protection of investors.

* * * * *

3. By amending § 229.911 by adding a sentence to the end of paragraph (a)(2)(vi), adding paragraph (a)(2)(vii), and revising paragraph (b) to read as follows:

§ 229.911 (Item 911) Reports, opinions and appraisals.

(a) * * *

(2) * * *

(vi) * * * If any limitation was imposed by the general partner, sponsor or affiliate on the scope of the investigation, including, but not limited to, access to its personnel, premises, and relevant books and records, state the reasons therefor.

(vii) State whether any compensation paid to such outside party is contingent on the approval or completion of the roll-up transaction and, if so, the reasons for compensating such parties on a contingent basis.

* * * * *

(b) *Fairness Opinions:* (1) If any report, opinion or appraisal relates to the fairness of the roll-up transaction to investors in the partnerships, state whether or not the report, opinion or appraisal addresses the fairness of:

(i) The roll-up transaction as a whole and to investors in each partnership; and

(ii) All possible combinations of partnerships in the roll-up transaction (including portions of partnerships if the transaction is structured to permit portions of partnerships to participate). If all possible combinations are not addressed:

(A) Identify the combinations that are addressed;

(B) Identify the person(s) that determined which combinations would be addressed and state the reasons for the selection of the combinations; and

(C) State that if the roll-up transaction is completed with a combination of partnerships not addressed, no report, opinion or appraisal concerning the fairness of the roll-up transaction will have been obtained.

(2) If the sponsor or the general partner has not obtained any opinion on the fairness of the proposed roll-up transaction to investors in each of the affected partnerships, state the sponsor's or general partner's reasons for concluding that such an opinion is not necessary in order to permit the limited partners or shareholders to make an informed decision on the proposed transaction.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

5. By amending Form S–1 (referenced in § 239.11) by adding General Instruction IV. to read as follows:

Note: The text of Form S–1 does not, and the amendment will not, appear in the Code of Federal Regulations.

Form S–1

* * * * *

General Instructions

* * * * *

IV. Roll-up Transactions

If the securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), attention is directed to the requirements of Form S–4 applicable to roll-up transactions, including, but not limited to, General Instruction I.

* * * * *

6. By amending General Instruction I. to Form S–4 (referenced in § 239.25) by adding a sentence to paragraph 1 between the first and second sentence and adding paragraph 3. to read as follows:

Note: The text of Form S–4 does not, and the amendment will not, appear in the Code of Federal Regulations.

Form S–4

* * * * *

General Instructions

* * * * *

I. Roll-up Transactions

1. * * * A "small business issuer," defined in § 230.405, that is engaged in a roll-up transaction shall refer to the disclosure items in subpart 900 of Regulation S–K.

* * *

2. * * *

3. Attention is directed to the proxy rules (17 CFR 240.14a–1 *et seq.*) and Rule 14e–7 of the tender offer rules (17 CFR 240.14e–7) if securities to be registered on this Form will be issued in a roll-up transaction. Such rules contain provisions specifically applicable to roll-up transactions, whether or not the entities involved have securities registered pursuant to Section 12 of the Exchange Act.

* * * * *

7. By amending Form S–11 (referenced in § 239.18) by adding General Instruction F. to read as follows:

Note: The text of Form S–11 does not, and the amendment will not, appear in the Code of Federal Regulations.

Form S–11

* * * * *

General Instructions

* * * * *

F. Roll-up Transactions

If the securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), attention is directed to the requirements of Form S–4 applicable to roll-up transactions, including, but not limited to, General Instruction I.

* * * * *

8. By amending Form F–1 (referenced in § 239.31) by adding General Instruction IV. to read as follows:

Note: The text of Form F–1 does not, and the amendment will not, appear in the Code of Federal Regulations.

Form F–1

* * * * *

General Instructions

* * * * *

IV. Roll-up Transactions

If the securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), attention is directed to the requirements of Form S–4 applicable to roll-up transactions, including, but not limited to, General Instruction I.

* * * * *

9. By amending Form F–4 (referenced in § 239.34) by adding paragraph 3. to General Instruction G. to read as follows:

Note: The text of Form F–4 does not, and the amendment will not, appear in the Code of Federal Regulations.

Form F–4

* * * * *

General Instructions

* * * * *

G. Roll-up Transactions.

* * * * *

3. Attention is directed to the proxy rules (17 CFR 240.14a–1 *et seq.*) and Rule 14e–7 of the tender offer rules (17 CFR 240.14e–7) if securities to be registered on this Form will be issued in a roll-up transaction. Such rules contain provisions specifically applicable to roll-up transactions, whether or not the entities involved have securities registered pursuant to Section 12 of the Exchange Act.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 78q, 79t, 80a–20, 80a–23, 80a–29, 80–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

11. By reserving § 240.3b–10 and adding § 240.3b–11 to read as follows:

§ 240.3b–11 Definitions relating to limited partnership roll-up transactions for purposes of sections 6(b)(9), 14(h) and 15A(b)(12)–(13).

For purposes of Sections 6(b)(9), 14(h) and 15A(b)(12)–(13) of the Act (15 U.S.C. 78f(b)(9), 78n(h) and 15 U.S.C. 78o–3(b)(12)–(13)):

(a) The term *limited partnership roll-up transaction* does not include a transaction involving only entities that are not "finite-life" as defined in Item 901(b)(2) of Regulation S–K (§ 229.901(b)(2) of this chapter).

(b) The term *limited partnership roll-up transaction* does not include a transaction involving only entities registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or any Business Development Company as defined in § 2(a)(48) of that Act (15 U.S.C. 80a–2(a)(48)).

(c) The term "regularly traded" shall be defined as in Item 901(c)(2)(v)(C) of Regulation S–K (§ 229.901(c)(2)(v)(C) of this chapter).

* * * * *

12. By amending § 240.14a–2 by revising the section heading, the introductory text, the reference "240.14a–14" in the introductory text of paragraph (a) to read "240.14a–15" and the reference "14a–14" in the introductory text of paragraph (b) to read "240.14a–15" and by adding paragraph (b)(4) to read as follows:

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

Sections 240.14a–3 to 240.14a–15, except as specified below, apply to every solicitation of a proxy with respect to securities registered pursuant to Section 12 of the Act (15 U.S.C. 78*l*), whether or not trading in such securities has been suspended. To the extent specified below, certain of these sections also apply to roll-up transactions that do not involve an entity with securities registered pursuant to Section 12 of the Act.

* * * * *

(b) * * *

(4) Any solicitation in connection with a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901 of this chapter) in which the holder of a security that is the subject of a proposed roll-up transaction engages in preliminary communications with other holders of securities that are the subject of the same limited partnership roll-up transaction for the purpose of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed limited partnership roll-up transaction; *provided, however,* that:

(i) This exemption shall not apply to a security holder who is an affiliate of the registrant or general partner or sponsor; and

(ii) This exemption shall not apply to a holder of five percent (5%) or more of the outstanding securities of a class that is the subject of the proposed roll-up transaction who engages in the business of buying and selling limited partnership interests in the secondary market unless that holder discloses to the persons to whom the communications are made such ownership interest and any relations of the holder to the parties of the transaction or to the transaction itself, as required by § 240.14a–6(n)(1) and specified in the Notice of Exempt Preliminary Roll-up Communication (§ 240.14a–104). If the communication is oral, this disclosure may be provided to the security holder orally. Whether the communication is written or oral, the notice required by § 240.14a–6(n) and § 240.14a–104 shall be furnished to the Commission.

13. By amending § 240.14a–6 by adding paragraph (n) to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(n) *Solicitations subject to § 240.14a–2(b)(4).* (1) Any person who:

(i) Engages in a solicitation pursuant to § 240.14a–2(b)(4), and

(ii) At the commencement of that solicitation both owns five percent (5%) or more of the outstanding securities of a class that is the subject of the proposed roll-up transaction, and engages in the business of buying and selling limited partnership interests in the secondary market, shall furnish or mail to the Commission, not later than three days after the date an oral or written solicitation by that person is first made, sent or provided to any security holder, five copies of a statement containing the information specified in the Notice of Exempt Preliminary Roll-up Communication (§ 240.14a–104). Five copies of any amendment to such statement shall be furnished or mailed to the Commission not later than three days after a communication containing revised material is first made, sent or provided to any security holder.

14. By amending § 240.14a–7 by revising paragraph (b) to read as follows:

§ 240.14a–7 Obligations of registrants to provide a list of, or mail soliciting material to, security holders.

(a) * * *

(b)(1) The requesting security holder shall have the options set forth in paragraph (a)(2) of this section, and the registrant shall have corresponding obligations, if the registrant or general partner or sponsor is soliciting or intends to solicit with respect to:

(i) A proposal that is subject to § 240.13e–3;

(ii) A roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter) that involves an entity with securities registered pursuant to Section 12 of the Act (15 U.S.C. 78*l*); or

(iii) A roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter) that involves a limited partnership, unless the transaction involves only:

(A) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k–1); or

(B) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k–1).

(2) With respect to all other requests pursuant to this section, the registrant shall have the option to either mail the security holder's material or furnish the security holder list as set forth in this section.

* * * * *

15. By adding § 240.14a–15 to read as follows:

§ 240.14a–15 Differential and contingent compensation in connection with roll-up transactions.

(a) It shall be unlawful for any person to receive compensation for soliciting proxies, consents, or authorizations directly from security holders in connection with a roll-up transaction as provided in paragraph (b) of this section, if the compensation is:

(1) Based on whether the solicited proxy, consent, or authorization either approves or disapproves the proposed roll-up transaction; or

(2) Contingent on the approval, disapproval, or completion of the roll-up transaction.

(b) This section is applicable to a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter), except for a transaction involving only:

(1) Finite life entities that are not limited partnerships;

(2) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k–1); or

(3) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k–1).

16. By adding § 240.14a–104 to read as follows:

§ 240.14a–104 Notice of Exempt Preliminary Roll-up Communication. Information regarding ownership interests and any potential conflicts of interest to be included in statements submitted by or on behalf of a person pursuant to § 240.14a–2(b)(4) and § 240.14a–6(n).

United States Securities and Exchange Commission

Washington, D.C. 20549

Notice of Exempt Preliminary Roll-up Communication

1. Name of registrant appearing on Securities Act of 1933 registration statement for the roll-up transaction (or, if registration statement has not been filed, name of entity into which partnerships are to be rolled up):

2. Name of partnership that is the subject of the proposed roll-up transaction:

3. Name of person relying on exemption:

4. Address of person relying on exemption:

5. Ownership interest of security holder in partnership that is the subject of the proposed roll-up transaction:

Note: To the extent that the holder owns securities in any other entities involved in this roll-up transaction, disclosure of these interests also should be made.

6. Describe any and all relations of the holder to the parties to the transaction or to the transaction itself:

a. The holder is engaged in the business of buying and selling limited partnership interests in the secondary market would be adversely affected if the roll-up transaction were completed.

b. The holder would suffer direct (or indirect) material financial injury if the roll-up transaction were completed since it is a service provider to an affected limited partnership.

c. The holder is engaged in another transaction that may be competitive with the pending roll-up transaction.

d. Any other relations to the parties involved in the transaction or to the transaction itself, or any benefits enjoyed by the holder not shared on a pro rata basis by all other holders of the same class of securities of the partnership that is the subject of the proposed roll-up transaction.

17. By adding § 240.14e–7 to read as follows:

§ 240.14e–7 Unlawful tender offer practices in connection with roll-ups.

In order to implement Section 14(h) of the Act (15 U.S.C. 78n(h)):

(a)(1) It shall be unlawful for any person to receive compensation for soliciting tenders directly from security holders in connection with a roll-up transaction as provided in paragraph (a)(2) of this section, if the compensation is:

(i) Based on whether the solicited person participates in the tender offer; or

(ii) Contingent on the success of the tender offer.

(2) Paragraph (a)(1) of this section is applicable to a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter), structured as a tender offer, except for a transaction involving only:

(i) Finite life entities that are not limited partnerships;

(ii) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k–1); or

(iii) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k–1).

(b)(1) It shall be unlawful for any finite life entity that is the subject of a roll-up transaction as provided in (b)(2) to fail to provide a security holder list or mail communications related to a tender offer that is in furtherance of the roll-up transaction, at the option of a requesting security holder, pursuant to the procedures set forth in § 240.14a–7.

(2) Paragraph (b)(1) of this section is applicable to a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter), structured as a tender offer, that involves:

(i) An entity with securities registered pursuant to Section 12 of the Act (15 U.S.C. 78*l*); or

(ii) A limited partnership, unless the transaction involves only:

(A) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k–1); or

(B) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k–1).

Dated: September 1, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–22124 Filed 9–7–94; 8:45 am]

BILLING CODE 8010–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Modifications to Role of National Labor Relations Board's Administrative Law Judges Including: Assignment of Administrative Law Judges as Settlement Judges; Discretion of Administrative Law Judges to Dispense With Briefs, To Hear Oral Argument in Lieu of Briefs, and To Issue Bench Decisions

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Labor Relations Board (NLRB) proposes to amend its rules with respect to the role that its Administrative Law Judges play in facilitating the expeditious resolution of unfair labor practice proceedings. First, the NLRB proposes to amend Section 102.35 of the rules to give the Chief Administrative Law Judge discretion to assign a judge other than the trial judge to conduct settlement negotiations with the parties, and to give the settlement judge certain powers necessary to engage effectively in those settlement efforts. Second, the NLRB proposes modifying Section 102.35(j), Section 102.42, and Section 102.45(a) to give administrative law judges assigned to hear a case the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions.

DATES: Comments must be received on or before October 7, 1994.

ADDRESSES: Comments should be sent to: Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11602, Washington, DC 20570 Telephone: (202) 273–1934.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary. Telephone: (202) 273–1934.

SUPPLEMENTARY INFORMATION:

I. Settlement Judges

The National Labor Relations Board proposes to amend § 102.35 of its Rules and Regulations, 29 CFR 102.35, to include provisions for the assignment of administrative law judges to serve as settlement judges. The proposal is modeled on Recommendation 88–5 of the Administrative Conference of the United States, 1 CFR 305.88–5, and with an awareness of the successful implementation of similar procedures by other agencies. The proposal would supplement, rather than supplant, settlement techniques traditionally used by the NLRB and its judges.

The proposal permits the chief administrative law judge in Washington, or his deputies and associates in other offices, to appoint a settlement judge, who shall be other than the trial judge assigned to the case, with powers to convene and preside over settlement conferences between the parties in an effort to facilitate settlements.

Decisions whether to assign a settlement judge, and when to terminate such participation, are left to the discretion of the assigning judge and are not appealable to the Board.

The importance of choosing wisely whether and when to assign a settlement judge can be crucial to the prospects for success in achieving a settlement. Therefore, the rules require the assigning judge to consider, among other factors, the likelihood that a settlement may occur, the good faith of any person making a request for assignment of a settlement judge, and whether the assignment is otherwise feasible. Among the factors which the assigning judge may consider would be the effect of an assignment upon agency resources, whether the assignment is being sought for, or would have the effect of, delaying the proceeding, and whether the assignment might tend to undermine other pending settlement efforts. Unlike the rules of some other agencies, these proposed regulations would not permit a party to veto the use of the procedure. However, as a practicable matter, a party's opposition to the use of the procedure is a factor that the assigning judge may consider in assessing whether the appointment of a settlement judge is likely to resolve the dispute.

The preferred method of conducting settlement conferences is to have the parties or their representatives attend in person, since such conferences are most likely to prove fruitful. However, the rule does not preclude holding settlement conferences by telephone in circumstances in which personal attendance at the conference is not feasible.

Discussions between the parties and the settlement judge are to be held confidential and are not admissible in proceedings before the Board except by stipulation of the parties.

Finally, the proposed rule provides that any settlement reached under the auspices of a settlement judge is subject to approval in accordance with the agency's existing procedures for approving and reviewing the approval of settlements. These procedures are set forth in Section 101.9 of the Board's Statements of Procedure, 29 CFR 101.9.

II. Briefs, Oral Argument, Recommendations, and Bench Decisions

As part of its ongoing review of ways in which unfair labor practice proceedings can be revamped to move the cases more expeditiously, the National Labor Relations Board proposes to give its administrative law judges the discretion, in appropriate cases, to dispense with post-hearing briefs or proposed findings and conclusions, to hear oral argument, and to issue bench decisions. These changes are proposed in the form of amendments to § 102.35(j) (renumbered to 102.35(b)(10)), § 102.42, and § 102.45(a) of the Board's Rules and Regulations.

Under the proposals, an administrative law judge shall have the discretion to decide whether or not briefs are needed in any case before rendering a decision. If the judge decides that briefs are not required, the parties are to be given the opportunity to present proposed findings and conclusions, either orally or in writing, as well as oral argument. In any case in which the judge believes that written briefs or proposed findings of fact and conclusions may not be necessary, he or she is to notify the parties at the opening of the hearing or as soon thereafter as practicable, in order to alert the parties to the possibility that they may be called upon to present their positions orally, rather than in writing, at the close of the hearing.

The proposal also gives administrative law judges the authority to render bench decisions, delivered within 72 hours after conclusion of oral argument. These decisions, like any other decisions, must be rendered in conformity with the provisions of the Administrative Procedure Act, 5 U.S.C. 557.

The NLRB is mindful that many cases are not suitable for decision from the bench. If inappropriate cases were selected for this sort of summary disposition, the resulting remands could delay the final disposition of the cases. On the other hand, if administrative judges choose the cases carefully, the benefits of expediting those cases would outweigh the delays in the few cases where the procedure is improvidently utilized.

The Board has not tried to spell out, in the proposed rules, the circumstances in which these procedures should be utilized. Rather, it anticipates that monitoring experience with the implementation of the proposal is the best way to refine the circumstances for which the procedures are best suited. Nevertheless, in order to provide some guidance in the initial application of these rule changes, the Board suggests that cases in which it may be appropriate to dispense with briefs and/or to issue bench decisions would include, for example: a case that turns on a very straightforward credibility issue; cases involving one-day hearings; cases involving a well-settled legal issue where there is no dispute as to the facts; short record single-issue cases; or cases in which a party defaults by not appearing at the hearing. In more complex cases, including cases with lengthy records, utilizing these procedures could create situations in which the Board or the reviewing courts might find it necessary to remand a case for more thoughtful consideration.

As required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the NLRB certifies that this rule will not have a significant impact on small business entities.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB proposes to amend 29 CFR Part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR Part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.35 is revised to read as follows:

§ 102.53 Duties and powers of administrative law judges; assignment and powers of settlement judges.

(a) It shall be the duty of the administrative law judge to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. The administrative law judge shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Board, subject to the Rules and Regulations of the Board and within its powers:

(1) To administer oaths and affirmations;

(2) To grant applications for subpoenas;

(3) To rule upon petitions to revoke subpoenas;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(6) To regulate the course of the hearing and, if appropriate or necessary, to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;

(7) To hold conferences for the settlement or simplification of the issues by consent of the parties, but not to adjust cases;

(8) To dispose of procedural requests, motions, or similar matters, including motions referred to the administrative law judge by the Regional Director and motions for summary judgment or to amend pleadings; also to dismiss complaints or portions thereof; to order hearings reopened; and upon motion order proceedings consolidated or severed prior to issuance of administrative law judge decisions;

(9) To approve a stipulation voluntarily entered into by all parties to the case which will dispense with a verbatim written transcript of record of the oral testimony adduced at the hearing, and which will also provide for the waiver by the respective parties of their right to file with the Board exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the administrative law judge shall make in his decisions;

(10) To make and file decisions, including bench decisions delivered within 72 hours after conclusion of oral argument, in conformity with Public Law 89–554, 5 U.S.C. § 557;

(11) To call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence;

(12) To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(13) To take any other action necessary under the foregoing and authorized by the published Rules and Regulations of the Board.

(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, DC, the deputy chief judge in San Francisco, the associate chief judge in Atlanta, or the associate chief judge in New York may assign a judge who shall be other than the trial judge to conduct

settlement negotiations. In exercising his discretion, the chief, deputy chief, or associate chief judge making the assignment will consider, among other factors, whether there is reason to believe that resolution of the dispute is likely, the request for assignment of a settlement judge is made in good faith, and the assignment is otherwise feasible.

(1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties, assess the practicalities of a potential settlement, and report to the chief, deputy, or associate the status of settlement negotiations, recommending continuation or termination of the settlement negotiations. Where feasible settlement conferences shall be held in person.

(2) The settlement judge may require that the attorney or other representative for each party be present at settlement conferences and that the parties or agents with full settlement authority also be present or available by telephone.

(3) Participation of the settlement judge shall terminate upon the order of the chief, deputy, or associates issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the hearing.

(4) All discussions between the parties and the settlement judge shall be confidential. The settlement judge shall not discuss any aspect of the case with the trial judge, and no evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement judge shall be admissible in any proceeding before the Board, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless voluntarily produced or obtained pursuant to subpoena.

(5) No decision of a chief, deputy, or associate concerning the assignment of a settlement judge or the termination of a settlement judge's assignment shall be appealable to the Board.

(6) Any settlement reached under the auspices of a settlement judge shall be subject to approval in accordance with the provisions of Section 101.9 of the Board's Statements of Procedure.

3. Section 102.42 is revised to read as follows:

§ 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which may include presentation of proposed findings and conclusions, and shall be included in the stenographic report of the hearing. In the discretion of the administrative law judge, any party may, upon request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge, who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, DC, to the deputy chief judge in San Francisco, California, to the associate chief judge in New York, New York, or to the associate chief judge in Atlanta, Georgia, as the case may be. Notice of the request for any extension shall be immediately served on all other parties, and proof of service shall be furnished. Three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished. In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions may not be necessary, he or she shall notify the parties at the opening of the hearing or as soon thereafter as practicable that he or she may wish to hear oral argument in lieu of briefs.

4. In Section 102.45, paragraph (a) is revised to read as follows:

§ 102.45 Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.

(a) After hearing for the purpose of taking evidence upon a complaint, the administrative law judge shall prepare a decision. Such decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record, and shall contain recommendations as to what disposition of the case should be made, which may include, if it be found that the respondent has engaged in or is engaging in the alleged unfair labor practices, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The administrative law judge shall file the original of his decision with the Board and cause a copy thereof to be served on each of the parties. If the administrative law judge delivers an oral decision from the bench, promptly upon receiving the transcript the judge shall certify the accuracy of the pages of the transcript containing the decision; file with the Board a certified copy of those pages, together with any supplementary matter the judge may deem necessary to complete the decision; and cause a copy thereof to be served on each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, on all the parties. Service of the administrative law judge's decision and of the order transferred the case to the Board shall be complete upon mailing.

* * * * *

Dated, Washington, DC, September 2, 1994.

By direction of the Board: [1]

John C. Truesdale,

Executive Secretary.

Statement of Members Stephens and Cohen

The following statement pertains to the proposed rules concerning briefs, oral argument, and bench decisions.[2] Although we join our colleagues in seeking public comment on these proposed rules, we wish to express our separate reasons for doing so.

In our view, the Board should propose a given rule only if it believes that the rule has at least prima facie merit. Phrased differently, the Agency should not be the proponent of a rule which, in its view, is lacking in such merit.

Because of these considerations, we are somewhat ambivalent about joining our colleagues in proposing the instant rule. On the one hand, we applaud, and share, our colleagues' desire to expedite the decisional process as much as possible. On the other hand, we are concerned that the proposed rule may jeopardize such important values as fairness, procedural due process and the quality of decisions.

For the reasons set forth below, we are presently inclined to believe that the latter factors outweigh the former. However, the issue at this juncture is whether the matter is so clear as to virtually compel the conclusion that the proposed rules lack prima facie merit. Because this issue is not free from doubt, we join our colleagues in submitting the rules for public comment. However, we believe that we must candidly state our misgivings about the proposed rules. In that way, those members of the public who wish to support the rules will know precisely the factors that they must address if they are to gain our approval. We look forward to receiving their comments, and those of others, and we remain open to persuasion.

A proper understanding of these issues must begin with the critical fact that NLRB proceedings are conducted without pre-trial discovery. Thus, each party learns of the other's case only as the trial unfolds. Under the proposed rule, promptly at the end of this

[1] Chairman Gould and Members Stephens, Devaney, Browning, and Cohen. A separate statement by Members Stephens and Cohen is attached.

[2] With respect to the proposed rules concerning settlement judges, we agree fully with our colleagues.

unfolding process, the attorney or other representative would have to proceed without opportunity for assimilation, research, organization and reflection. In such circumstances, counsel may be unable to do an effective job. That would be a disservice not only to the client, but also to the process.

Although the proposed rule provides for a "reasonable period" for oral argument, it does not provide for a reasonable period, or any period, to perform the tasks enumerated above. Further, even if the judge were to grant a recess for counsel to prepare oral argument, that may not solve the problem. A recess period for preparation may not be an adequate substitute for the time-honored practice of reading a transcript, researching issues by use of a library and computer technology, reflecting upon the relationship of pieces of evidence, studying precedent, and writing a cogent, organized, and persuasive brief.

Further, if counsel has no opportunity to perform in the traditional way, there is a danger that relevant points may be overlooked. The consequences of this can be severe. If a party fails to make a point to the judge, that party may well have waived its right to make the point to the Board, See e.g., *Hydro Logistics, Inc.*, 287 NLRB 602, n.1 (1987), *Local 520, IUOE (Mautz & Oren, Inc.)*, 298 NLRB 1098, n.3 (1990). And, if the point cannot be made to the Board, the party will be unable to raise it to the reviewing court. See Section 10(e) of the Act.

Further, an inadequate presentation to the judge may make more difficult the process of decision-making by the judge and by the reviewing Board and courts. The decisional process is facilitated by the use of excellent and well-organized briefs. The process becomes more difficult if one does not have the assistance of such briefs.

The proposal for bench decisions also raises concerns. Indeed, the difficulties in dispensing with written briefs may be compounded when the judges, without the benefit of such briefs, render bench decisions. In our view, the absence of guiding briefs may have a negative impact on quality in the decisional process. Further, unless the Board, upon review, supplies the missing ingredients—itself a time-consuming process—the courts, in reviewing Board decisions, may have problems in at least some of the cases which they review.

Our colleagues have wisely suggested limitations on the proposed procedures, i.e., confining their use to relatively simple cases. However, these limitations presently are not set forth in the rule. Further, even if the judge seeks to abide by the limitations, and chooses what appears to be a "simple" case, that case may turn out to be not so simple after all. As set forth above, the absence of pre-trial discovery means that counsel and the judges hear the evidence for the first time at trial. Consequently, although a case might appear, at first blush, to present only a straightforward credibility issue or a single well-settled legal issue, it may, upon reflection, involve much more. Although the Board could reverse and remand when the procedures have been used inappropriately, this would only add time to the process.

To be sure, we are in favor of expediting the process. In appropriate cases, we would encourage judges to set short time-periods for the receipt of briefs. But, in our quest for speed, we must be careful not to undermine the goals of fairness in our decisional procedure and excellence in our decisional product.

[FR Doc. 94–22177 Filed 9–7–94; 8:45 am]
BILLING CODE 7545–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–94–122]

RIN 2115–AA97

Safety Zone; Keyport Festival & Boat Race VI, Keyport Harbor, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone, on October 22, 1994, in Keyport Harbor, for the Keyport Festival and Boat Race VI to protect the boating public from the hazards associated with high speed powerboats racing in confined waters. This event will take place from 9 a.m. until 6 p.m. on Saturday, October 22, 1994. This proposed regulation would close all waters within Keyport Harbor, New Jersey, south of the 40°26′39″ N line of latitude, drawn shore to shore, east of the 074°12′30″ W line of longitude, drawn shore to shore, and north and west of the natural coastline of Keyport, New Jersey during these hours. This safety zone would preclude vessel traffic from transiting this portion of Keyport Harbor and is needed to protect both the boating public and the participants during this event.

DATES: Comments must be received on or before October 11, 1994.

ADDRESSES: Comments should be mailed to Captain of the Port, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Waterways Management Branch, Bldg. 108, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Waterways Management Branch at (212) 668–7933 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. Trabocchi, Waterways Management Officer, Coast Guard Group New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 30 day comment period is deemed to be sufficiently reasonable, prior notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is deemed to be unnecessary and contrary to the public interest. Any delay in publishing a final rule would effectively cancel this event. Cancellation of this event would be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–94–122) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing, however, persons may request a public hearing by writing to the Project Manager at the address under "**ADDRESSES**". If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and CDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

The Coast Guard Captain of the Port, New York, received a request from the Chamber of Commerce of the Greater Keyport Area to hold a powerboat race in Keyport Harbor, Keyport, New Jersey. This proposed regulation establishes a safety zone for the annual event known as the "Keyport Festival and Boat Race" and would temporarily close a portion of Keyport Harbor to protect both the boating public and the participants during this event.

Discussion of Proposed Amendments

The Coast Guard proposes to establish a safety zone in all waters of Keyport Harbor south of the Keyport Harbor Channel Buoy 12 and east of a line drawn, shore to shore, across the mouth of Matawan Creek. If adopted, this

safety zone will be in effect from 9 a.m. until 6 p.m. on October 22, 1994. This regulation would preclude vessels from transiting this portion of Keyport Harbor as well as from entering or departing Matawan Creek, Keyport, New Jersey. This regulation is needed to protect the boating public as well as the participants during the event from the hazards associated with high speed powerboats racing in confined waters.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This proposed safety zone will close a portion of Keyport Harbor as well as the entrance to Matawan Creek to all vessel traffic between the hours of 9 a.m. and 6 p.m. on October 22, 1994. This regulation would prohibit vessels from transiting through a portion of Keyport Harbor and would preclude vessels from entering or departing Matawan Creek, Keyport, New Jersey. However, due to the fact that mariners can safely transit the northern portion of Keyport Harbor and all waters north of the zone; that the amount of traffic in this area is limited to one commercial cruise line and recreational craft; that vessels may be permitted to transit through the safety zone between race heats as determined by the on scene Coast Guard Patrol Commander; and that extensive, advance notifications will be made to the one commercial cruise line and the maritime community to allow for transits to be rescheduled accordingly, the impact of this regulation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to promote maritime safety and protect the environment, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–122, is added to read as follows:

§ 165.T01–122 Safety Zone; Keyport Festival and Boat Race VI, Keyport Harbor, New Jersey.

(a) *Location.* The safety zone includes all waters within Keyport Harbor, New Jersey, south of the 40°26'39"N line of latitude, drawn shore to shore, east of the 074°12'30"W line of longitude, drawn shore to shore, and north and west of the natural coastline of Keyport, New Jersey.

(b) *Effective period.* This section will be effective from 9 a.m. until 6 p.m. on October 22, 1994.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 30, 1994.

T. H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94–22167 Filed 9–7–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH04

Disease Subject to Presumptive Service Connection (Radiation Risk Activity)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning diseases presumed to be the result of exposure to ionizing radiation. This amendment is necessary to implement a determination by the Secretary of Veterans Affairs that the term "radiation risk activity" should include the onsite participation in a test involving the atmospheric detonation of a nuclear device by any government allied with the United States during World War II. The intended effect of this amendment is to extend the presumption of service connection for radiogenic disabilities to those veterans exposed to radiation due to their onsite participation in atmospheric nuclear tests conducted by allied governments.

DATES: Comments must be received on or before November 7, 1994. Comments will be available for public inspection until November 17, 1994.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this

amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 119, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until November 17, 1994.

FOR FURTHER INFORMATION CONTACT: Lorna Weston, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: The Radiation-Exposed Veterans Compensation Act of 1988, Pub. L. 100–321, which was enacted May 20, 1988, established a presumption of service connection for specific radiogenic diseases arising in veterans who had been present at the occupation of Hiroshima or Nagasaki, who had potentially been exposed to ionizing radiation as prisoners of war in Japan during World War II, or who had participated onsite in a test involving the atmospheric detonation of a nuclear device.

On June 21, 1989, VA published regulations at 38 CFR 3.309 to implement the provisions of Pub. L. 100–321. Under these regulations, if a veteran who was present at one of the specified sites during the appropriate time subsequently develops one of the specified radiogenic diseases, that condition is presumed to have resulted from the veteran's in-service exposure to ionizing radiation. In formulating these regulations, VA relied on the introductory language of the statute, which indicated that it was to apply to veterans "who participated in atmospheric or underwater nuclear tests as part of the United States nuclear weapons testing program." The effect of that rulemaking was to exclude those veterans exposed to ionizing radiation during atmospheric nuclear testing by governments allied with the United States during World War II from the presumption of service connection.

VA is aware that veterans who were involved in allied atmospheric nuclear tests as part of their active military duty are at the same risk of developing a radiogenic disease as veterans who were present at atmospheric tests conducted by the United States. Under current regulations, however, these veterans are not entitled to presumptive service connection for the radiogenic conditions listed at 38 CFR 3.309(d)(2). In the judgement of the Secretary of Veterans Affairs, it is only equitable that VA provide service connection for radiogenic diseases on the same presumptive basis for these veterans as for veterans exposed to ionizing radiation due to atmospheric nuclear detonations conducted as a part of the U.S. testing program.

Therefore, under the broad general rulemaking authority granted the Secretary under the provisions of 38 U.S.C. 501(a), and the authority to compensate for service-connected disabilities under 38 U.S.C. 1110 and 1131, we are amending 38 CFR 3.309(d) to extend the presumption that radiogenic diseases are the result of in-service exposure to ionizing radiation to veterans who were present at atmospheric nuclear tests conducted by any government allied with the United States during World War II.

We propose to make this amendment effective the date of publication of the final rule.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 606(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

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

Approved: July 7, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended to read as follows:

PART 3—ADJUDICATION

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

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

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

§ 3.309 [Amended]

2. In § 3.309, paragraph (d)(3)(ii)(A) is amended by removing the period and adding in its place, the words "or by the government of any nation allied with the United States during World War II."

3. In § 3.309, paragraph (d)(3)(v) is amended by removing the word "The" at the beginning of the sentence, and inserting in its place the words "For tests conducted by the United States, the".

4. The authority citation following § 3.309(d)(3)(vii)(D) is revised to read as follows:

(Authority: 38 U.S.C. 1110; 1112; 1131).

[FR Doc. 94–21854 Filed 9–7–94; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MI21–03–6635; AMS-FRL–5067–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Michigan; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; extension of the comment period.

SUMMARY: The EPA is extending the comment period for a proposed action published on July 21, 1994 (59 FR 37190) pertaining to the Detroit-Ann Arbor moderate ozone nonattainment area. On July 21, 1994, the EPA proposed approval of requested revisions to the Michigan State Implementation Plan (SIP) for attainment and maintenance of the National Ambient Air Quality Standard for ozone. The revisions were the 1990 base year emission inventory, basic vehicle inspection and maintenance, and redesignation of the Detroit-Ann Arbor area to attainment for ozone and corresponding section 175A maintenance plan. Portions of the document pertaining to the redesignation request and section 175A maintenance plan were inadvertently excluded from the document. Specifically, the last portion of section C.III.5.B. Demonstration of Maintenance—Projected Inventories and the first portion of section C.III.5.C. Verification of Continued Attainment were excluded. Elsewhere in this **Federal Register** a correction notice is being published for these two sections. Consequently, the EPA is extending the

comment period for 15 days on the redesignation and corresponding section 175A maintenance plan.

DATES: Comments on the July 21, 1994 (59 FR 37190) proposed action pertaining to the redesignation and corresponding section 175A maintenance plan and today's correction document must be received in writing by September 23, 1994.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6081.

SUPPLEMENTARY INFORMATION:

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Hydrocarbons, Intergovernmental relations, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 26, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–22014 Filed 9–7–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 60

[FRL–5068–1]

Standards of Performance for New Stationary Sources Starch Production Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed new source performance standards (NSPS) would limit emissions of particulate matter (PM) from new, modified, and reconstructed starch production plants. The proposed NSPS implement section 111 of the Clean Air Act, as amended (the Act), and are based upon the Administrator's determination that emissions from starch production plants cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intent is to require new, modified, and reconstructed starch production plants to control emissions to the level achievable by the best demonstrated system of continuous emission reduction, taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentations of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments on the proposed standards must be received on or before November 7, 1994 at the address noted below.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by September 29, 1994, a public hearing will be held on October 11, 1994 beginning at 9:00 a.m. Persons interested in attending the hearing should call Ms. Brenda Overman at (919) 541–5595 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by September 29, 1994.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–94–18 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (formerly known as the Air Docket) (6102), 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below. The docket is located at the above address in room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket center or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548 or 7549. The FAX number for the Center is (202) 260–4000. A reasonable fee may be charged for copying docket materials. The proposed regulatory text and other materials are also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on the TTN is needed, call the TTN HELP line at (919) 541–5384.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons wishing to present oral testimony should notify Ms. Brenda Overman, Industrial Studies Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5595, FAX number (919) 541–5600.

Docket. Docket No. A–94–18, containing supporting information used in developing the proposed standards, is available for public inspection and copying as noted above. The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) To serve as the record in case of judicial review.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this proposal, contact Mr. William Maxwell [telephone number (919) 541–5430], Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this document.

I. Applicability and Summary of the Proposed Rule
II. Additional Detailed Information
III. Public Participation
IV. Statutory Authority
V. Administrative Designation and Regulatory Analysis
VI. Compliance with Regulatory Flexibility Act
VII. Paperwork Reduction Act

I. Applicability and Summary of the Proposed Rule

Typically, starch production plants are components of larger facilities that prepare a variety of products. For example, a corn wet milling facility will normally produce a range of products that can include animal feed, corn gluten, corn germ, germ meal, corn oil, starch, and starch derivatives. Starch derivatives can include modified specialty starches, dextrins, dextrose, corn syrup, high fructose corn syrup, ethanol, and a variety of sweeteners. Similar ranges of products may be derived from wheat, potatoes, or tapioca.

The provisions of this rule are applicable to the following affected

facilities at starch production plants: starch dryers, dextrin roasters, and starch transfer, storage, and loading facilities (including facilities used to blend, mix, mill, grind, screen, convey, transfer, store, or load starch). A starch dryer is the equipment used to remove uncombined (free) water from starch slurry through direct or indirect heating. A dextrin roaster is a reactor vessel, or a series of vessels, in which starch is reacted, through the addition of heat and/or chemicals, to form the modified starch "dextrin" (or "polydextrin"). Starch transfer, storage, and loading facilities include any facility used to blend, mix, mill, grind, screen, convey, transfer, store, or load for shipment (into any container for shipment, including, but not limited to, bag, truck, and rail car), dry starch. This also includes the bag dumping of dry additives into the starch for the purpose of producing modified starches.

The source category includes those facilities that produce dry starch (including modified starches) derived from corn, wheat, potatoes, tapioca, or other vegetable source, and facilities drying starch extracted from the wastewater at snack food production facilities (e.g., potato chips, french fries). The owner or operator of any affected facility that commences construction, reconstruction, or modification after September 8, 1994 is subject to the requirements of this rule.

There are several types of dryers used at starch production plants, including single-pass (also known as one-pass) flash dryers, ring (also known as loop) flash dryers, spray dryers, drum dryers, and belt (also known as conveyor, tunnel, or apron) dryers. A single-pass (or one-pass) flash starch dryer is a dryer into which the starch is introduced into a vertical drying column using a kicker mill, screen (e.g., cascading), or other means to finely disperse the starch in a hot air stream. A ring (or loop) flash dryer is a starch dryer similar to a single-pass flash starch dryer but with additional ducting in the shape of a ring added at the top of the dryer column for the purpose of centrifugally classifying the heavier, wet starch granules from the lighter, dry starch particles. A spray dryer is a starch dryer in which starch slurry is atomized into a vertically oriented, cylindrical chamber with a conical base filled with hot air. A drum dryer is a starch dryer in which starch is dried as a thin film on the exterior surface of a cylindrical drum. A belt (or conveyor, tunnel, or apron) dryer is a starch dryer wherein starch is dried on a perforated conveyor belt through which heated air is drawn to dry the starch.

In summary, the proposed standards would prohibit discharge to the atmosphere of any stack emissions which contain PM, the only criteria pollutant emitted from starch production plants, in excess of:

(a) 45 milligrams per dry standard cubic meter (mg/dscm) [0.02 grains per dry standard cubic foot (gr/dscf)] for new, modified, or reconstructed ring (or loop) flash dryers;
(b) 25 mg/dscm (0.01 gr/dscf) for new, modified, or reconstructed single-pass (or one-pass) flash dryers; and
(c) 10 mg/dscm (0.005 gr/dscf) for new, modified, or reconstructed spray dryers, drum dryers, and belt (or conveyor, tunnel, or apron) dryers.

These proposed standards are based on an analysis of the available emission test data from the various types of starch dryers.

In addition, visible emissions from the stacks or vents of new dextrin roasters and new starch transfer, storage, and loading facilities would be limited to 0 percent opacity, based on a 6-minute average. Visible fugitive emissions from new starch transfer, storage, and loading facilities would be limited to no visible emissions.

Affected facilities would also be subject to monitoring and recordkeeping requirements and certain restrictions of operating parameters in order to ensure continuous compliance. Continuous compliance with the PM standard for new starch dryers utilizing dry control devices (e.g., fabric filters) would be determined by measuring the visible emissions from the stacks and ensuring that emissions were less than 3 percent opacity, based on a 6-minute average. Starch dryers would be in compliance with the PM standard if the opacity measurements were within the specified limit, and other applicable requirements were met. Continuous compliance with the PM standard for new starch dryers utilizing wet control devices (e.g., wet scrubbers) would be determined by monitoring certain operating parameters. Failure to perform the monitoring or recordkeeping, or operating outside the specified operating parameters, would be considered violations of the standard. Monitoring would be performed daily, weekly, or monthly depending on the parameter being monitored. These requirements are summarized in Tables 1, 2, and 3. The EPA solicits comment on this approach to monitoring and determination of compliance with the NSPS.

Drum dryers and dryers located at snack food processing facilities having a manufacturer's listed dry starch capacity of 907 kilograms per hour (kg/hr) (2,000 pounds per hour [lb/hr]) or less would be exempt from all requirements of the standards, including notification requirements, because of the low level of emissions from these dryers. Similarly, dextrin roasters, and starch transfer, storage, and loading facilities at snack food processing facilities would be exempt from all requirements of the standards if the dry starch capacity of any of the individual facilities is 454 kg/hr (1,000 lb/hr) or less, because of the low level of emissions from these facilities. The EPA solicits comment on these proposed exemptions.

TABLE 1.—SUMMARY OF PROPOSED NSPS REQUIREMENTS—STARCH DRYERS

Parameter	Requirement
Emission limit:	
Particular matter	
Ring flash dryer	0.02 gr/dscf.
Single-pass flash dryer	0.01 gr/dscf.
Spray, drum, or belt dryer	0.005 gr/dscf.
Monitoring:	
	Wet Control Device
	Continuous measurement and recording of pressure drop across, and liquid flow rate to, the control device with semiannual calibration.
	Failure to continuously monitor and record the pressure drop and liquid flow rate and exceedances of the operating limits will be violations of the PM standard.
	Dry Control Device or Uncontrolled
	Method 9 opacity observation for 1 18-minute period per week during period of dryer operation

TABLE 1.—SUMMARY OF PROPOSED NSPS REQUIREMENTS—STARCH DRYERS—Continued

Parameter	Requirement
	Exceedance of 3% opacity will be a violation of the PM standard.
	All Control Devices
	Implementation of inspection and logging procedure to include some or all of (1) daily check to ensure that dust is being removed from the system; (2) weekly inspection for proper cleaner functioning and cycling; (3) monthly inspection for wear, material buildup, and corrosion; (4) logging of broken bags by location to identify installation or operational problems; and (5) monthly inspection of pressure drop and liquid flow rate devices (as appropriate).
	Failure to inspect and log will be a violation of the PM standard.
Reporting:	Wet Control Device
	Quarterly reports of exceedances (<90% of either pressure drop or liquid flow rate established during initial PM compliance test).
	Dry Control Device or Uncontrolled
	Quarterly reports of exceedances (>3% of opacity).
Test methods and procedures:	Wet Control Device
	Method 5 for PM standard.
	Dry Control Device or Uncontrolled
	Method 5 for PM standard. Method 9 for opacity standard.

TABLE 2.—SUMMARY OF PROPOSED NSPS REQUIREMENTS—DEXTRIN ROASTERS

Parameter	Requirement
Emission limit:	
Particulate matter	None.
Opacity	0 percent.
Monitoring	Method 9 opacity observation for 1 18-minute period per week during period of roaster operation.
	Exceedance of opacity standard will be a violation of the VE standard.
	All Dry Control Devices (e.g., Fabric Filters)
	Implementation of inspection and logging procedure to include (1) daily check to ensure that dust is being removed from the system; (2) weekly inspection for proper cleaner functioning and cycling; (3) monthly inspection for wear, material buildup, and corrosion; and (4) logging of broken bags by location to identify installation or operational problems.
	Failure to inspect and log will be a violation of the VE standard.
Reporting:	Dry Control Device or Uncontrolled
	Quarterly reports of exceedances (>0% opacity).
Test methods and procedures:	Dry Control Device or Uncontrolled
	Method 9 for opacity standard.

TABLE 3.—SUMMARY OF PROPOSED NSPS REQUIREMENTS—STARCH TRANSFER, STORAGE, AND HANDLING FACILITIES

Parameter	Requirement
Emission limit:	
Particulate matter	None.
Opacity	0 percent.
Visible emissions	No visible emissions.
Monitoring	Method 9 opacity observation of stack or vent for 1 18-minute period per week during period of facility operation.
	Exceedance of opacity standard will be a violation of the VE standard.
	Method 22 opacity observation of affected facility for 1 18-minute period per week during period of facility operation.
	Exceedance of the no visible emission standard will be a violation of the VE standard.
	All Dry Control Devices (e.g., Fabric Filters)
	Implementation of inspection and logging procedure to include (1) daily check to ensure that dust is being removed from the system; (2) weekly inspection for proper cleaner functioning and cycling; (3) monthly inspection for wear, material buildup, and corrosion; and (4) logging of broken bags by location to identify installation or operational problems.
	Failure to inspect and log will be a violation of the VE standard.
Reporting:	Dry Control Device or Uncontrolled
	Quarterly reports of exceedances (>0% opacity).
	Affected Facility
	Quarterly reports of exceedances (any visible emissions).

TABLE 3.—SUMMARY OF PROPOSED NSPS REQUIREMENTS—STARCH TRANSFER, STORAGE, AND HANDLING FACILITIES—Continued

Parameter	Requirement
Test methods and procedures:	Dry Control Device or Uncontrolled
	Method 9 for opacity standard.
	Affected Facility
	Method 22 for visible emission standard.

Under § 70.3(b)(3), the Administrator must determine whether to exempt nonmajor sources subject to an NSPS proposed after July 21, 1992 from the requirement to obtain a part 70 permit. This proposed starch production plant rule does not exempt such nonmajor sources from the part 70 permitting requirements because the number of nonmajor sources subject to part 70 permitting requirements is not so great as to cause a significant administrative burden on the permitting authority. In addition, nonmajor sources at starch production plants are not likely to require significant additional technical assistance from permitting authorities. The EPA solicits comment on this proposal not to exempt these sources from part 70 permitting requirements.

II. Additional Detailed Information

The proposed regulatory text and detailed evaluation and support to this notice (contained in the EPA's "Rationale for New Source Performance Standards: Starch Production Plants" accompanying the proposed rule and this Notice) are not included in this **Federal Register** notice, but are available in Docket No. A–94–18 (docket entries II–A–4 and II–A–5, respectively) or copies may be obtained by request from the Air and Radiation Docket and Information Center (see **ADDRESSES**). The Rationale Document describes the factual data on which the proposed rule is based, the methodology used in obtaining the data and in analyzing it, and the major legal interpretations and policy considerations in more detail. The Notice, Rationale Document, and proposed regulatory language are also available on the TTN, one of EPA's electronic bulletin boards (see **ADDRESSES**). For further information about availability of the Rationale Document or Regulatory Text, contact the EPA contact person designated earlier in this notice.

III. Public Participation

A. Written Comments

The EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of this proposal from all interested parties. Whenever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the Air and Radiation Docket and Information Center, Docket No. A–94–18 (see **ADDRESSES**). Comments on this notice must be submitted on or before the date specified in **DATES**.

Commentors wishing to submit proprietary information for consideration should clearly distinguish such information from other comments, and clearly label it "Confidential Business Information" (CBI). Submissions containing such proprietary information should be sent directly to the Emission Standards Division CBI Office, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, North Carolina 27711, with a copy of the cover letter directed to the contact person listed above. Confidential business information should not be sent to the public docket. Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commentor.

B. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentations on the proposed standards should contact the EPA (see **ADDRESSES**). To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement on or before November 7, 1994. Written statements should be addressed to the Air and Radiation Docket and Information Center (see **ADDRESSES**), and refer to Docket No. A–94–18. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or mailed upon request, at the Air and Radiation Docket and Information Center (see **ADDRESSES**).

IV. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 111, 114, and 301 of the Clean Air Act, as amended; 42 U.S.C. 7401, 7411, 7414, and 7601.

V. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" because none of the listed criteria apply to this action (see Docket entry II–A–3). Consequently, this action was not submitted to OMB for review under Executive Order 12866.

VI. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, Federal agencies are required to assess the economic impact of Federal regulations on small entities. The Regulatory Flexibility Act specifies that Federal agencies must prepare an initial

Regulatory Flexibility Analysis (RFA) if a proposed regulation will have a significant economic impact on a substantial number of small entities.

The EPA has projected starch industry growth over the short run, and concludes that, with or without promulgation of the NSPS being proposed today, no small entity will be constructing, reconstructing, or modifying an affected starch facility. The proposed regulation would apply to a very small number of starch dryers, dextrin roasters, and ancillary starch handling and loading equipment. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), the EPA certifies that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities (see Docket entry II–A–3).

VII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to the OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information collection request document has been prepared by the EPA (ICR. No. 1706.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA 2136, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–2740.

Public reporting burden for this collection of information is estimated to total approximately 2,413 person-hours per year over the first 3 years the standard is in effect. This is an average of approximately 90 person-hours per affected facility expected to be constructed in this time period. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments regarding the burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden should be sent to: Chief, Information Policy Branch, EPA 2136, 401 M Street, SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, marked "Attention: Desk Officer for EPA." Responses to any OMB or public comments on the information collection requirements contained in this proposal will accompany the final rule.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Starch production plants.

Dated: August 31, 1994.

Jonathan Z. Cannon,

Acting Administrator.

[FR Doc. 94–22136 Filed 9–7–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–86, RM–8497]

Radio Broadcasting Services; Klamath Falls, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Correction.

SUMMARY: This document contains a correction to the *Notice of Proposed Rule Making* (MM Docket No. 94–86, RM–8497), which was published on Monday, August 1, 1994 (59 FR 38950). The *Notice* proposed the allotment of Channel 284C1 to Klamath Falls, OR, as the community's fourth local FM broadcast service.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the *Notice* reflected the wrong rulemaking number which needs to be corrected.

Correction of Publication

Accordingly, the publication on July 25, 1994 of the Public Notice regulations (MM Docket No. 94–86) which were the subject of FR Doc. 94–18646, is corrected as follows:

On page 38950, in the first column, under 47 CFR part 73, the rulemaking number is corrected to read "RM–8497" in lieu of "RM–8697."

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–22082 Filed 9–7–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAR Case 92–39]

Federal Acquisition Regulation; Master Subcontracting Plans

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to permit master subcontracting plans to be written for a 3-year period and to emphasize that it is incumbent upon contractors to maintain and update master plans. This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before November 7, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR case 92–39 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 92–39.

SUPPLEMENTARY INFORMATION:

A. Background

President Bush's memorandum on "Reducing the Burden of Government Regulation" tasked selected agencies and departments to review current regulations, to identify those that impose a substantial cost on the economy, and to make appropriate revisions. In response to this direction, the Federal Acquisition Regulatory Council solicited and received the views of various industry associations and the public. This amendment to FAR 19.704(b) and 52.219–9 was based on an industry recommendation.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small businesses are exempt from subcontracting plan requirements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92–39), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. This proposed rule will result in an estimated 10 percent reduction in the number of subcontract plans per year and associated hours as currently approved under Office of Management and Budget (OMB) Control Number 9000–0006, Subcontracting Plans/Subcontracting Report for Individual Contracts. Accordingly, a request for approval of a decrease in the estimated burden is being submitted to OMB under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: August 31, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 19 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 19.704 is amended in paragraph (b) by revising the second sentence and adding a third sentence to read as follows:

19.704 Subcontracting plan requirements.

* * * * *

(b) * * * Master plans shall be effective for a 3-year period after approval by the contracting officer; however, it is incumbent upon contractors to maintain and update master plans. A master plan when incorporated in an individual plan shall apply to that contract throughout the life of the contract.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.219–9 is amended by revising the clause date to read "(DATE)"; and revising paragraph (f)(2) of the clause to read as follows:

52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan.

* * * * *

(f) * * *

(2) the Offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval to the Contracting Officer, and

* * * * *

[FR Doc. 94–22012 Filed 9–7–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 46

[FAR Case 92–31]

Federal Acquisition Regulation; Quality Assurance Actions—Electronic Screening

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to revise the Federal Acquisition Regulation (FAR) concerning "Quality Assurance" to include definitions of the terms "latent defect" and "patent defect". This proposed rule is the result of recommendations made by the Department of Defense Inspector General. This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before November 7, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 92–31 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT:

Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 92–31.

SUPPLEMENTARY INFORMATION:

A. Background

On June 8, 1992, the Department of Defense Inspector General issued Audit Report 92–099, Quality Assurance Actions Resulting from Electronic Component Screening, which included a recommendation that the Defense FAR Supplement be revised to include definitions of the terms "latent defect" and "patent defect". The Director of Defense Procurement concurred with this recommendation; however, as both terms are used in the FAR, Part 46 of the FAR is being revised to include uniform definitions for use by all acquiring agencies.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it provides uniform definitions for terms which are already in use. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et. seq.* (FAR case 92–31), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 46

Government procurement.

Dated: August 31, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 46 be amended as set forth below:

PART 46—QUALITY ASSURANCE

1. The authority citation for 48 CFR part 46 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 46.101 is amended by adding in alphabetical order the definitions "Latent defect" and "Patent defect" to read as follows:

§ 46.101 Definitions.

* * * * *

Latent defect means a defect which exists at the time of acceptance but cannot be discovered by a reasonable inspection.

* * * * *

Patent defect means any defect which exists at the time of acceptance and is not a latent defect.

* * * * *

[FR Doc. 94–22011 Filed 9–7–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR 638, 642, and 659

[I.D. 082994D]

South Atlantic Fishery Management Council; Meetings and Hearings

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

ACTION: Notice of public meeting, public hearings, and public scoping meeting; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) is holding public hearings to solicit comments on coral-related issues and on developing regulations for the rock shrimp fishery. A public scoping meeting will be held to solicit comments on controlled access options for Atlantic Spanish mackerel in the exclusive economic zone (EEZ) and on proposed Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP).

DATES: Written comments on the coral-related issues and on rock shrimp regulations must be received by October 3, 1994. Written comments on controlled access options for Atlantic Spanish mackerel and on proposed Amendment 8 to the FMP must be received by October 3, 1994. See **SUPPLEMENTARY INFORMATION** for times and dates of public hearings and meetings.

ADDRESSES: Send written comments to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699 (FAX: 803–769–4520). See **SUPPLEMENTARY INFORMATION** for locations of hearings and meetings.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, 803–571–4366.

SUPPLEMENTARY INFORMATION: Public hearings will be held to solicit comments on coral-related issues concerning aquaculture of live rock and octocoral harvest in the South Atlantic EEZ and on the effects of anchoring vessels in the Oculina Bank habitat area of particular concern (HAPC). The Oculina Bank HAPC has been designated recently as an experimental closed area to snapper-grouper fishing and encompasses a 23 by 4 nautical mile strip located approximately 15 nautical miles offshore at its nearest point in the vicinity of Fort Pierce, FL. The Council's Coral Advisory Panel is scheduled to meet on Saturday, September 24, 1994, Banana Bay, 4590 Overseas Highway, Marathon, FL, to discuss these topics. The public hearings will be held from 7 p.m. to 10 p.m. and are scheduled on the following dates at the following locations:

1. Monday, September 19, 1994—Holiday Inn Midtown, 7100 Abercorn Street, Savannah, GA.

2. Thursday, September 22, 1994—Brazilian Court, 301 Australian Avenue, Palm Beach, FL.

3. Friday, September 23, 1994—Banana Bay, 4590 Overseas Highway, Marathon, FL.

The Council is holding public hearings to solicit comments on developing regulations for the rock shrimp fishery. The main focus will be on area restrictions to prevent habitat damage, controlling effort through possible license limitation, and exploring shared management with the industry. The hearings on rock shrimp will be held from 7 p.m. to 10 p.m. and are scheduled on the following dates at the following locations:

1. Tuesday, September 20, 1994—Ponce de Leon Golf and Resort, 4000 U.S. 1 North, St. Augustine, FL.

2. Wednesday, September 21, 1994—Holiday Inn, 1300 N. Atlantic Avenue, Cocoa Beach, FL.

A public scoping meeting will be held to solicit comments on controlled access options for the Atlantic Spanish mackerel fishery in the South Atlantic EEZ and on proposed Amendment 8 to the FMP. The Council is considering the following options for controlling access into the Atlantic Spanish mackerel fishery: (1) no action; (2) community or group-based quotas; (3) territorial use rights (TURFs); (4) effort-limit controls; (5) license limitation; (6) individual transferable quotas (ITQs); (7) ITQs with a period during which no share sales are allowed; (8) ITQs with modifications such as restrictions on sale, requirements for use, ownership caps, and other possible modifications; (9) ITQs with provisional license limitation period; and (10) nontransferable individual quotas. The Council is also considering the following options for proposed Amendment 8 to the FMP: (1) commercial trip limits for Atlantic king mackerel; (2) Federal dealer permits for coastal pelagics; (3) extend management of cobia through the Mid-Atlantic region and review cobia trip limits; (4) allow transfer at sea of Spanish mackerel; (5) determine a fixed boundary between Gulf and South Atlantic stocks of king mackerel; (6) develop alternative requirements for obtaining a coastal pelagics permit, i.e., income, threshold level, age, etc.; (7) limit vessels to one net with a maximum length of 600 yards and one hour soak time along either the Florida coast or the entire management range; (8) changes the recreational/commercial allocation of Atlantic group Spanish mackerel; and (9) add African pompano to the management unit. The public scoping meeting on controlled access options for Atlantic Spanish mackerel and on proposed Amendment 8 to the FMP will be held from 7 p.m. to 10 p.m. on Wednesday, September 28, 1994, at the Holiday Inn-Sunshine Parkway, 7151 Okeechobee Road, Fort Pierce, FL.

The Council will also solicit additional public comments on coral-related issues, rock shrimp regulations, controlled access options for Atlantic Spanish mackerel, and proposed Amendment 8 to the FMP during its October 24–28, 1994, meeting at the Holiday Inn, 1706 N. Lumina Avenue, Wrightsville Beach, NC. Specific meeting times will be advertised at a later date.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight at

the above Council address by September 12, 1994.

Dated: September 1, 1994.

David S. Crestin,

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

[FR Doc. 94–22060 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 173
Thursday, September 8, 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 COMMERCE

Bureau of Export Administration

[Docket No. 940833–4322]

Observation Flights Over U.S. Territory Under the Treaty on Open Skies

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice and opportunity for comment.

SUMMARY: This notice provides information on the Treaty on Open Skies (Open Skies) signed by twenty-seven nations (including NATO allies and eleven East European and former Soviet States) and requests comments on how observation flights under Open Skies might affect the industrial sector. Open Skies is a confidence and security building measure that permits unarmed aerial data collection by its parties in order to promote transparency and openness on military forces and activities. As a treaty party, the U.S. will be subject to these observation flights on a limited, quota basis. The information collected in response to this notice will be used in preparing for observation flights over U.S. territory.

DATES: Comments must be received by October 24, 1994.

ADDRESSES: Written comments (six copies) should be sent to Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230, (202) 482–3351.

SUPPLEMENTARY INFORMATION:

Background

The Treaty on Open Skies establishes a regime of unarmed aerial observation flights over the entire territory of its participants. The treaty is designed to enhance mutual understanding and confidence by giving all participants, regardless of size a direct role in gathering information about military activities of concern to them. Open Skies is the most wide-ranging international effort to date to promote openness and transparency of military activities and to facilitate the monitoring of compliance with arms control agreements.

The U.S. was an original signatory to the treaty in 1992 and deposited its instrument of ratification in December, 1993. Entry into force (EIF) is expected in late 1994/early 1995. Treaty signatories include all NATO nations, the East European members of the former Warsaw Pact, Ukraine, Georgia and Kyrgyzstan, and the Russia/Belarus group of states parties.

Basic Elements of the Treaty on Open Skies

Territory

The Treaty specifies that all the territory of its participating states is open to observation. Countries being observed may not restrict observation flights for national security reasons, only for legitimate reasons of flight safety. Open Skies observation flights will take precedence over regular air traffic.

Quotas

Each participant has agreed to an annual quota of observation flights it is willing to receive over its own territory—its passive quota of observation flights. Each participant may conduct as many observation flights—its active quota—as its passive quota. The full passive quota for the U.S. is 42 flights. During the phase-in period,[1] countries will have to accept only seventy-five percent of their passive quotas. Thus, the initial U.S. passive quota is 31 flights. For the first year of the treaty's operation, only 4 of the 31 potential flights over the U.S. were requested, all by Russia/Belarus (shared quota). Active quota distributions will be reviewed annually by the treaty parties in the treaty's implementation organization, the Open Skies Consultative Commission.

Aircraft

The treaty calls for the use of fixed-wing aircraft. The U.S. Open Skies aircraft is a modified WC–135B aircraft (a military version of the Boeing 707), which the U.S. now calls an OC–135B. States parties may choose their own airframes, but the sensors that are used must meet treaty standards.

Sensors

Sensors allowed on board the aircraft may come from four sensor categories. Observing parties are not required to utilize all the sensors if they do not wish to. The sensor categories and limits agreed upon in the treaty are:

1. Optical panoramic and framing cameras (no better than 30 centimeters or 12 inches resolution);
2. Video cameras with real-time display (no better than 30 centimeters or 12 inches resolution);
3. Infra-red line-scanning (IRLS) devices (no better than 50 centimeters or 20 inches resolution);
4. Sideways-looking synthetic aperture radar (SAR) (no better than 3 meters or 10 feet resolution);

All equipment used in Open Skies must be commercially available to all participants.

Sensor resolution is a function of aircraft altitude and the sensor's mechanical capabilities, thus the altitude may vary with the type of sensor being used—so long as the minimum resolutions are not exceeded. While the precise sensor/altitude combinations that will occur over an area will not be known in advance of the flight, one or more of the following could be in use throughout an observation flight: Video and IRLS sensors could be employed at altitudes as low as 1000 meters (3300 feet). Framing cameras will normally be used between 1000 and 2600 meters (3300 and 8500 feet). The panoramic camera is expected to be used at or above 8000 meters (26000 feet) altitude. SAR may be used at varying altitudes.

The Open Skies aircraft is not permitted to loiter over or circle any point.

Timelines

The observing party is required to notify the observed party of its intention to conduct an observation flight no less

[1] The phase-in period is from entry into force of the treaty until 31 December of the third year following the year in which entry into force occurs.

than 72 hours prior to the estimated time of arrival at the point of entry. The period from the estimated time of arrival at the point of entry until completion of the observation flight may not exceed 96 hours.

Data Availability

The treaty provides that the observing state will provide a copy of the data it collects during an overflight to the observed state. All other states parties also have the right to the data collected by the observing state, on request. Data collected by sensors during observation flights shall be used exclusively for the attainment of the purposes of this treaty.

Submission of Comments

The Department of Commerce encourages interested entities to submit comments on the extent to which Open Skies overflights might affect the U.S. industrial sector. Specifically, the Department is interested in soliciting the following types of comments:

A. The need for short notice advance notification of observation flights;

B. The reasons why such notification would be required, i.e., to prevent disclosure of proprietary information;

C. Any other comments, suggestions, or questions industry might have that would be useful as we prepare for Open Skies implementation.

Understanding possible industry concerns will help the Department in evaluating the need for future industry notification. Because of the importance of this notice, comments should be submitted as soon as possible during the forty-five day comment period provided by this notice.

The Department will accept comments or information accompanied by a request that part or all of the material submitted be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted separately from any non-confidential information. The top of each page should be marked with the term "Confidential Information". Confidential submissions must include a statement from the submitter that the material is commercial or financial information which the submitter does not customarily release to the public. A non-confidential summary must accompany such submissions of confidential information. The Department will make the summary available for public inspection.

The Department will hold information marked as "Confidential" and accompanied by this statement in confidence to the extent allowed by law.

All other information received in response to this notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. If oral comments are received they must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record of information received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations.

Information about the inspections and copying of records at the facility may be obtained from Edward J. Lingelbach, Freedom of Information Officer, Bureau of Export Administration, at the above address or by calling (202) 482–5653.

Dated: September 1, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–22172 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–DT–P

Bureau of Export Administration

[Docket Nos. 1624–01, 1624–02, 1624–03, 1624–51, 1624–52, 1624–53]

In the Matters of: Michael M. Winkler, President, Syscom U.S.A., Inc., 3409 Rose Avenue, Ocean Industrial Park, Ocean, New Jersey 07712, and Syscom U.S.A., Inc., 3409 Rose Avenue, Ocean Industrial Park, Ocean, New Jersey 07712, and Syscom Winkler, GmbH, Truebner Strasse 40, 6900 Heidelberg, Federal Republic of Germany, and Winkler Electronics, Inc., 3409 Rose Avenue, Ocean, New Jersey 07712, and Winkler GmbH, Truebner Strasse 40, 6900 Heidelberg, Federal Republic of Germany, and Syscom GmbH, Truebner Strasse 40, 6900 Heidelberg, Federal Republic of Germany, Respondents.

Order

Whereas, on June 30, 1986, the then-Assistant Secretary for Trade Administration, Paul Freedenberg, entered an Order against Michael M. Winkler, Syscom Winkler, U.S.A., Inc. and Syscom Winkler, GmbH (hereinafter referred to collectively as the "denied parties"), denying each party all export privileges for a period of 20 years based on a finding that each had violated the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–227, July 5, 1994)) (the Act,[1] and the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1994)) (the Regulations) (51 FR 24569 (July 7, 1986));

Whereas, to prevent evasion of the Order by the denied parties, by Order of July 7, 1986, then-Assistant Secretary Freedenberg amended the June 30, 1986 Order to make its provisions applicable to the following persons, related to the denied parties in the conduct of trade or related services: Winkler GmbH, Syscom GmbH and Winkler Electronics, Inc. (51 FR 25081 (July 10, 1986));

Whereas, the Department represented that it has reason to believe that, as of August 22, 1991, Syscom U.S.A., Inc. no longer operates as a business; that Syscom Winkler, GmbH was liquidated on October 1, 1986; that Winkler Electronics, Inc. filed a voluntary petition in bankruptcy under Chapter 7 on January 16, 1984, and no longer operates as a business; that Winkler GmbH—Truebner Strasse and Syscom GmbH are not currently listed in the Official Trade Register at the Heidelberg District Court; and that Michael M. Winkler died in 1990;

Whereas, based on the representations made by the Department and the unique circumstances surrounding these matters, I find that it is inappropriate to maintain respondents' status on the list of denied parties;

Accordingly, it is hereby ordered that the Orders of June 30, 1986 and July 7, 1986 are vacated.

This Order, which is effective immediately, shall be published in the **Federal Register.**

Entered this 31st day of August, 1994.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 94–22074 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 28–94]

Foreign-Trade Zone 9—Honolulu, HI; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of Foreign-

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 *Fed. Reg.* 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

Trade Zone 9, requesting authority to expand the zone to include additional sites on the island of Oahu, within the Honolulu Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 24, 1994.

On February 15, 1965, the Board authorized the State of Hawaii to establish a foreign-trade zone in the City and County of Honolulu, on the island of Oahu, (Board Order 65, 30 FR 2377, 2/20/65). The zone project has been expanded five times (Board Orders 188, 359, 399, 580 and 581), and it currently consists of five sites on three of the State's islands. *Site 1* (17 acres) at Pier 2 in Honolulu Harbor; *Site 2* (1,050 acres) at the James Campbell Industrial Park, Ewa (Oahu); *Site 3* (109 acres) at the Mililani Technology Park, Mililani (Oahu); *Site 4* (60 acres) at the Maui Research and Technology Park, Kihei (Maui); and, *Site 5* (31 acres) at the Hilo Industrial Park, Hilo (island of Hawaii).

The State is now requesting authority to further expand the general purpose zone to include three non-contiguous sites (44 acres—proposed Sites 6–8) on the island of Oahu. Proposed *Site 6* (27 acres) would involve the aviation fueling facilities at Honolulu International Airport, including the tanker terminal at Pier 51 (Sand Island), the bulk storage area for fuel storage tank facilities at Sand Island Access Road and Mokauea Street, the airport fuel storage facility at 3181 & 3201 Aolele Street, airport fueling stations and pipelines connecting the facilities. The land is owned by the State of Hawaii but under long-term lease to the Hawaii Fueling Facilities Corporation (HFFC). (A portion of the Aolele Street fuel storage facility (42,000 sq. ft.) is currently part of Subzone 9A, but this proposal would make it part of the general-purpose zone.) Proposed *Site 7* (7 acres) is at Unicold Corporation's public cold-storage distribution facilities in the Airport Industrial complex at 3140 Ualena Street, Honolulu. It is owned by Loyalty Development Co. but under long-term lease to Unicold Corp. Proposed *Site 8* (10 acres) would include the Hawaii Convention Center located at Kalakaua Avenue and Kapiolani Boulevard, Honolulu. The site is owned by the State of Hawaii.

No manufacturing approvals are being sought for either site at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the Address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 300 Ala Moana Boulevard, Room 4106, Honolulu, Hawaii 96850

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 1, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–22175 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews of Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Various Countries.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of antidumping duty (AD) and countervailing duty (CVD) orders on cold-rolled and corrosion resistant carbon steel flat products and certain cut-to-length carbon steel plate from various countries with August anniversary dates. In accordance with the Department's Regulations, we are initiating these administrative reviews.

EFFECTIVE DATE: September 8, 1994.

FOR FURTHER INFORMATION CONTACT: Maureen Price, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders with August anniversary dates.

Because the number of countries and companies involved in these cases is extraordinarily large, the Department has decided to do the following: First, the Department will issue single administrative protective orders (APO) covering the consolidated AD or CVD records for each country. Second, although there are separate AD case numbers and separate reviews that will be conducted for each class or kind of merchandise, we will combine—as was done in the investigation—the records of each class or kind of merchandise into a lead case record for each country. The lead AD case numbers for each country are: Australia (A–602–803), Canada (A–122–820), Finland (A–405–802), Germany (A–428–813), Korea (A–580–814), the Netherlands (A–421–803), and Sweden (A–401–805). For example, parties participating in any of AD cases on steel products from France should file their submissions under case number A–427–806, which is the lead case number for France. This is not an issue for the CVD orders because there is only one case number for each country subject to a CVD order. However, all appropriate case numbers should continue to appear on each document. In addition, the Department requires parties filing documents that relate to all steel cases to submit comments to the General Issue files, public version only (A–100–003 and C–100–004).

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders. We intend to issue the final results of these reviews not later than August 31, 1995. The following list consists of administrative reviews requested. However, the Department may determine at a later date to collapse some related parties.

Antidumping duty proceedings	Period to be reviewed
List of Companies by Country	
AUSTRALIA (A–602–803):	
A–602–803 Certain Corrosion-Resistant Carbon Steel Flat Products:	
Australian National Industries Ltd., A–602–803	02/04/93–07/31/94
CANADA (A–122–820):	
A–122–822 Certain Corrosion-Resistant Carbon Steel Flat Products:	
Continuous Colour Coat, Ltd., A–122–822	02/04/93–07/31/94
Dofasco Inc., A–122–822	02/04/93–07/31/94
Sorevco, Inc., A–122–822	02/04/93–07/31/94
Stelco, Inc., A–122–822	02/04/93–07/31/94
A–122–823 Certain Cut-to-Length Carbon Steel Plate:	
Algoma Steel Inc., A–122–823	02/04/93–07/31/94
IPSCO, Inc., A–122–823	07/09/93–07/31/94
Manitoba Rolling Mills, A–122–823	02/04/93–07/31/94
Stelco, Inc., A–122–823	02/04/93–07/31/94
FINLAND (A–405–802):	
A–405–802 Certain Cut-to-Length Carbon Steel Plate:	
Rautaruukki Oy, A–405–802	02/04/93–07/31/94
GERMANY (A–428–813):	
A–428–814 Certain Cold-Rolled Carbon Steel Flat Products:	
C.D. Walzholz, A–428–814	08/18/93–07/31/94
J.N. Eberle & Cie, GmBH, A–428–814	08/18/93–07/31/94
Röchlinger Kaltwalzwerk, KG, A–428–814	08/18/93–07/31/94
Thyssen Stahl AG, A–428–814	08/18/93–07/31/94
A–428–816 Certain Cut-to-Length Carbon Steel Plate:	
Dillinger Hüttenwerke, A–428–816	02/04/93–07/31/94
KOREA (A–580–814):	
A–580–815 Certain Cold-Rolled Carbon Steel Flat Products:	
Dongbu Steel Co., Ltd., A–580–815	08/18/93–07/31/94
Union Steel Manufacturing Co., Ltd., A–580–815	08/18/93–07/31/94
A–580–816 Certain Corrosion-Resistant Carbon Steel Flat Products:	
Dongbu Steel Co., Ltd., A–580–816	02/04/93–07/31/94
Union Steel Manufacturing Co., Ltd., A–580–816	02/04/93–07/31/94
Pohang Coated Steel Co., Ltd., A–580–816	02/04/93–07/31/94
Dongkuk International, Inc., A–580–816	02/04/93–07/31/94
THE NETHERLANDS (A–421–803):	
A–421–804 Certain Cold-Rolled Carbon Steel Flat Products:	
Hoogovens Grop BV, A–421–803	08/18/93–07/31/94
SWEDEN (A–401–805):	
A–401–805 Certain Cut-to-Length Carbon Steel Plate:	
Svenskt Stål AB, A–401–805	02/04/93–07/31/94

Countervailing duty procedures	Period to be reviewed
List of Countries	
Certain Cut-to-Length Carbon Steel Plate:	
Belgium, C–423–806	12/07/92–12/31/93
Germany, C–428–817	12/07/92–12/31/93
Spain, C–469–804	12/07/92–12/31/93
Sweden, C–401–804	12/07/92–12/31/93
Mexico, C–201–810	12/07/92–12/31/93
Certain Corrosion-Resistant Carbon Steel:	
France, C–427–810	12/07/92–12/31/93

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: September 2, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–22186 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–557–806]

Extruded Rubber Thread From Malaysia; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an

administrative review of the countervailing duty order on extruded rubber thread from Malaysia for the period January 1, 1992 through December 31, 1992. We preliminarily determine the net subsidy to be 3.27 percent *ad valorem* for all manufacturers and exporters of Malaysian extruded rubber thread. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: September 8, 1994.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Chris Jimenez, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1993, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" (58 FR 41239) of the countervailing duty order on extruded rubber thread from Malaysia (57 FR 38472; August 24, 1992). On October 29, 1993, respondents Heveafil Sdn. Bhd. (Heveafil), Filmax Sdn. Bhd. (Filmax), Rubberflex Sdn. Bhd. (Rubberflex), and Filati Lastex Elastofibre Sdn. Bhd. (Filati), requested an administrative review of the order. We initiated the review for the period January 1, 1992 through December 31, 1992, on September 30, 1993 (58 FR 51053). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Such merchandise is classifiable under item number 4007.00.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The period of review is January 1, 1992 through December 31, 1992. This review covers four companies and 13 programs. Two related companies participated in the review.

Calculation Methodology for Assessment and Deposit Purposes

We calculated the benefits pursuant to section 355.51 of the Department's *Proposed Substantive Countervailing Duty Regulations (Proposed Regulations)* (54 FR 23366; May 31, 1989). First, we calculated a country-wide rate, weight-averaging the benefits received by the four companies subject to review to determine the overall subsidy from all countervailing programs benefitting exports of subject merchandise to the United States. Because the country-wide rate was above *de minimis*, as defined by 19 CFR 355.7 (1993), we proceeded to the next step in our analysis and examined the *ad valorem* rate we calculated for each company for all countervailable programs to determine whether individual company rates differed significantly from the weighted-average country-wide rate. In calculating the individual company rates described above, only one rate was calculated for Heveafil and Filmax because Heveafil and Filmax are related parties.

None of the companies received aggregate benefits which were significantly different within the meaning of 19 CFR 355.22(d)(3)(i). Therefore, the country-wide rate is based on the weight-averaged aggregate benefits received by the companies subject to this review.

Analysis of Programs

1. Pioneer Status

Pioneer status is a tax incentive offered to promote investment in the manufacturing, tourist, and agricultural sectors. Pioneer status was first introduced under the Pioneer Industries (Relief from Income Tax) Ordinance of 1958. This ordinance was replaced by the Investment Incentives Act (IIA) of 1968, which was subsequently replaced by the Promotion of Investment Act (PIA) of 1986. Under the IIA and the PIA, the Minister of International Trade and Industry may determine products or activities to be pioneer status products or activities.

Companies petition for pioneer status for products or activities that have already been approved and listed as pioneer products. Once a company receives pioneer status, its profits from the designated product or activity are exempt from the corporate income tax, the development tax, and the dividend tax for a period of five years, with the possibility of an extension for an additional five years. The five-year extension, however, was abolished effective October 1, 1991. Furthermore, the computation of capital allowances, which are normally deducted against the adjusted income, are postponed to the post-tax holiday period.

In evaluating a project for pioneer status, the Malaysian Industrial Development Authority (MIDA) will generally consider whether:

(1) The product is being produced on a commercial scale suitable to the economic requirements or development of the country,

(2) There are prospects for further development, and

(3) The product or activity meets the national and strategic requirements of Malaysia.

Specifically, MIDA officials consider 12 essential criteria to evaluate whether a particular company should receive pioneer status. Two of these 12 criteria address the export potential of the proposed product or activity: (1) The government considers if the applicant has made a case for export markets to absorb the excess above the existing demand and (2) the government considers whether the project saves foreign exchange through substitution of imports and, alternatively, whether it earns considerable foreign exchange by exporting a substantial part of its output. The other 10 criteria address domestic factors and are, therefore, export "neutral".

Only in cases where the export criteria carry predominant weight is the program countervailable. Where pioneer status is conferred on a company because it has been determined that the domestic market is saturated and will no longer support additional producers and because that company agrees to export a certain percentage of its production, the program conveys an export subsidy, regardless of the other "neutral" criteria the company is required to meet. This is because the company is clearly being approved due to the fact it will export and because receipt of benefits becomes contingent on export performance. In the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia* (57 FR 38472; August 25, 1992) *Malaysian Rubber Thread Final Determination*, we determined that pioneer status was granted to Rubberflex based on its obligation to export. Therefore, the Department found the program to be countervailable with respect to that company. Rubberflex continues to hold pioneer status.

In this review, we reviewed the pioneer status of Filati and Filmax to determine whether the program is also countervailable with respect to those two companies. (Heveafil's pioneer status expired.) We verified that both of

those companies were granted pioneer status based on a commitment that they would export a majority of their production. Therefore, we preliminarily find this program also countervailable with respect to Filati and Filmax.

To determine the benefit, we calculated the tax savings from this program during the review period and divided that by total exports. On this basis, we preliminarily determine the net subsidy from this program to be 2.05 percent *ad valorem* for all manufacturers and exporters in Malaysia of extruded rubber thread.

2. Export Credit Refinancing (ECR) Program

The ECR program was established in order to promote: (1) exports of manufactured goods and agricultural food products that have significant value-added and high local content, (2) greater domestic linkages in export industries, and (3) easy access to credit facilities. In order to accomplish this, the Bank Negara Malaysia, the central bank of Malaysia, provides pre-shipment and post-shipment financing. Pre-shipment financing is a line of credit based on the previous 12 months' export performance, and cannot be tied to specific sales in specific markets. Post-shipment financing is order-based which is provided for specific sales to specific markets.

The Department determined that this program was countervailable in the *Malaysian Rubber Thread Final Determination* because receipt of loans under this program was contingent upon export performance, and the loans were provided at preferential interest rates. We verified that all four companies used both pre-shipment and post-shipment ECR loans.

In order to determine whether these loans were provided at preferential rates, we compared the interest rate charged to a benchmark interest rate. It is our practice to select the predominant source of short-term financing in the country as our benchmark for short-term loans. *See* § 355.44(b)(3) of the *Proposed Regulations.*

In Malaysia, overdrafts and term loans offered by commercial banks are the predominant form of short-term financing. The average interest rates for these types of financing, however, are not individually available. Therefore, we have used as our benchmark for ECR loans the average commercial bank lending rate as an estimate of these predominant short-term lending rates.

Because the pre-shipment loans were not shipment-specific, we included all loans on which interest was paid during the review period in our calculations. Because the post-shipment ECR loans were shipment-specific, we included in our calculations only those loans used to finance exports of extruded rubber thread to the United States.

We calculated the benefit by comparing the amount of interest actually paid on the pre- and post-shipment loans during the review period with the amount that would have been paid at the benchmark rate of 10.83 percent. The difference between those amounts is the benefit. We then divided each company's interest savings by that company's total exports, in the case of pre-shipment loans, because they applied to all exports, or by its exports to the United States, in the case of post-shipment loans, because they applied to specific shipments to the United States. On this basis, we preliminarily determine the net subsidy for pre-shipment loans to be 0.33 percent for all manufacturers or exporters. For post-shipment loans, we preliminarily determine the rate to be 0.30 percent for all manufacturers and exporters in Malaysia of extruded rubber thread.

3. Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales

The IIA provided for an abatement of income tax based on the ratio of export sales to total sales. This law was repealed effective January 1, 1986, and replaced by the PIA. Among other incentives, the new law also provides an abatement of income tax based on export performance. Specifically, a portion of income, equal to 50 percent of the ratio of export sales to total sales, is exempt from income tax. This program is not available to companies still participating in programs under the repealed IIA or to companies granted pioneer status or an investment tax allowance under the PIA. Because this program is limited to exporters, we determined this program to be countervailable in the *Malaysian Rubber Thread Final Determination.*

We verified that only Heveafil claimed this tax abatement on its income tax return filed during the review period. Heveafil contends that this tax abatement did not benefit exports of the subject merchandise to the United States. This contention is based on the fact that the company did not include U.S. sales in the calculation of the ratio used to determine the amount of the tax abatement.

The amount of the tax abatement is calculated using a ratio of total exports divided by total sales. This ratio is then multiplied by total adjusted income to calculate the claimed tax abatement. In calculating this ratio, Heveafil deducted the amount of U.S. exports from both the numerator and denominator, *i.e.*, from both total exports and total sales. Therefore, in the company's calculation there was no significant change in the calculated ratio which was applied to the adjusted income. Thus, the calculation methodology used by Heveafil in its tax return did not eliminate the benefit attributable to sales of U.S. exports conferred from the use of this program. Therefore, we preliminarily determine that this program provides a countervailable benefit with respect to exports of the subject merchandise.

To calculate the benefit, we calculated the tax savings from this program during the review period and divided that by total exports, because these benefits applied to all exports. On this basis, we preliminarily determine the net subsidy from this program to be 0.38 percent *ad valorem* for all manufacturers and exporters in Malaysia of extruded rubber thread.

4. Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports

In addition to the income tax abatement based on exports which is discussed above, the PIA provides for an abatement of income tax in the amount of five percent of the ratio of export sales to total sales times the value of indigenous Malaysian materials used in the manufacture of exported products. This program is not available to companies still participating in programs under the repealed IIA or to companies granted pioneer status or an investment tax allowance under the PIA. We found this program countervailable in the *Malaysian Rubber Thread Final Determination* because use of this program is contingent upon export performance.

We verified that only Heveafil claimed this tax abatement on its income tax return filed during the review period. Heveafil contends that this tax abatement did not benefit exports of the subject merchandise to the United States. This contention is based on the fact that the company did not include U.S. sales in the calculation of the ratio used to determine the amount of the tax abatement.

The amount of the tax abatement is calculated using a ratio of total exports divided by total sales. This ratio is then multiplied by five percent of the value of indigenous materials to calculate the claimed tax abatement. In calculating this ratio, Heveafil deducted the amount of U.S. exports from both the numerator and denominator, *i.e.*, from both total exports and total sales. Therefore, in the company's calculation there was no

significant change in calculated ratio which was applied to the value of indigenous materials to determine the amount of the tax abatement. Thus, the calculation methodology used by Heveafil in its tax return did not eliminate the benefit attributable to sales of U.S. exports conferred from the use of this program. Therefore, we preliminarily determine that this program provides a countervailable benefit with respect to exports of the subject merchandise.

To calculate the benefit, we calculated the tax savings from this program during the review period and divided that by total exports, because these benefits applied to all exports. On this basis, we preliminarily determine the net subsidy from this program to be 0.12 percent *ad valorem* for all manufacturers and exporters in Malaysia of extruded rubber thread.

5. Industrial Building Allowance

Sections 63 through 66 of the Income Tax Act of 1967, as amended, allow an income tax deduction for a percentage of the value of constructed or purchased buildings used in manufacturing. In 1984, this allowance, which had been limited to manufacturing facilities, was extended to include buildings used as warehouses to store finished goods ready for export or imported inputs to be incorporated into exported goods. This program includes a 10 percent initial tax allowance and an additional 2 percent annual tax allowance (*i.e.*, 12 percent in the first year and 2 percent thereafter). The program effectively reduces a company's taxable income, and the tax allowance can be carried forward to future tax years until fully exhausted. Rubber-based exporters are eligible for this program. We found this program countervailable in the *Malaysian Rubber Thread Final Determination* because use of this allowance is limited to exporters.

We verified that Heveafil used this program during the review period. To calculate the benefit, we calculated the tax savings from this program during the review period for Heveafil and divided the savings amount by total exports, because these benefits applied to all exports. On this basis, we preliminarily determine the net subsidy from this program to be less than 0.005 percent *ad valorem* for all manufacturers and exporters in Malaysia of extruded rubber thread.

6. Double Deduction for Export Promotion Expenses

Section 41 of the Promotion of Investments Act allows companies to deduct expenses related to the promotion of exports twice, once in calculating net income on the financial statement and again in calculating taxable income. Because this program is limited to exporters, we found this program countervailable in the *Malaysian Rubber Thread Final Determination*. We verified that Heveafil and Filmax used this program during the review period.

To calculate the benefit, we calculated the tax savings from this program during the review period for each company and divided that by total exports, because these benefits applied to all exports. On this basis, we preliminarily determine the net subsidy from this program to be 0.09 percent *ad valorem* for all manufacturers and exporters in Malaysia of extruded rubber thread.

7. Rubber Discount Scheme

We verified that this program was terminated effective January 1, 1992, and that the last date exports were eligible for rebates under this program was December 31, 1991. In the *Malaysian Rubber Thread Final Determination*, we determined that benefits from this program were conferred when the product was exported. Therefore, we preliminarily determine that this program is terminated and provides no residual benefit.

Other Programs

We preliminarily determine that the exporters of extruded rubber thread did not use the programs listed below with respect to exports of the subject merchandise to the United States during the review period:

- Investment Tax Allowance.
- Abatement of Five Percent of Taxable Income Due to Location in a Promoted Industrial Area.
- Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales.
- Double Deduction of Export Credit Insurance Payments.
- Abatement of Taxable Income of Five Percent of Adjusted Income of Companies Due to Capital Participation and Employment Policy Adherence.
- Preferential Financing for Bumiputras.

Preliminary Results of Review

We preliminarily determine the net subsidy for the period January 1, 1992 through December 31, 1992, to be 3.27 percent.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the Customs Service to assess countervailing duties at 3.27 percent of the f.o.b. invoice price on shipments of the subject merchandise exported on or after April 1, 1992, and on or before December 31, 1992.

Pursuant to the International Trade Commission's termination of its injury determination on Malaysian extruded rubber thread in light of the revocation of duty free status under the Generalized System of Preferences, effective March 31, 1992, the Department previously issued instructions to Customs to liquidate entries of the subject merchandise entered, or withdrawn from warehouse, for consumption prior to March 31, 1992. Therefore, those entries are not subject to assessment of countervailing duties (*See Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread from Malaysia* (58 FR 41084; August 2, 1993)).

The Department also intends to instruct the Customs Service to collect a cash deposit of 3.27 percent on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to this proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after date of publication of this notice. In accordance with 19 CFR 355.38(c)(1)(ii), interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order up until 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due under 19 CFR 355.38(c).

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal briefs.

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 30, 1994

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–22176 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Proposed Revisions of Exploration Licenses

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of receipt of applications to revise the exploration plans for Deep Seabed Mining Exploration Licenses USA–2, issued to Ocean Management, Inc., and USA–3 issued to Ocean Mining Associates; request for comments.

SUMMARY: On February 1, and April 22, 1994, Ocean Mining Associates (OMA) and Ocean Management, Inc. (OMI), respectively, submitted to the National Oceanic and Atmospheric Administration (NOAA) applications to revise the schedule of expenditures contained in the exploration plans for Deep Seabed Mining Exploration Licenses USA–2 and USA–3, pursuant to section 105(c)(2) of the Deep Seabed Hard Mineral Resources Act ("the Act") (30 U.S.C. 1401 *et seq.*) and 15 CFR 970.602(c). In each application, the consortium has requested a reduction in expenditures for years 10 through 13 to reflect a reduction in the scope of its activities. No changes are proposed in the nature or schedule of activities previously approved by NOAA, nor the licensees' objectives of being prepared to file for commercial recovery permits, given a viable metals market. NOAA has determined that these proposals constitute applications for major but not significant revisions to the exploration plans of these licenses pursuant to 15 CFR 970.513, and is commencing public review procedures prescribed in 15 CFR 970.514(b).

Pursuant to the Act and 15 CFR Part 970, on August 29, 1984, NOAA issued licenses to OMI and OMA to engage in deep seabed mining exploration activities for a period of ten years in sites located in the Clarion-Clipperton Fracture Zone of the Pacific Ocean. In 1991 both licensees were granted revisions to their licenses for five years, based upon a downward trend in world metals market conditions, pursuant to 15 CFR 970.515. Since that time OMI and OMA have diligently pursued the activities approved in their exploration plans, in accordance with the terms, conditions and restrictions of their licenses and 15 CFR 970.602.

USA–2, Issued to Ocean Management, Inc.

On July 31, 1991, NOAA approved Revision No. 3 to OMI's Exploration License USA–2 to extend the license through August 1999. Concurrently NOAA approved an amended exploration plan with expenditures in the range of $50,000–$100,000 per annum for years 7 through 13, with higher expenditures ($100K–$2M) projected for years 14 through 15 to prepare for commercialization. Activities that remain to be completed—years 10 through 15—include the following activities: monitoring mining technology; monitoring national and international developments to ensure that a legal framework conducive to commercial exploitation will prevail; monitoring world metal market conditions; coordination with NOAA regarding environmental data gaps and obtaining necessary environmental data for an environmental impact statement relating to a permit application; assessing needs for foreign processing and potential for conflicting uses of the site; and decisionmaking regarding commercialization.

OMI has reassessed the costs for the activities to be conducted through years 10 through 13 (monitoring technical, legal, and political developments and coordination with NOAA on preliminary environmental work) and has concluded that the costs of carrying out these limited activities will fall within the range of $10,000–$20,000 per year. The major reason for the lower cost is that the activities called for in the plan (until site specific information is required), are being carried out by OMI partners at their own individual cost and not billed as joint venture expenditures.

The proposed reduction in expenditures does not jeopardize the ability of OMI to apply for a commercial permit, when a permit application is warranted. In its application of April 22, 1994, OMI further addresses its capability for future compliance with the regulatory requirements of an application for commercial recovery as set forth in 15 CFR Part 971, Subpart B.

Prior to issuance of the exploration license, OMI conducted an extensive program of site and resource evaluation and commercial technology development. The consortium has formulated its preliminary designs and specifications for commercial systems and conducted mining tests on a pilot scale. It has identified its prime area and gathered a considerable amount of resource data in that area in preparation for commercial mining. Conflicts have been negotiated and resolved with other U.S. miners and "reciprocating states" and further resource data has been exchanged and integrated into OMI database. In addition OMI has participated in international environmental studies and developed and tested advance deep sea exploration systems. These efforts, conducted in part in cooperation with its German partner, have resulted in considerably higher expenditure levels than those predicted in its exploration plans over the past ten years.

USA–3, Issued to Ocean Mining Associates

NOAA approved Revision No. 2 to OMA's Exploration License USA–3 on July 31, 1991, which extended the license through August 1999, based on metals market instability, early completion of scheduled activities, and acquisition of substantial resource data. The currently approved exploration plan estimates expenditure levels for years 7 through 12 at $50,000 per annum. Year 13 is estimated at $450,000, with the estimated $1M–$1.5M for years 14 and 15. Activities in the plan—covering years 7 through 12—focus on completion of data archives; monitoring legal, technical and economic ocean mining activities; and participation in cooperative environmental research efforts. In years 13 through 15, OMA will begin gear-up activities for commercial mining, which include: developing environmental protection and monitoring plans; completion of survey operations of candidate mining subareas and selection of a logical unit; developing the methods and technology for a base-case mining system; planning for processing and mobilization; and completion of documentation for application of a commercial permit assuming favorable economic conditions so indicate.

OMA is requesting a reduction in expenditures from $50,000 to $25,000 for years 10 through 12. For year 13 a reduction is requested from $450,000 to $323,000. The reduction is requested due to adverse economic, political and diplomatic conditions. With the exception of completing data archiving, no change has been proposed by OMA in the nature of activities, as originally approved by NOAA under Revision 2. OMA's revision addresses and cross-references both the regulatory requirements of an exploration license under 15 CFR Part 970 and an application for commercial recovery as set forth in 15 CFR Part 971, Subpart B.

In addition, OMA has presented a chronology of major achievements from 1962 through the license years. During years one through nine of its license OMA has considerably exceeded the promised activities and expenditures in its plan.

Subject to 15 CFR 971.802, which excludes confidential information from public disclosure, interested persons will be permitted to examine the applications for revision and to provide comments by (60 days from publication in the FR). These documents may be examined at the below listed address.

FOR FURTHER INFORMATION CONTACT: Betty Rosser or Karl Jugel, Ocean Minerals and Energy Division (N/ORM1), Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Washington, DC 20910, (301) 713–3159 (Ext 206).

Dated: September 1, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–22073 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 083194C]

North Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will meet during the week of September 26, 1994, at the Red Lion Hotel, 18740 Pacific Highway South, Seattle, WA. All meetings are open to the public with the exception of an executive session to be held during the lunch hour one day during the meeting week. All meetings will be held at the hotel and are scheduled as follows:

The Council Advisory Panel and Scientific and Statistical Committee will meet beginning at 8:00 a.m. on September 27.

The Council will begin at 8:00 on September 28. Each meeting will continue until business is completed. There may be other workgroup and/or committee meetings held during the week. Notice of meetings will be posted. Time permitting, the Council will address, and may take appropriate action on, the following agenda items:

(1) Oath of office to newly-appointed members, and election of officers;

(2) Reports from the Alaska Department of Fish and Game and NMFS on current status of fisheries and regulations; reports from NMFS and the Coast Guard on fisheries enforcement activities; and status reports on marine mammals in the Exclusive Economic Zone (EEZ) off Alaska and reauthorization of the Magnuson Fishery Conservation and Management Act;

(3) Report and discussion of Law of the Sea and current treaties and agreements;

(4) Reports on the Observer Plan, setting first-year fees for the North Pacific Fisheries Research Plan, and observer insurance concerns;

(5) Status report on the Sablefish and Halibut Individual Fishing Quota (IFQ) program and on pending amendments and other issues of clarification, including hardships and lien registry. Approve Community Development Quota (CDQ) plans for 1995–97;

(6) Identify elements and alternatives for analysis of rollover of offshore and CDQ programs;

(7) Consider approval for public review of preliminary analysis for a license program for groundfish and crab fisheries in the EEZ off Alaska. Receive discussion papers and discuss harvest priority and full utilization issues, and discuss future IFQ programs;

(8) Discuss Secretary's decision to disapprove moratorium and take action as necessary;

(9) Discuss inter-council cooperative management of Pacific pelagic fisheries;

(10) Crab management: Review plan team report and status of stocks; schedule time for joint Council/Alaska Board of Fisheries meeting;

(11) Salmon Bycatch Issues: Receive report from the Salmon Foundation; review a salmon retention and delivery amendment for final action, and receive preliminary analysis of time and area closures to reduce salmon bycatch in the Bering Sea/Aleutian Islands;

(12) 1995 Initial Groundfish Specifications: Review and approve for public review the Stock Assessment and Fishery Evaluation documents for the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fisheries and set preliminary 1995 groundfish specifications, bycatch rates, Vessel Incentive Program rates, and discard mortality rates for halibut in the groundfish fisheries;

(13) Consider final action on a regulatory amendment for total weight measurement in the groundfish fisheries off Alaska. Initial review of regulatory amendments for trawl mesh regulations, halibut grid-sorting, and a regulatory amendment which would prohibit using a vessel with a Federal permit from fishing for groundfish in international waters or possessing groundfish in the EEZ that were caught in international waters during the fishing year for which the permit is issued; and

(14) Additional issues for discussion including measures to reduce the bycatch of opilio crab in other fisheries, a proposal to remove the Gulf of Alaska halibut mortality limit for hook and line gear, any amendment proposals received, staff tasking, financial reports, if available; and consider recommending an end to foreign involvement in sablefish longline surveys in the EEZ off Alaska.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, by September 16.

Dated: September 1, 1994.

David S. Crestin,

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

[FR Doc. 94–22169 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 083194B]

Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team will hold public meetings at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201. These meetings will begin at 1:00 p.m. on September 20, and at 8:00 a.m., on September 21 and September 22, 1994. The meetings on September 20 and 21 will not adjourn until the business for each day is completed, and may go into the evening. The September 22 meeting will adjourn by 3:30 p.m.

The purpose of these meetings is to review final groundfish stock assessment documents and acceptable biological catch recommendations, sablefish management, catch projections

and recommendations for inseason trip limit adjustments, management measures for 1995 and beyond, an experimental fishing permit to monitor salmon bycatch in the shore-based whiting fishery, and consistency of the groundfish plan with a state setnet closure in the exclusive economic zone off southern California.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

Dated: September 1, 1994.

David S. Crestin,

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

[FR Doc. 94–22170 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 083194D]

Western Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: A subcommittee of the Western Pacific Fishery Management Council's (Council) Scientific and Statistical Committee will hold a meeting on September 19, 1994, from 8:30 a.m. until 5:00 p.m., in the conference room of the NMFS Honolulu Laboratory, 2570 Dole Street, Honolulu, HI.

The purpose of the meeting is to review and refine the Council's draft Cultural, Social and Economic Research Plan for presentation to the Council at its next meeting. The subcommittee will also develop definitions of recreational, commercial and subsistence fishing/fishermen that are useful for the Western Pacific Region.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed, in writing, to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Dated: September 1, 1994.

David S. Crestin,

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

[FR Doc. 94–22171 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–22–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: Administrative Record Information System (ARIS) — State and Selected Local Data.

Form Number(s): ARIS–1.

Agency Approval Number: 0607–0750.

Type of Request: Revision of a currently approved collection.

Burden: 294 hours.

Number of Respondents: 605.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau maintains an Administrative Records Information System database that contains a general profile of available Federal, state, and local administrative records systems. Data is available for researchers to use the ARIS database to evaluate administrative records that may be useful for the following: (1) as an alternative to new data collection efforts, thus reducing respondent burden; (2) as a source for survey coverage or content evaluation; (3) to supplement survey data with administrative records; (4) to explore using administrative controls in surveys to reduce variances; and (5) to explore standardization and linking of administrative records systems for statistical uses. The ARIS database will also be used by Census Bureau personnel to research activities related to the Year 2000 census and other Census programs. The questionnaire requests descriptive information about administrative records systems, not the records, themselves. Additionally, Census will request that governments update their information biennially rather than annually, as in the past.

Affected Public: State or local governments.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

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: September 2, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–22174 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–07–F

National Oceanic and Atmospheric Administration

[I.D. 082694B]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting on September 21, 1994, from 8:30 a.m. until 5:00 p.m. The Council will receive Public Testimony on Reef Fish Total Allowable Catches (TACs), and take final action on 1995 reef fish TACs for red snapper and possibly shallow-water grouper stocks, commercial quotas, bag limits, and size limits (NOTE: Testimony cards must be turned in to staff before the start of public testimony). The Council also may specify vessel trip limits and seasonal or areal closures to achieve the TACs, from 1:30 p.m. until 5:00 p.m. The Council will reconvene on September 22, at 8:00 a.m., to receive reports on Recent Shrimp Trawl Bycatch Reduction Device Evaluations, from 8:00 a.m. until 8:30 a.m.; from the NMFS Permitting System, from 8:30 a.m. until 9:15 a.m.; and from the NOAA General Counsel Enforcement Office, from 9:15 a.m. until 9:45 a.m. It will also receive reports of the Shrimp Management Committee, from 9:45 a.m. until 10:00 a.m.; from the Migratory Species Management Committee from 10:00 a.m. until 10:15 a.m.; from the Joint Stone Crab/Spiny Lobster Management Committee, from 10:15 a.m. until 10:30 a.m.; and from the

Habitat Protection Committee, from 10:30 a.m. until 11:00 a.m. The Committee reports will be followed by Enforcement Reports, Directors' Reports, other business, and the election of the Chairman and Vice Chairman for 1994–95.

On September 19, 1994 the Shrimp Management Committee, Migratory Species Management Committee, and Joint Stone Crab/Spiny Lobster Management Committees will convene at 1:00 p.m. and recess at 5:30 p.m. On September 20, the Reef Fish Management Committee and the Habitat Protection Committee will convene at 8:00 a.m. and adjourn at 5:00 p.m.

These meetings will be held at the Holiday Inn Crowne Plaza, 333 Poydras, New Orleans LA; telephone: (504) 525–9444.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by September 12, 1994.

Dated: September 1, 1994.

David S. Crestin, Acting Director,

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

[FR Doc. 94–22168 Filed 9–7–94; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 178. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 178 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: 1 September 1994.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
ALASKA:						
ADAK[5]	$10		$34		$44	10–01–91
ANAKTUVUK PASS	83		57		140	12–01–90
ANCHORAGE						
06–01–09–15	147		64		211	06–01–94
09–16–05–31	81		57		138	05–01–94
ANIAK	73		36		109	07–01–91
ATQASUK	129		86		215	12–01–90
BARROW	105		83		188	11–01–93
BETHEL	76		67		143	02–01–94
BETTLES	65		45		110	12–01–90
COLD BAY	110		54		164	07–01–93
COLDFOOT	95		59		154	10–01–92
CORDOVA	60		81		141	01–01–94
CRAIG	67		35		102	07–01–91
DENALI NATIONAL PARK	113		68		181	05–01–94
DILLINGHAM	85		64		149	11–01–93
DUTCH HARBOR-UNALASKA	113		67		180	05–01–92
EIELSON AFB:						
05–15–09–15	106		59		165	05–15–94
09–16–05–14	68		55		123	01–01–94
ELMENDORF AFB:						
06–01–09–15	147		64		211	06–01–94
09–16–05–31	81		57		138	05–01–94
EMMONAK	62		61		123	10–01–93
FAIRBANKS:						
05–15–09–15	106		59		165	05–15–94
09–16–05–14	68		55		123	01–01–94
FALSE PASS	80		37		117	06–01–91
FT. RICHARDSON:						
06–01–09–15	147		64		211	06–01–94
09–16–05–31	81		57		138	05–01–94
FT. WAINWRIGHT:						
05–15–09–15	106		59		165	05–15–94

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
09–16–05–14	68		55		123	01–01–94
HOMER:						
05–01–09–30	71		60		131	05–01–94
10–01–04–30	60		58		118	02–01–94
JUNEAU:						
04–30–09–14	92		74		166	04–30–94
09–15–04–29	78		73		151	01–01–94
KATMAI NATIONAL PARK	89		59		148	12–01–90
KENAI-SOLDOTNA:						
04–02–09–30	104		74		178	04–02–94
10–01–04–01	67		71		138	01–01–94
KETCHIKAN:						
04–01–09–30	82		71		153	04–01–94
10–01–03–31	69		70		139	01–01–94
KING SALMON[3]	75		59		134	12–01–90
KLAWOCK	75		36		111	07–01–91
KODIAK	74		65		139	01–01–94
KOTZEBUE	133		87		220	05–01–93
KUPARUK OILFIELD	75		52		127	12–01–90
METLAKATLA:						
06–01–10–01	95		58		153	06–01–94
10–02–05–31	72		56		128	02–01–94
MURPHY DOME:						
05–15–09–15	106		59		165	05–15–94
09–16–05–14	68		55		123	01–01–94
NELSON LAGOON	102		39		141	06–01–91
NOATAK	133		87		220	05–01–93
NOME	71		67		138	10–01–93
NOORVIK	133		87		220	05–01–93
PETERSBURG:						
04–16–10–14	77		56		133	05–01–94
10–15–04–15	72		56		128	10–15–94
POINT HOPE	99		61		160	12–01–90
POINT LAY[6]	106		73		179	12–01–90
PRUDHOE BAY-DEADHORSE	73		60		133	11–01–93
SAND POINT	64		67		131	08–01–94
SEWARD:						
05–01–09–30	90		65		155	05–01–94
10–01–04–30	52		62		114	01–01–94
SHUNGNAK	133		87		220	05–01–93
SITKA-MT. EDGECOMBE	79		71		150	01–01–94
SKAGWAY:						
04–01–09–30	82		71		153	04–01–94
10–01–03–31	69		70		139	01–01–94
SPRUCE CAPE	74		65		139	01–01–94
ST. GEORGE	100		39		139	06–01–91
ST. MARY'S	77		59		136	06–01–93
ST. PAUL ISLAND	62		63		125	10–01–93
TANANA	71		67		138	10–01–93
TOK:						
05–02–09–30	60		58		118	05–02–94
10–01–05–01	51		57		108	01–01–94
UMIAT	97		63		160	12–01–90
VALDEZ:						
05–01–09–14	95		61		156	05–01–94
09–15–04–30	79		59		138	01–01–94
WAINWRIGHT	90		75		165	12–01–90
WALKER LAKE	82		54		136	12–01–90
WRANGELL:						
04–01–09–30	82		71		153	04–01–94
10–01–03–31	69		70		139	01–01–94
YAKUTAT	77		58		135	11–01–93
OTHER[3,4,6]	63		48		111	01–01–93
AMERICAN SAMOA	60		47		107	08–01–94
GUAM	155		75		230	05–01–93
HAWAII:						
ISLAND OF HAWAII: HILO	73		61		134	06–01–93

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
ISLAND OF HAWAII: OTHER	80		71		151	06–01–93
ISLAND OF KAUAI:						
04–01–11–30	110		75		185	06–01–93
12–01–03–31	122		76		198	12–01–93
ISLAND OF KURE[1]			13		13	12–01–90
ISLAND OF MAUI:						
04–01–11–30	79		71		150	06–01–93
12–01–03–31	96		73		169	12–01–93
ISLAND OF OAHU	105		62		167	06–01–93
OTHER	79		62		141	06–01–93
JOHNSTON ATOLL[2]	22		22		44	08–01–94
MIDWAY ISLANDS[1]			13		13	12–01–90
NORTHERN MARIANA ISLANDS:						
ROTA	48		77		125	05–01–94
SAIPAN	89		80		169	05–01–94
TINIAN	50		72		122	05–01–94
OTHER	20		13		33	12–01–90
PUERTO RICO:						
BAYAMON:						
05–01–12–14	93		73		166	09–01–93
12–15–04–30	116		76		192	12–15–93
CAROLINA:						
05–01–12–14	93		73		166	09–01–93
12–15–04–30	116		76		192	12–15–93
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO):						
04–16–12–10	65		52		117	10–01–93
12–11–04–15	110		52		162	12–11–93
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO):						
05–01–12–14	93		73		166	09–01–93
12–15–04–30	116		76		192	12–15–93
MAYAGUEZ	85		65		150	08–01–92
PONCE	96		75		171	09–01–93
ROOSEVELT ROADS:						
04–16–12–10	65		52		117	10–01–93
12–11–04–15	110		52		162	12–11–93
SABANA SECA:						
05–01–12–14	93		73		166	09–01–93
12–15–04–30	116		76		192	12–15–93
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS):						
05–01–12–14	93		73		166	09–01–93
12–15–04–30	116		76		192	12–15–93
OTHER[7]	63		52		115	08–01–92
VIRGIN ISLANDS OF THE U.S.:						
ST. CROIX:						
04–15–12–14	119		73		192	08–01–94
12–15–04–14	169		78		247	12–15–94
ST. THOMAS:						
04–17–12–17	141		106		247	08–01–94
12–18–04–16	220		114		334	12–18–94
WAKE ISLAND[2]	4		17		21	12–01–90
ALL OTHER LOCALITIES	20		13		33	12–01–90

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

[6] The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

DOD Personnel Daily Rate $13
Non-DOD Personnel $30

[7] (Eff 9–1–94) A per diem rate of $200 (lodging $148; M&IE $52) will be in effect for Las Croabas, Puerto Rico, during the Annual Conference of the National Association of State Boating Law Administrators (NASBLA) being held at the El Conquistador Resort and County Club. This rate will be in effect from 4–12 September 1994 only for travelers attending the conference and only for travelers staying at the El Conquistador Resort.

Dated: September 1, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–22043 Filed 9–7–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

DEPARTMENT OF ENERGY

Bonneville Power Administration

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Public Meetings on the Columbia River System Operation Review Draft EIS

AGENCIES: Bonneville Power Administration (Energy), Corps of Engineers (Army), Bureau of Reclamation (Interior).

ACTION: Notice of public meetings.

SUMMARY: This notice announces the dates, times, and locations of public meetings on the Columbia River System Operation Review (SOR) Draft Environmental Impact Statement (EIS).

DATES AND ADDRESSES: Written comments on the Draft EIS will be accepted through October 24, 1994. Comments should be sent to SOR Interagency Team, P.O. Box 2988, Portland, Oregon 97208–2988.

Public meeting dates, times, and locations are:

September 19, 1994; 7–9 p.m.—Sandpoint Senior High School, 410 South Division, Sandpoint, Idaho

September 20, 1994; 7–9 p.m.—Cavanaugh's Inn, 20 N. Main Street, Kalispell, Montana

September 21, 1994; 7–9 p.m.—Asa Wood School Gym, 700 Idaho Street, Libby, Montana

September 22, 1994; 7–9 p.m.—Reclamation Project Office, Conference Room, Grand Coulee, Washington

September 26, 1994; 7–9 p.m.—Red Lion Downtowner, 1800 Fairview Avenue, Boise, Idaho

September 27, 1994; 7–9 p.m.—Ramada Inn, Port 4 Room, 621 21st Street, Lewiston, Idaho

September 28, 1994; 7–9 p.m.—Red Lion, 2525 N. 20th, Pasco, Washington

October 3, 1994; 1–3 p.m.—Portland Conference Center, Morrison Room, 1020 NE. 3rd Avenue, Portland, Oregon

October 4, 1994; 1–3 p.m.—West Coast Hotel (Sea-Tac), 18220 Pacific Highway South, Seattle, Washington

BACKGROUND: The Bonneville Power Administration (BPA), the U.S. Bureau of Reclamation, and the U.S. Army Corps of Engineers have issued the Draft EIS on the Columbia River System Operation Review. The SOR, which began in 1990, analyzes major long-term obligations such as salmon recovery and other uses of the Columbia River system. The EIS evaluates seven different strategies for operating 14 Federal dams on the system. Alternatives range from operations as they were before any changes were made for threatened and endangered species to drawing down the lower Snake River projects to near natural riverbed levels. No alternative has been identified as preferred. Other actions addressed in the Draft EIS include formation of a Columbia River Regional Forum, renewal of the Pacific Northwest Coordination Agreement and negotiation of new Canadian Entitlement Allocation Agreements. Comments on the Draft EIS will be accepted through October 24, 1994.

FOR FURTHER INFORMATION CONTACT: For more information, please call one of the SOR Project Managers: Witt Anderson, U.S. Army Corps of Engineers (503) 326–5189; John Dooley, U.S. Bureau of Reclamation (503) 230–7395; or Philip Thor, Bonneville Power Administration (503) 230–4235.

Issued in Portland, Oregon, on August 25, 1994.

Philip W. Thor,

NEPA Project Manager, SOR Interagency Team, Bonneville Power Administration.

[FR Doc. 94–22007 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–P–M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES: Monday, September 26, 1994: 6:00 p.m.–7:00 p.m. (public comment session); Tuesday, September 27, 1994: 8:30 a.m.–4:00 p.m.

ADDRESSES: The public comment session and meeting will be held at: The Comfort Inn, 2625 Highway 21, Beaufort, South Carolina.

FOR FURTHER INFORMATION CONTACT: Tom Henna, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Monday, September 26, 1994

6:00 p.m.—Public Comment Session (5-minute rule)
7:00 p.m.—Adjourn

Tuesday, September 27, 1994

8:00 a.m.—Registration
8:30 a.m.—Briefings on Decontamination and Decommissioning and the Solid Waste Program at SRS
3:30 p.m.—Public Comment Session (5-minute rule)
4:00 p.m.—Adjourn

If needed, time will be allotted after public comments for old business, new business, for items added to the agenda, and administrative details.

A final agenda will be available at the meeting Monday, September 26, 1994.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written

comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803)–725–8074.

Issued at Washington, DC on September 2, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–22144 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Hydrogen Technical Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting:

Name: Hydrogen Technical Advisory Panel.

Date and Time: Thursday, September 29, 1994, 9:00 a.m.–5:30 p.m.; Friday, September, 30, 1994, 9:00 a.m.–12:00 p.m.

Place: South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California, Telephone: 714–396–3245.

FOR FURTHER INFORMATION CONTACT: Russell Eaton, Designated Federal Official, 1000 Independence Avenue SW, Washington, DC 20585, Telephone: (202) 586–1506.

SUPPLEMENTARY INFORMATION: *Purpose:* The Hydrogen Technical Advisory Panel (HTAP) will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Public Law 101–566. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) The implementation and conduct of programs required by the Act, (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems, and (3) the contents of the comprehensive 5-year program required by the Act.

Tentative Agenda

Thursday, September 29, 1994

9:00 a.m.—Introductions and Opening Comments—Takahashi
9:15 a.m.—Report from the Past Chairman and Discussion—Birk
10:00 a.m.—Discussion/Approval of Committee Reports—Bain/Lynch Takahashi
10:45 a.m.—Break
11:00 a.m.—USDOE Report to HTAP and Discussion—Eaton
11:45 a.m.—Hydrogen Program Status and Discussion—Rossmeissl
12:30 p.m.—Lunch
2:00 p.m.—Reports from Related Organizations
National Hydrogen Association—John Kennedy
American Renewable Hydrogen Energy Alliance—Scott Sklar
International Hydrogen Energy Association—Veziroglu
3:00 p.m.—South Coast Management District Hydrogen Activities Projections—Alan Lloyd
4:00 p.m.—California Marketing Opportunities—Lloyd/Panel
4:45 p.m.—Tour of South Coast Air Quality Management District Hydrogen Facilities—Lloyd

Friday, September 30, 1994

9:00 a.m.—Discussion of Topics to be reviewed by the Panel
- Integration of effort with other USDOE offices and federal agencies—Eaton
- Demonstrations—Rossmeissl
- Sustainable R&D Centers—McKinley
- Budget Plan—Takahashi
- International Cooperation—Hoagland
- Hydrogen Technologies for the 1996 Atlanta Olympics—USDOE
- Partnership for a Next Generation Vehicle—USDOE

11:00 a.m.—Round Table—Panel
11:15 a.m.—Public Comments
12:15 a.m.—Adjournment

Public Participation: The meeting is open to the public. The Chairman of the HTAP is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Official at the address or telephone number listed above. Requests must be received before 5 p.m. (E.S.T.) Wednesday, September 21, 1994, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Official at the address shown above before 5 p.m. (E.S.T.) Wednesday, September 21, 1994, to assure that it is considered by Panel members during the meeting.

Minutes: A transcript of the open, public meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued at Washington, DC, on September 2, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–22142 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Federal Assistance Award to Air Products and Chemicals, Inc.

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award (Supersedes FR Doc. 94–10073, pub. 4–26–94).

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a cooperative agreement to Air Products and Chemicals, Inc. for the continuation of development and marketing of novel transport membranes for separation of industrial gasses.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: M.A. Barron, Contract Specialist, (303) 275–4787. The Contracting Officer is John W. Meeker. The Project Officer is R.N. Chappell, (303) 275–4769.

SUPPLEMENTARY INFORMATION: The proposed effort will complete the

activity begun under Cooperative Agreement No. DE–FC02–89ID12779 for the development of active transport membranes for gas separation. Air Products is proposing to develop prototypes of advanced membrane systems and conduct field evaluations. Later pilot scale systems will be developed and installed in industrial settings for commercial evaluation and demonstration. This last stage of development involving commercial demonstration on a large scale basis was added in order to ensure commercial usage.

DOE has performed a review in accordance with 10 CFR 600.7, and has determined that the activity to be funded is necessary to the satisfactory completion of, and is a continuation of an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on continuity and satisfactory completion of the activity. DOE intends to restrict eligibility to Air Products and Chemicals, Inc. for this activity in accordance with 10 CFR 600.7(b)(2)(i) (A) and (D).

The total estimated cost to complete the project is $14,300,000. The proposed cost share for Air Products is $5,900,000 (41%) and $8,400,000 (59%) for DOE over a 5 year project period.

Issued in Golden, Colorado on August 25, 1994.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 94–22147 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award Consortium for Energy Efficiency

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Pursuant to 10 CFR 600.7(b)(2)(i)(D), the U.S. Department of Energy (DOE) Region I Support Office, through the Golden Field Office, intends to award a grant to the Consortium for Energy Efficiency (CEE) to develop "market-pull" initiatives intended to increase the deployment of advanced, energy efficient technologies through the development of utility/manufacturer/customer consortia. These tasks fulfill DOE missions set forth in section 127 of the Energy Policy Act of 1992, H.R. 776 (EPACT) and in the Climate Change Action Plan, Actions #4 and #6 (CCAP).

SUPPLEMENTARY INFORMATION: The proposal, which was negotiated with the DOE, Office of Building Technologies (OBT), establishes funding for tasks related to increasing the deployment of advanced, highly energy efficient technologies throughout the United States. The CEE is a non-profit corporation dedicated to helping private and public interests form partnerships to accelerate the development and availability of technologies that save energy.

Initial funding of $142,500 will be used to begin several program initiatives. Depending upon availability, additional financial assistance for CEE in support of on-going "market-pull" activities between FY '95–FY '99 is anticipated. Funding may range from between $50,000–$700,000 per fiscal year. In the event that additional funding is available in the future, it will be used to expand program initiatives in different product technologies, to provide additional expert technical assistance for program initiatives, to set-up workshops/conferences, and to increase marketing efforts for product technologies. The completion of these tasks should result in an increase in the use of super-efficient appliances in the United States.

Noncompetitive financial assistance to CEE is in accordance with the justifying criteria presented in 10 CFR 600. The DOE/OBT has determined that CEE has exclusive domestic capability to develop consortia to increase the deployment of advanced, energy efficient technologies, and, is, therefore, uniquely capable to complete missions outlined in section 127 of EPACT and Action #'s 4 and 6 of CCAP.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Attn: Hugh Saussy, Jr., Region I Support Office, One Congress Street, Boston, MA 02114–2021, (617) 565–9700.

Issued at Golden, Colorado on August 25, 1994.

John W. Meeker,

Contracting Officer, Golden Field Office.

[FR Doc. 94–22150 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

EERE-Denver Regional Support Office; Financial Assistance Award; Intent to Award Cooperative Agreement to the Electric Power Research Institute

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy, pursuant to 10 CFR 600.7, announces that it is making a financial assistance cooperative agreement cost shared award based on a noncompetitive determination to the Electric Power Research Institute (EPRI) in the amount of $140,000.

SUPPLEMENTARY INFORMATION: The DOE will fund up to 50 percent of the allowable costs of the Cooperative Agreement. The pending award is based on an application for a project entitled "Advanced Integrated Resource Planning Training and Bulletin Board" which was submitted by the EPRI. The general objective of the project is to advance the practices of Integrated Resource Planning (IRP) in the electric utility industry. EPRI will develop and conduct an advanced IRP course covering the concepts, methods and modeling techniques including the integration of supply and demand issues, demand-side cost effectiveness and value tests, treatment of externalities and evaluation of supply side options, including renewables and distributed resources. It is also intended to assist state utility regulatory commissions and other IRP practitioners and researchers obtain and exchange information important to IRP development and to assist in their implementation of the IRP related titles of the Energy Policy Act of 1992 and the Climate Change Action Plan.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the project to be funded will be an enhancement to the public and will be of public benefit. It is suitable for financial assistance and would not be eligible for financial assistance under a recent, current, or planned solicitation. The initial term of the award will be twelve (12) months, for a possible project period of five years from the initial date of award. Possible additional funding in future years will be based on satisfactory completion of the initial term, and availability of funding.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Denver Regional Support Office, 2801 Youngfield St., Golden, CO., 80201, Attention: Louise S. Urgo, Contracting Officer.

Issued in Golden, Colorado on August 25, 1994.

John W. Meeker,

Contrcting Officer, Golden Field Office.

[FR Doc. 94–22148 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Grant Award to Enermodal Engineering, Inc.

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE

Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Enermodal Engineering for continuing research efforts in support of the DOE Office of Building Energy Research programs. The project seeks to improve the compatibility between the Canadian and U.S. window rating software programs and standards.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Cidney L. Bippus, Contract Specialist, 303–275–4793.

SUPPLEMENTARY INFORMATION: The proposed basic research will contribute to the DOE mission by assisting in the development of compatible window simulation software programs for the U.S. and Canada. Successful completion of this research will help ensure that U.S. manufacturers will have equal access to Canadian markets. DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Grant is estimated at $35,000 and the anticipated period of performance is twelve (12) months.

Issued in Golden, Colorado on August 25, 1994.

John W. Meeker,

Contracting Officer, Golden Field Office.

[FR Doc. 94–22146 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award: National Association of State Energy Officials

AGENCY: U.S. Department of Energy (DOE), Seattle Regional Support Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE Seattle Regional Support Office, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to make a noncompetitive financial assistance award under grant No. DE–FG51–94RO20454. A grant will be awarded to the National Association of State Energy Officials (NASEO) for the purpose gathering and disseminating information on a number of different energy efficiency and renewable energy-related topics which are connected to the Administration's Climate Change Action Plan and the Energy Policy Act of 1992.

SCOPE: The U.S. Department of Energy is undergoing several policy initiatives that directly or indirectly relate to the Administration's Climate Change Action Plan (CCAP) and the Energy Policy Act of 1992 (EPAct). Within the Department, the Office of Energy Efficiency and Renewable Energy is charged with the task of developing and implementing various programs required by these two initiatives, which also directly or indirectly affects the Department's clients and stakeholders. The network of state energy offices is a key component to the Department's ability to implement these plans and initiatives.

As representatives of the various state energy offices (including territories), the NASEO is best suited to perform work related to gathering and disseminating information relating to energy efficiency and renewable energy-related projects outlined in the CCAP and the EPAct. Collectively, these offices form a valuable network for exchange of views and information on a variety of energy-related issues. As the NASEO is the only organization which represents state energy offices, it has been determined to the best suited to perform the task of working with Departmental personnel in gathering and disseminating the energy-related issues from the CCAP and the EPAct.

Funding for this project is being provided by the Office of Energy Efficiency and Renewable Energy as authorized by the Department of Energy Organization Act, as amended, Public Laws 95–91 and 97–377. The estimated DOE share of costs for this project is $600,000 to cover a three-year period.

ELIGIBILITY: Pursuant to the requirements of 10 CFR 600.7(b)(2)(i), the following reasons are stated for the basis of issuing this noncompetitive grant to NASEO:

1. The NASEO is uniquely qualified and has exclusive domestic capability to perform this proposed activity successfully [Criteria 10 CFR 600.7(b)(2)(i)(D)]. This proposal identifies a broad array of tasks and activities designed to gather, analyze, and disseminate information on a nation-wide basis. These actions would significantly help the Department carry out the Administration's CCAP and fulfill its mandated responsibilities under the EPAct of 1992. State energy offices are the organizations best suited to perform this work. They have up to twenty years experience complying with Federal energy requirements and delivering energy programs. They are "experts" on their state energy issues, interests, and priorities. Collectively these offices form a valuable network for disseminating information from DOE and gathering intelligence on state needs and accomplishments.

NASEO is the only organization which represents state energy offices—its membership currently includes 54 out of 56 state and territorial energy offices. NASEO holds at least 2 national meetings of state energy officials each year to gather information and exchange views on a variety of energy-related issues. NASEO's organization and management help ensure that a diversity of state views are represented and heard within the organization. NASEO provides the opportunity for at least one Energy Office Director from each of the 10 DOE regions and 5 officers from throughout the nation to manage the organization. This allows producing states, consuming states, and others the opportunity to voice their concerns and opinions on energy issues through a non-partisan process. NASEO has successfully assisted DOE in past efforts to (1) develop training exercises on energy emergencies, (2) unanimously endorse programmatic changes in federally-funded conservation programs effecting the states, and (3) collect, categorize, and distribute information relating to national energy issues.

2. The activities would probably be conducted, at least in part, by the applicant using its own resources. However, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting, or plans to conduct, the activities. [Criteria 10 CFR 600.7(b)(2)(i)(B)]. Without additional funding from DOE a number of the larger states, with greater existing resources, would probably conduct a number of the activities covered by the proposal. However, this data would be spotty and incomplete. Additional DOE funding, provided through this proposal, will ensure that more uniform, complete, and high quality product is produced for DOE. Specifically, funding from DOE will help ensure that information provided DOE is: (1) collected from all states, rather than just those states with large existing energy offices and resource bases, (2) collected on all, not just some of the activities proposed; and (3) uniform in format and quality.

FOR FURTHER INFORMATION CONTACT: Inquiries must be submitted within fourteen (14) calendar days of publication of this notice to: Julie A. Riel, U.S. Department of Energy, Seattle Regional Support Office, 800 Fifth Ave., Suite 3950, Seattle, WA 98104.

Issued in Golden, Colorado on August 25, 1994.

John W. Meeker,

Contracting Officer, Golden Field Office.

[FR Doc. 94–22185 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Technical and Financial Assistance Energy Efficiency and Renewable Energy

Award Based on Acceptance of a Non-Competitive Application; Home Energy Rating Systems Council; Energy Efficiency Rating Guidelines

AGENCY: Office of Technical and Financial Assistance Energy Efficiency Renewable Energy, U.S. Department of Energy (DOE).

ACTION: DOE, Office of Technical and Financial Assistance, Energy Efficiency and Renewable Energy, through the Region 3 Support Office—Philadelphia, announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(ii), DOE intends to award a grant to the Home Energy Rating Systems Council (HERS). The overall objective of this project is to issue voluntary guidelines to be used by State and local governments, utilities, builders, real estate agents, lenders and others to enable and encourage the assignment of energy efficiency ratings to residential buildings.

SUPPLEMENTARY INFORMATION: The grant of $283,000 will fund the HERS Council to establish guidelines to encourage uniformity for certifying home energy efficiency rating tools and to encourage uniformity for accrediting home energy efficiency rating systems.

The project term of this grant shall be eighteen (18) months from the effective date of the award.

DOE support of this activity would enhance the public benefit to be derived and DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for non-competitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: Nancy Costa, Region 3 Support Office—Philadelphia, U.S. Department of Energy, Suite 501, 1880 J.F. Kennedy Boulevard, Philadelphia, PA 19103–7483, (215) 656–6961.

Issued at Golden, Colorado on August 17, 1994.

John W. Meeker,

Contracting Officer, Golden Field Office.

[FR Doc. 94–22155 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Award Based on Acceptance of a Non-Competitive Application; Citizens Fund: Cleaner Burning Alternative Fuel Buses

AGENCY: Office of Technical and Financial Assistance Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: DOE, Office of Technical and Financial Assistance, Energy Efficiency and Renewable Energy, through the Region 3 Support Office—Philadelphia, announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(ii), DOE intends to award a grant to the Citizen's Fund. The overall objective of this project is to develop and carry out a large public information campaign related to Alternative Fuel Vehicles (AFV) in general and the public transit system in particular.

SUPPLEMENTARY INFORMATION: The grant of $50,000 will fund the Citizens Fund for support of a project entitled "The Transit Agency as Environmental Leader: Educating the Philadelphia Area Public on the Benefits of Cleaner-Burning Alternative Fuel Buses."

The project term of this grant shall be twelve (12) months from the effective date of the award.

DOE support of this activity would enhance the public benefit to be derived and DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for non-competitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: James Winebrake, Region 3 Support Office—Philadelphia, U.S. Department of Energy, Suite 501, 1880 J.F. Kennedy Boulevard, Philadelphia, PA 19103–7483, (215) 656–6974.

Issued at Golden, Colorado on August 17, 1994.

John W. Meeker,

Contracting Officer, Golden Field Office.

[FR Doc. 94–22156 Filed 9–7–94; 8:45 am]

BILLING CODE 645–01–M

Office of Technical and Financial Assistance; Office of Utility Technologies; Energy Efficiency and Renewable Energy; Award Based on Acceptance of a Noncompetitive Application; Pennsylvania Energy Office; FY95 National Energy Awards

AGENCY: Department of Energy (DOE).

ACTION: DOE, Office of Technical and Financial Assistance, Energy Efficiency and Renewable Energy, through the Region 3 Support Office—Philadelphia, announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(2)(ii), DOE intends to award a grant to the Pennsylvania Energy Office (PEO). The anticipated overall objective of this project entitled "1995 National Awards Program for Energy Efficiency and Renewable Energy" is to honor energy innovators of the most deserving projects in five categories and to publicize unique energy saving technologies and related projects. Through this program, DOE strives to increase the use of energy efficient and renewable resource technologies that are beneficial and transferable to others nationwide.

SUPPLEMENTARY INFORMATION: The grant of $250,000 will fund the PEO's project to support energy efficient and renewable resource technologies.

The project term of this grant shall be sixteen (16) months from the effective date of the award.

DOE support of this activity would enhance the public benefit to be derived and DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for noncompetitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: Patricia M. Starkey, Energy Conservation Specialist, Region 3 Support Office—Philadelphia, U.S. Department of Energy, Suite 501, 1880 J.F. Kennedy Boulevard, Philadelphia, PA 91903–7483, (215) 656–6961.

Issued at Golden, Colorado on August 25, 1994.

John W. Meeker,

Contracting Officer, GO.

[FR Doc. 94–22145 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Federal Assistance Award to Southwest Research Institute

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the Southwest Research Institute for continuing research efforts to develop and demonstrate natural gas-fueled railway locomotives. The first year of this four year project was funded in 1993. This notice announces the DOEs intent to fund years 2 through 4 of this project as a renewal application.

This project is a portion of DOE's Fuels Utilization Program of its Transportation Technologies Program, which seeks to improve fuel efficiency, reduce energy costs, and reduce air emissions in transportation operations. This is not a notice for solicitation of proposals or financial assistance applications.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Ms. Ruth E. Adams, Contract Specialist.

SUPPLEMENTARY INFORMATION: For the past twelve years, the applicant has been conducting engine research for the Association of American Railroads. The applicant is currently completing the development of a first generation gas-fueled freight locomotive engine, under contract with the Electro-Motive Division of General Motors (EMD). This engine technology will be available to this cooperative research program.

This cooperative research program is being funded by the DOE and five non-Federal entities. The DOE will be funding approximately 12% of the total project costs.

Three locomotive engine technologies will be investigated during this research program. With each technology, variables affecting engine performance (power, fuel economy, exhaust emissions, etc.) will be optimized to produce a freight engine with improved cost efficiency and a commuter passenger engine with low emissions.

In accordance with 10 CFR 600.7, it has been determined that DOE funding of this activity will enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity. In addition, DOE has determined that the applicant and its cost-sharing contractor, EMD, have exclusive domestic capability to perform this activity successfully, based upon unique equipment, proprietary data, technical expertise, and other unique qualifications.

DOE funding for this three-year effort is estimated to be $600,000. The anticipated term of the proposed grant shall be thirty-six months from the effective date of the award.

Issued in Golden, Colorado on August 24, 1994.

John W. Meeker,

Contracting Officer.

[FR Doc. 94–22152 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award University of Florida

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Pursuant to 10 CFR 600.7(b)(2)(i)(D), The U.S. Department of Energy Region IV Support Office, through the Golden Field Office, intends to award a grant to the University of Florida to support a program to improve energy efficiency in the commercial buildings sector.

SUPPLEMENTARY INFORMATION: Energy Analysis and Diagnostic Centers (EADCs) have been established to provide technical assistance in the use of new energy efficient technology in the manufacturing sector. The Department of Energy has an interest in developing this concept and evaluating its feasibility in the commercial buildings area. In this pilot project, the University of Florida will conduct five audits of commercial buildings to test this approach. The project will assess the applicability of augmenting the existing EADC structure to conduct commercial buildings audits and will estimate the cost effectiveness of this approach.

Noncompetitive financial assistance is in accordance with the justifying criteria presented in 10 CFR 600. DOE has determined that support of this activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity. DOE plans to provide FY 1994 funding in the amount of $50,000 in support of this activity.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Attn: Fred Singleton, Atlanta Support Office, 730 Peachtree Street, N.E., Atlanta, Georgia 30308, 404–347–3482.

Issued at Golden, Colorado on August 25, 1994.

John W. Meeker,

Contracting Officer, Golden Field Office.

[FR Doc. 94–22151 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Financial Assistance Award to the University of South Carolina

AGENCY: Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for Grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14, the DOE, Morgantown Energy Technology Center (METC), gives notice of its plans to award a twelve month Grant to the University of South Carolina, Columbia, South Carolina, in the estimated amount of $61,956. Award will not be made for at least 14 days after publication of this notice in order to allow time for public comment.

FOR FURTHER INFORMATION CONTACT: Ronald D. Roth, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4244, Procurement Request No. 21–94MC31384.000.

SUPPLEMENTARY INFORMATION: The participant will apply steady state and dynamical analysis proven in the chemical industry using data and models from the METC coal gasifier to develop an optimal control scheme for METC coal gasification. This proof of concept will help in developing the methodology needed to timely develop control schemes in the power generation industry.

Randolph L. Kesling,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 94–22153 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–P

Kansas City Support Office; Non-Competitive Financial Assistance Award to the Wisconsin Demand-Side Demonstrations, Inc.

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Kansas City Support Office, announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i)(B) it intends to award a Cooperative Agreement to the Wisconsin Demand-Side Demonstrations, Inc. (WDSD). WDSD will work in conjunction with the DOE, Industrial Electric Motor Systems Program, to (1) gather information, develop materials, and conduct training on performance optimization methods which are used to identify efficiency opportunities in electric motor-driven systems, and (2) to promote the use of performance optimization techniques and/or services to industrial electric motor-driven systems stakeholders.

SUPPLEMENTARY INFORMATION: WDSD receives support for their activities from eight Wisconsin utilities. In addition to the state utilities, WDSD is currently working in conjunction with state

agencies, and other organizations including industry and equipment manufacturers and distributors on a state-wide High Efficiency Motors Program aimed at establishing working partnerships in the electric motor systems market and increasing the market availability and implementation of high-efficiency electric motors. WDSD and supporting organizations have also worked to develop a core Performance Optimization Program in Wisconsin. In this effort, WDSD secured the assistance and input from Ontario Hydro staff who have been instrumental in the development and implementation of many successful performance optimization efforts in Canada.

Therefore, the proposed project meets the criterion for noncompetitive financial assistance specified in 10 CFR 600.7(b)(2)(i)(B) in that the activities are being or would be conducted by the applicant using its own resources or those provided by third parties. This award will further the objectives of the DOE, Industrial Electric Motor Systems Program to promote the adoption and use of efficient electric motor-driven systems. The application is being accepted because DOE knows of no other opportunity to conduct such a project by any other organization or entity.

PROJECT PERIOD: The project period for this award is two years and is expected to begin September 1994. DOE plans to provide initial funding in the amount of approximately $40,000 with total project funding estimated at $250,000, subject to availability of funds.

FURTHER INFORMATION CONTACT: Chris Cockrill, Technology Marketing Division, or JoAnn Timm, Contracting Officer, U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, Kansas City, MO 64106–2024. (816) 426–4772.

Issued in Golden, Colorado on August 30, 1994.

John W. Meeker,

Chief, Procurement Team, GO.

[FR Doc. 94–22149 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG94–94–000, et al.]

Kingston Cogen Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

August 31, 1994.

Take notice that the following filings have been made with the Commission:

1. Kingston Cogen Limited Partnership

[Docket No. EG94–94–000]

Kingston Cogen Limited Partnership ("Kingston") (c/o Alisa B. Speck, Destec Energy, Inc., 2500 CityWest Blvd., Suite 150, Houston, Texas 77210–4411) filed with the Federal Energy Regulatory Commission an application on August 24, 1994, for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Kingston is an Ontario, Canada limited partnership formed to own an electric generating facility located in Ernestown Township, Ontario, Canada.

Comment date: September 19, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Selkirk Cogen Partners, L.P.

[Docket No. EG94–95–000]

On August 25, 1994, Selkirk Cogen Partners, L.P. ("Selkirk"), with its address at One Bowdoin Square, Boston, MA 02114, filed with the Federal Energy Regulatory Commission ("FERC" or the "Commission") an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Selkirk is the owner and operator of a 79.9 MW (net) gas-fired cogeneration facility ("Unit 1") located in the Town of Bethlehem, New York and an approximately 265 MW gas-fired cogeneration facility to be located in the town of Bethlehem ("Unit 2," together with Unit 1, the "Facility"). Unit 1 commenced commercial operation on April 17, 1992, and construction of Unit 2 commenced on October 23, 1992; commercial operation of Unit 2 is expected to begin in October of 1994. Selkirk will sell all of the electric energy produced by the Facility at wholesale. Electric energy produced by Unit 1 is sold to Niagara Mohawk Power Corporation ("NIMO") pursuant to a Power Sales Agreement between Selkirk and NIMO and electric energy produced by Unit 2 will be sold to Consolidated Edison Company of New York, Inc. ("Con Edison") pursuant to a Power Purchase Agreement between Selkirk and Con Edison.

Comment date: September 19, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Panda-Kathleen, L.P.

[Docket No. QF94–150–000]

On August 23, 1994, Panda-Kathleen, L.P. of 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility, which will be located in Lakeland, Florida, will consist of a combustion turbine generator, a heat recovery boiler and a steam turbine generator. Steam recovered from the facility will be sold to an affiliated steam host, Lakeland Distilled Water Company for production of distilled water. The maximum net electric power production capacity of 125.9 MW will be purchased by Florida Power Corporation. The primary energy source of the facility will be Natural gas. Installation of the facility is expected to commence in January, 1995.

Comment date: Thirty days from the date of publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 94–22099 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP92–184–009, et al.]

Texas Eastern Transmission Corporation, et al.; Natural Gas Certificate Filings

August 31, 1994.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP92–184–009]

Take notice that on August 29, 1994, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77056–1642, filed in Docket No. CP92–184–009 pursuant to Section 7(c) to amend and to partially vacate the Commission's order issued July 16, 1993, in Docket Nos. CP92–184–000 *et al.* in order to modify the construction program associated with the Integrated Transportation Project (ITP), to supersede various elements of the ITP amended application pending in Docket No. CP92–184–007, and to establish initial rates for ITP service in 1995 and 1996, all as more fully set forth in the application, which is on file and open to public inspection.

It is indicated that on July 16, 1993, the Commission issued an order approving construction and operation of incremental facilities on Texas Eastern's mainline system which would permit Texas Eastern to render Part 284 transportation service for specific shippers. Texas Eastern explains that the facilities and associated services were designated as the Integrated Transportation Project (ITP). The order authorized discrete construction programs for 1993 and 1994, consistent with Texas Eastern's plan to implement the underlying transportation service in two stages: 111,000 Dekatherms per day (Dthd) to commence November 1, 1993, and the remaining 90,000 Dthd to commence November 1, 1994, for an aggregate ITP service level of 201,000 Dthd. Reflecting the staged construction approved for ITP facilities, the order also authorized an incremental rate with a built-in step-up, *i.e.*, an initial rate effective November 1, 1993, based on 1993 ITP construction, with a step-up effective November 1, 1994, incorporating 1994 ITP construction costs.

On January 27, 1994, Texas Eastern filed an application in Docket No. CP92–184–007 to amend the ITP authorization issued July 16, 1993. Texas Eastern indicated that because of the narrow window available for 1993 construction as well as changes in ITP customer requirements, it was compelled to reschedule implementation of ITP service. As shown below, the adjustments included deferral to 1994 and 1995 of portions of the service originally scheduled to be initiated in 1993 and deferral until 1995 of some service originally scheduled for implementation in 1994. While there was some reallocation of ITP service among customers, there was no planned change in the ultimate total level of ITP service.

I. TIMING OF ITP SERVICE LEVELS UNDERLYING JULY 16, 1993, ORDER

ITP shipper	11/01/93 Dthd volumes	11/01/94 Dthd volumes	Total ITP service Dthd volumes
UGI	40,000	0	40,000
PSE&G	25,000	75,000	100,000
Delmarva	40,000	0	40,000
PGW	6,000	0	6,000
Yankee	0	15,000	15,000
Total	111,000	90,164	201,000

II. ALLOCATIONS/TIMING FOR ITP IMPLEMENTATION PROPOSED IN DOCKET NO. CP92–184–007 (JANUARY 27, 1993, AMENDMENT)

ITP shipper	11/01/93 Dthd volumes	11/01/94 Dthd volumes	11/01/95 Dtdh volumes	Cumulative Dthd volumes
UGI	20,000	10,000	10,000	40,000
PSE&G	13,000	47,000	50,000	110,000
Delmarva	0	20,000	10,000	30,000
PGW	0	6,000	0	6,000
Yankee	0	15,164	0	15,164
Total	33,000	98,164	70,000	201,164

Texas Eastern asserted that the ITP service modifications necessitated changes in the timing, configuration and extent of facility construction required to support ITP service as well as corresponding adjustments in the initial rates for ITP service. Based on a reevaluation of its ITP facility design analysis, Texas Eastern determined that it no longer required approximately 8.92 miles of authorized pipeline along with certain approved compressor modifications. In addition, Texas Eastern stated that it would require a total of 11.02 miles of new pipeline which is not already authorized while deferring some of the remaining authorized facilities.

In order to conform its facility and rate authorizations to the revised ITP service levels and implementation schedule, Texas Eastern requested the following specific authorizations in Docket No. CP92–184–007:

(1) To defer construction of a portion of the authorized ITP facilities until 1995;

(2) To vacate certificate authorization as it related to 8.92 miles of authorized pipeline;

(3) To construct, install, own, and operate an additional 11.02 miles of 36" pipeline for 1995 ITP service; and

(4) To charge revised Section 7(c) initial rates for 1994 ITP service and new initial rates for 1995 ITP service.

Texas Eastern estimated that the capital cost of the proposed additional facilities was $13,966,000 and that the revised cost of all 1994 and 1995 ITP facilities in $100,724,000 and $91,987,000, respectively. Texas Eastern proposed the following initial rates for 1994 and 1995 ITP service.

Rate per Dth	1994	1995
Demand Rate	$19.974	$21.078

Texas Eastern has now filed in Docket No. CP92–184–009 a further request to amend the July 16, 1993, ITP certificate authorization. Texas Eastern states that the subject amendment reflects ITP facility and rate adjustments which are necessary to respond to (1) further changes in the market requirements of ITP shippers, and (2) a resequencing of certain Texas Eastern projects ahead of proposed 1995 and 1996 ITP service. Texas Eastern states that the new amendment restates and supersedes the prior amendment in Docket No. CP92–184–007 except with respect to Texas Eastern's request for authorization of initial rates for 1994 ITP service, which remains pending in Docket No. CP92–184–007. Texas Eastern requests specific authorization to:

(1) Defer completion of certain authorized facilities until November 1, 1995;

(2) Defer completion of certain authorized facilities until November 1, 1996;

(3) Authorize construction of certain proposed additional facilities to accommodate 1996 ITP service;

(4) Vacate the authorization for certain authorized facilities no longer need to render ITP service; and

(5) Charge the ITP shippers proposed rates for 1995 and 1996, not subject to refund.

Texas Eastern states that the revised estimated capital cost of the 1995 and 1996 ITP facilities is $50,892,000 and $34,724,000, respectively.

Texas Eastern states that the requested authorizations are based on the following revised schedule of ITP service levels. (Service levels for 1993 and 1994 are unchanged from those indicated in Docket No. CP92–184–007.)

ITP shipper	11/01/93 Dthd volumes	11/01/94 Dthd volumes	11/01/95 Dthd volumes	11/01/96 Dthd volumes	Total ITP volumes
UGI	20,000	10,000	10,000	0	40,000
PSE&G	13,000	47,000	25,000	25,000	110,000
Delmarva	0	20,000	10,000	0	30,000
PGW	0	6,000	0	0	6,000
Yankee	0	15,164	0	0	15,164
Total	33,000	98,164	45,000	25,000	201,164

Texas Eastern proposes to revise its proposed initial rate for 1995 and to establish a new initial rate for 1996. The proposed rates for each year reflect a "roll-in" of the costs for each stage of ITP construction to the pre-existing ITP rate for service. Texas Eastern does not propose any change to the currently effective rate for ITP service which commenced November 1, 1993, or to the proposed rate for 1994 ITP service contained in Docket No. CP92–184–007. The proposed 1995 and 1996 rates are based on cumulative costs of service of $42,306,390 and $48,318,030, respectively, and design volumes of 176,164 Dth/d and 201,164 Dth/d for 1995 and 1996, respectively. The factors used in developing the cost of service are derived from Texas Eastern's settlement in Docket No. RP90–119–000.

Rate per Dth	1995	1996
Demand Rate	$20.013	$20.016

Comment date: September 21, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP94–738–000]

Take notice that on August 25, 1994, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94–738–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission to abandon a measurement facility located in Acadia Parish, Louisiana, by removal, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that the Booher-Iota Meter (BI Meter) was placed into service on March 2, 1989, as an interconnection between Texas Gas and Travis Booher, a producer, to transport gas for various shippers. Texas Gas indicates that the meter was authorized under the blanket certificate issued to Texas Gas in Docket No. CP82–407–000 and the provisions of 18 CFR Section 157.208(a) of the Commission's Regulations. Texas Gas further indicates that the producer's wells behind the BI Meter have ceased production and are now only producing oil. Texas Gas also states that it is no longer receiving gas volumes into its system at this point for any shipper, and is not likely to do so in the future.

Comment date: September 19, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. East Tennessee Natural Gas Company

[Docket No. CP94–741–000]

Take notice that on August 29, 1994, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–741–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to abandon existing delivery point facilities in McMinn County, Tennessee, and to replace them with new facilities, to serve Bowater, Incorporated's (Bowater) papermill plant, under East Tennessee's blanket certificate issued in Docket No. CP82–412–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to abandon the Bowater Meter Station and relocate it. It is stated that the existing facilities are located on Bowater's property and that the activities of the plant have threatened the integrity of the facilities. East Tennessee proposes to relocate the facilities on property adjacent to the plant. It is explained that the relocation will require the replacement of 328 feet of 12-inch mainline pipe adjacent to the existing mainline valve and 3,100 feet of 8-inch pipe to run between the new delivery point and Bowater. It is estimated that the cost of the abandonment would be $71,000, and the cost of the construction of new facilities would be $871,000. It is asserted that East Tennessee would pay these costs out of its capital budget. It is asserted that the replacement of facilities will not result in any change in the daily or annual quantities that East Tennessee is authorized to deliver to Bowater. East Tennessee states that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or

disadvantage to any of East Tennessee's other customers.

Comment date: October 17, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Sea Robin Pipeline Company

[Docket No. CP94–748–000]

Take notice that on August 29, 1994, Sea Robin Pipeline Company (Sea Robin), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP94–748–000 a request pursuant to § 157.205 of the Commission's Regulations to: (1) abandon certain existing measuring facilities at the Columbia Gulf Transmission Company (Columbia Gulf) interconnection (Existing Columbia Gulf Meter Station) in order to construct and operate replacement facilities (New Columbia Gulf Meter Station) near Erath, Louisiana to provide more reliable and accurate measurement for the potential increase in delivery volumes of natural gas to Columbia Gulf and (2) partially abandon capacity and meter facilities at the Koch Gateway Pipeline Company interconnect (Koch Gateway Meter Station) that will be used to construct the New Columbia Gulf Meter Station, under Sea Robin's blanket certificate issued in Docket No. CP82–429–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Sea Robin proposes to abandon two 12-inch meter runs at the Existing Columbia Gulf Meter Station and replace them with three 16-inch meter runs from its existing Koch Gateway Meter Station located adjacent to the Existing Columbia Gulf Meter Station at the New Columbia Gulf Meter Station. Sea Robin states that the New Columbia Gulf Meter Station will be constructed pursuant to § 157.208(a)(2) under Part 284 of the Commission's Regulations. Transfer of three meter runs to the New Columbia Gulf Meter Station will leave three 16-inch meter runs at the Koch Gateway Meter Station that will provide ample capacity for the volumes of natural gas that Sea Robin delivers to Koch Gateway, it is indicated. Sea Robin states that Koch Gateway is agreeable to the transfer of the meter runs and the abandonment of the capacity at the Koch Gateway Meter Station will not result in any termination or degradation of service to any shipper which schedules deliveries to the Koch Gateway Meter Station. Sea Robin states that the estimated cost of replacing the facilities at the New Columbia Gulf Meter Station is $322,000, including the $15,000 cost of removing the retired facilities.

Comment date: October 17, 1994, in accordance with Standard Paragraph G 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 § 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. 94–22100 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP85–221–035]

Frontier Gas Storage Company; Notice of Sale Pursuant To Settlement Agreement

September 1, 1994.

Take notice that on August 29, 1994, Frontier Gas Storage Company (Frontier), % Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Washington, D.C. 20004, in compliance with the provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000 et al., submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to a daily quantity of 5,500 MMBtu of Frontier's gas storage inventory on an "as metered" basis to Western Sugar Company (Western Sugar).

Under subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is "authorized to commence the sale of its inventory, fourteen days after filing the executed agreement with the Commission, and may continue making such sale unless the Commission issues an order either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter.

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, within ten days of the publication of such notice in the **Federal Register,** file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. 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. 94–22101 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–036]

Frontier Gas Storage Co.; Notice of Sale Pursuant To Settlement Agreement

September 1, 1994.

Take notice that on August 29, 1994, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000 et al., submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of 280,000 MMBtu of Frontier's gas storage inventory on an "in place" basis to Western Sugar Company (Western Sugar).

Under Subpart (b) of Ordering Paragraph (G) of the Commission's February 13, 1985, Order Frontier is "authorized to consummate the proposed sale in place unless the Commission issues an order within 20 days after expiration of such notice period either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter. Deliveries of gas sold in place shall be made pursuant to a schedule to be set forth in an exhibit to the executed service agreement."

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, within ten days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426), a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22102 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST94–5933–000 et al.]

Williston Basin Interstate Pipeline Company; Notice of Self-Implementing Transactions

September 1, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act. [1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket number[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94–5933	WILLISTON BASIN INTER. P/L CO.	RETEX GATHERING COMPANY, INC.	07–01–94	G–S	60,000	N	I	06–01–94	05–31–96
ST94–5934	WILLISTON BASIN INTER. P/L CO.	WESTERN GAS RESOURCES, INC.	07–01–94	G–S	30,000	N	I	06–03–94	03–31–95
ST94–5935	NORTHERN ILLINOIS GAS CO.	ANR PIPELINE CO., ET AL.	07–01–94	G–HT	1,300	N	I	06–19–94	06–30–94
ST94–5936	NORTHERN ILLINOIS GAS CO.	ANR PIPELINE CO., ET AL.	07–01–94	G–HT	4,167	N	I	06–25–94	06–30–94
ST94–5937	VALERO TRANSMISSION, L.P.	TENNESSEE GAS PIPELINE CO.	07–01–94	C	2,400	N	I	06–01–94	INDEF.
ST94–5938	PANHANDLE EASTERN PIPE LINE CO.	SEMCO ENERGY SERVICES, INC.	07–01–94	G–S	50,000	N	I	06–18–94	02–28–99
ST94–5939	PANHANDLE EASTERN PIPE LINE CO.	VINTAGE GAS, INC.	07–01–94	G–S	60,000	N	I	06–15–94	04–30–99
ST94–5940	NATURAL GAS P/L CO. OF AMERICA.	MOBIL NATURAL GAS INC.	07–01–94	G–S	10,000	N	F	06–07–94	06–30–94
ST94–5941	TRANSCONTINENTAL GAS P/L CORP.	TRISTAR GAS CO	07–01–94	G–S	155,000	N	I	06–01–94	INDEF.
ST94–5942	TRANSCONTINENTAL GAS P/L CORP.	ENRON GAS MARKETING, INC.	07–01–94	G–S	100,000	N	F	06–10–94	INDEF.
ST94–5943	TRANSCONTINENTAL GAS P/L CORP.	TEXACO GAS MARKETING, INC.	07–01–94	G–S	40,000	N	F	06–15–94	INDEF.
ST94–5944	TRANSTEXAS PIPELINE.	FLORIDA GAS TRANSMISSION CO.	07–05–94	C	25,000	N	I	06–01–94	INDEF.
ST94–5945	CRANBERRY PIPELINE CORP.	TEXAS EASTERN TRANSMISSION CORP.	07–05–94	C	3,000	N	I	06–17–91	06–17–01
ST94–5946	CRANBERRY PIPELINE CORP.	COLUMBIA GAS TRANSMISSION CORP.	07–05–94	C	30,000	N	I	06–17–91	06–17–01
ST94–5947	CRANBERRY PIPELINE CORP.	TRANSCONTINENTAL GAS PIPE LINE CORP.	07–05–94	C	3,000	N	I	06–17–91	06–17–01
ST94–5948	MIDWESTERN GAS TRANSMISSION CO.	TENNECO GAS MARKETING CO.	07–05–94	G–S	10,000	A	F	06–22–94	INDEF.
ST94–5949	SABINE PIPE LINE CO.	TEJAS HYDROCARBONS CO.	07–05–94	G–S	100,000	N	I	06–13–94	INDEF.
ST94–5950	SOUTHERN CALIFORNIA GAS CO.	COASTAL GAS MARKETING CO.	07–05–94	G–LT	25,000	N	I	06–03–94	06–30–94
ST94–5951	PACIFIC GAS TRANSMISSION CO.	GRAND VALLEY GAS CO.	07–05–94	G–S	200,000	N	I	02–12–94	INDEF.
ST94–5952	GRANITE STATE GAS TRANSMISSION.	NORTHERN UTILITIES, INC.	07–05–94	B	80,000	Y	I	N/A	03–15–95
ST94–5953	GRANITE STATE GAS TRANSMISSION.	NORTHERN UTILITIES, INC.	07–05–94	B	100,000	Y	I	N/A	06–08–95
ST94–5954	NORTHERN NATURAL GAS CO.	NORTHERN STATES POWER CO.-MINNESOTA.	07–06–94	B	209,813	N	F	06–01–94	10–31–97
ST94–5955	NORTHERN NATURAL GAS CO.	NORTHERN STATES POWER CO.-WISCONSIN.	07–06–94	B	39,994	N	F	06–01–94	10–31–97
ST94–5956	PACIFIC GAS TRANSMISSION CO.	CRESTAR ENERGY MARKETING CORP.	07–07–94	G–S	20,000	N	I	06–12–94	INDEF.

Docket number[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94–5957	PACIFIC GAS TRANSMISSION CO.	UTILITY–2000 ENERGY CORP.	07–07–94	G–S	200,000	N	I	06–12–94	INDEF.
ST94–5958	PACIFIC GAS TRANSMISSION CO.	TENNECO GAS MARKETING CO.	07–07–94	G–S	200,000	N	I	06–12–94	INDEF.
ST94–5959	PACIFIC GAS TRANSMISSION CO.	REDWOOD RESOURCES, INC.	07–07–94	G–S	100,000	N	I	06–12–94	INDEF.
ST94–5960	PACIFIC GAS TRANSMISSION CO.	PG&E (ON BEHALF OF ITS UEG).	07–07–94	G–S	1,000,000	N	I	06–09–94	INDEF.
ST94–5961	PACIFIC GAS TRANSMISSION CO.	NORTHSTAR ENERGY CORP.	07–07–94	G–S	10,000	N	I	06–12–94	INDEF.
ST94–5962	PACIFIC GAS TRANSMISSION CO.	NORTH AMERICAN CHEMICAL CO.	07–07–94	G–S	24,000	N	I	06–12–94	INDEF.
ST94–5963	PACIFIC GAS TRANSMISSION CO.	NESTLE' USA, INC.	07–07–94	G–S	1,462	N	I	06–12–94	INDEF.
ST94–5964	ACADIAN GAS PIPELINE SYSTEM.	NATURAL GAS P/L CO. OF AMER., ET AL.	07–07–94	C	15,000	N	F/I	06–01–94	INDEF.
ST94–5965	GREAT LAKES GAS TRANSMISSION L.P..	NORTHERN STATES POWER CO. (WI).	07–07–94	G–S	20,000	N	I	06–07–94	INDEF.
ST94–5966	PACIFIC GAS TRANSMISSION CO.	PHIBRO OIL & GAS INC.	07–07–94	G–S	150,000	N	I	06–12–94	INDEF.
ST94–5967	NATURAL GAS P/L CO. OF AMERICA.	MOBIL NATURAL GAS INC.	07–07–94	G–S	15,486	N	F	06–08–94	06–30–94
ST94–5968	WILLISTON BASIN INTER. P/L CO.	WESTERN GAS RESOURCES, INC.	07–07–94	G–S	30,000	A	I	06–07–94	03–31–96
ST94–5969	WILLISTON BASIN INTER. P/L CO.	WESTERN GAS RESOURCES, INC.	07–07–94	G–S	30,000	A	I	06–07–94	03–31–96
ST94–5970	WILLISTON BASIN INTER. P/L CO.	WESTERN GAS RESOURCES, INC.	07–07–94	G–S	30,000	A	I	06–07–94	03–31–96
ST94–5971	WILLISTON BASIN INTER. P/L CO.	WESTERN GAS RESOURCES, INC.	07–07–94	G–S	30,000	A	I	06–07–94	03–31–96
ST94–5972	OLYMPIC PIPELINE CO.	SABINE PIPE LINE CO.	07–08–94	C	5,200	N	I	02–02–94	INDEF.
ST94–5973	OLYMPIC PIPELINE CO.	SABINE PIPE LINE CO.	07–08–94	C	9,500	N	I	02–06–94	INDEF.
ST94–5974	OLYMPIC PIPELINE CO.	SABINE PIPE LINE CO.	07–08–94	C	13,900	N	I	02–05–94	INDEF.
ST94–5975	PACIFIC GAS TRANSMISSION CO.	NATIONAL GAS RESOURCES, LP.	07–08–94	G–S	20,000	N	I	06–12–94	INDEF.
ST94–5976	FLORIDA GAS TRANSMISSION CO.	NGC TRANSPORTATION, INC.	07–08–94	G–S	500,000	N	I	06–04–94	INDEF.
ST94–5977	U–T OFFSHORE SYSTEM.	TENNECO GAS PROCESSING CO.	07–08–94	K–S	50,000	N	I	06–29–94	INDEF.
ST94–5978	U–T OFFSHORE SYSTEM.	COAST ENERGY GROUP.	07–08–94	K–S	21,000	N	F	06–01–94	06–30–94
ST94–5979	U–T OFFSHORE SYSTEM.	CNG PRODUCING CO.	07–08–94	K–S	11,000	N	F	06–02–94	06–30–94
ST94–5980	U–T OFFSHORE SYSTEM.	COAST ENERGY GROUP.	07–08–94	K–S	21,000	N	F	07–01–94	08–31–94
ST94–5981	HIGH ISLAND OFFSHORE SYSTEM.	TENNECO GAS PROCESSING CO.	07–08–94	K–S	100,000	N	I	06–29–94	INDEF.

Docket number [1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	AFF Y/A/ N [3]	Rate sch.	Date commenced	Projected termination date
ST94–5982	OZARK GAS TRANSMISSION SYSTEM.	SOUTHWESTERN ENERGY PIPELINE CO.	07–08–94	G–S	35,000	N	I	06–10–94	INDEF.
ST94–5983	TRUNKLINE GAS CO.	TENNECO GAS MARKETING CO.	07–11–94	G–S	1,000	N	F	07–01–94	INDEF.
ST94–5984	TRUNKLINE GAS CO.	NOBLE GAS MARKETING, INC.	07–11–94	G–S	150,000	N	I	07–02–94	INDEF.
ST94–5985	TRUNKLINE GAS CO.	MERIDIAN OIL TRADING, INC.	07–11–94	G–S	10,000	N	I	07–01–94	INDEF.
ST94–5986	TRUNKLINE GAS CO.	TORCH GAS, L.C .	07–11–94	G–S	10,350	N	I	07–02–94	INDEF.
ST94–5987	LONE STAR GAS CO.	EL PASO NATURAL GAS CO., ET AL.	07–11–94	C	30,000	N	I	06–01–94	INDEF.
ST94–5988	VALERO TRANSMISSION, L.P.	TEXAS EASTERN TRANS. CO., ET AL.	07–11–94	C	22,000	N	I	07–01–94	INDEF.
ST94–5989	VALERO TRANSMISSION, L.P.	NATURAL GAS PIPELINE CO. OF AMERICA.	07–11–94	C	2,143	N	I	06–15–94	INDEF.
ST94–5990	VALERO TRANSMISSION, L.P.	ARKLA ENERGY RESOURCES.	07–11–94	C	25,000	N	I	06–18–94	INDEF.
ST94–5991	TRANSTEXAS PIPELINE.	ARKLA ENERGY RESOURCES.	07–11–94	C	25,000	N	I	06–18–94	INDEF.
ST94–5992	VALERO TRANSMISSION, L.P.	FLORIDA GAS TRANSMISSION CO.	07–11–94	C	4,000	N	I	06–22–94	INDEF.
ST94–5993	WINNIE PIPELINE CO.	SABINE PIPE LINE CO.	07–11–94	C	100,000	N	I	01–15–94	INDEF.
ST94–5994	WINNIE PIPELINE CO.	SABINE PIPE LINE CO., ET AL.	07–11–94	C	50,000	N	I	12–11–93	INDEF.
ST94–5995	WINNIE PIPELINE CO.	SABINE PIPE LINE CO., ET AL.	07–11–94	C	100,000	N	I	01–04–94	INDEF.
ST94–5996	WINNIE PIPELINE CO.	SABINE PIPE LINE CO., ET AL.	07–11–94	C	150,000	N	I	01–01–94	INDEF.
ST94–5997	WINNIE PIPELINE CO.	SABINE PIPE LINE CO.	07–11–94	C	100,000	N	I	01–05–94	INDEF.
ST94–5998	NORTHERN NATURAL GAS CO.	WESTAR TRANSMISSION CO.	07–12–94	G–S	10,000	N	F	06–01–94	11–30–94
ST94–5999	NORTHERN NATURAL GAS CO.	CONWEST EXPLORATION (DELAWARE) INC.	07–12–94	G–S	5,000	N	I	04–16–94	INDEF.
ST94–6000	GULF STATES PIPELINE CORP.	ASSOCIATED NATURAL GAS, INC.	07–12–94	C	10,000	N	F	07–01–94	INDEF.
ST94–6001	EAST TEXAS GAS SYSTEMS.	SOUTHERN NATURAL PIPELINE, ET AL.	07–12–94	C	50,000	N	I	04–01–94	INDEF.
ST94–6002	EAST TEXAS GAS SYSTEMS.	SOUTHERN NATURAL PIPELINE, ET AL.	07–12–94	C	50,000	N	I	01–01–94	INDEF.
ST94–6003	EAST TEXAS GAS SYSTEMS.	SOUTHERN NATURAL PIPELINE, ET AL.	07–12–94	C	50,000	N	I	02–01–94	INDEF.
ST94–6004	EAST TEXAS GAS SYSTEMS.	SOUTHERN NATURAL PIPELINE, ET AL.	07–12–94	C	50,000	N	I	05–01–94	INDEF.
ST94–6005	EAST TEXAS GAS SYSTEMS.	SOUTHERN NATURAL PIPELINE, ET AL.	07–12–94	C	50,000	N	I	03–01–94	INDEF.
ST94–6006	EAST TEXAS GAS SYSTEMS.	SOUTHERN NATURAL PIPELINE, ET AL.	07–12–94	C	50,000	N	I	05–01–94	INDEF.
ST94–6007	EAST TEXAS GAS SYSTEMS.	SOUTHERN NATURAL PIPELINE, ET AL.	07–12–94	C	50,000	N	I	02–01–94	INDEF.
ST94–6008	EAST TEXAS GAS SYSTEMS.	SOUTHERN NATURAL PIPELINE, ET AL.	07–12–94	C	50,000	N	I	03–01–94	INDEF.

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ST94–6009	EAST TEXAS GAS SYSTEMS.	SOUTHERN NATURAL PIPELINE, ET AL.	07–12–94	C	50,000	N	I	02–01–94	INDEF.
ST94–6010	EAST TEXAS GAS SYSTEMS.	SOUTHERN NATURAL PIPELINE, ET AL.	07–12–94	C	50,000	N	I	05–01–94	INDEF.
ST94–6011	ENOGEX INC	ARKLA ENERGY RESOURCES CO.	07–13–94	C	50,000	N	I	07–01–94	INDEF.
ST94–6012	ENOGEX INC	ARKLA ENERGY RESOURCES CO.	07–13–94	C	7,500	N	I	07–01–94	INDEF.
ST94–6013	ENOGEX INC	NATURAL GAS P/L CO. OF AMERICA.	07–13–94	C	50,000	N	I	06–23–94	INDEF.
ST94–6014	ENOGEX INC	PHILLIPS GAS PIPELINE CO.	07–13–94	C	5,000	N	I	07–01–94	INDEF.
ST94–6015	ENOGEX INC	PHILLIPS GAS PIPELINE CO.	07–13–94	C	5,000	N	I	07–01–94	INDEF.
ST94–6016	ENOGEX INC	WILLIAMS NATURAL GAS CO.	07–13–94	C	5,000	N	I	06–23–94	INDEF.
ST94–6017	TEXAS EASTERN TRANSMISSION CORP.	BRISTOL & WARREN GAS CO.	07–13–94	G–S	1,474	N	F	06–13–94	10–31–99
ST94–6018	NATURAL GAS P/L CO. OF AMERICA.	NGC TRANSPORTATION, INC.	07–13–94	G–S	15,500	N	F	07–02–94	07–31–94
ST94–6019	NATURAL GAS P/L CO. OF AMERICA.	CATEX VITOL GAS, INC.	07–13–94	G–S	20,000	N	F	07–07–94	08–31–94
ST94–6020	COLORADO INTERSTATE GAS CO.	THERMO COGENERATION PART., L.P.	07–13–94	G–S	21,036	N	I	07–01–94	06–30–09
ST94–6021	COLORADO INTERSTATE GAS CO.	OXY USA INC	07–13–94	G–S	20,000	N	F	07–01–94	07–31–94
ST94–6022	WILLIAMS NATURAL GAS CO.	CERTAINTEED CORP.	07–13–94	G–S	1,000	N	F	06–01–94	06–01–95
ST94–6023	WILLIAMS NATURAL GAS CO.	MERCADO GAS SERVICES, INC.	07–13–94	B	2,200	N	I	05–20–94	04–15–95
ST94–6024	WILLIAMS NATURAL GAS CO.	WESTPLAINS ENERGY.	07–13–94	G–S	30,000	N	I	07–01–94	10–01–94
ST94–6025	WILLIAMS NATURAL GAS CO.	UNION PACIFIC FUELS, INC.	07–13–94	G–ST	4,891	N	I	05–01–94	11–01–94
ST94–6026	TEXAS GAS TRANSMISSION CORP.	MARATHON OIL CO.	07–14–94	G–S	12,500	N	F	07–01–94	INDEF.
ST94–6027	TRANSCONTINENTAL GAS P/L CORP.	NORTH CAROLINA NATURAL GAS CORP.	07–14–94	G–S	50,000	A	I	06–13–94	INDEF.
ST94–6028	TEXAS GAS TRANSMISSION CORP.	CARGILL, INC	07–14–94	G–S	100,000	N	I	07–01–94	INDEF.
ST94–6029	EAST TEXAS GAS SYSTEMS.	SOUTHERN NATURAL PIPELINE, ET AL.	07–12–94	C	50,000	N	I	02–01–94	INDEF.
ST94–6030	NATURAL GAS P/L CO. OF AMERICA.	NGC TRANSPORTATION, INC.	07–14–94	G–S	10,000	N	F	07–02–94	07–31–94
ST94–6031	NATURAL GAS P/L CO. OF AMERICA.	NGC TRANSPORTATION, INC.	07–14–94	G–S	30,700	N	F	07–07–94	08–31–94
ST94–6032	FLORIDA GAS TRANSMISSION CO.	FLORIDA PUBLIC UTILITIES CO.	07–14–94	G–S	5,754	N	I	06–14–94	INDEF.
ST94–6033	DELHI GAS PIPELINE CORP.	ANR PIPELINE CO., ET AL.	07–14–94	C	2,000	N	I	06–14–94	INDEF.
ST94–6034	QUESTAR PIPELINE CO.	MOCK RESOURCES, INC.	07–15–94	G–S	40,000	N	I	06–30–94	INDEF.

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ST94–6035	SOUTHERN CALIFORNIA GAS CO.	WASHINGTON WATER POWER CO.	07–15–94	G–ST	48,000	N	F/I	06–17–94	06–01–00
ST94–6036	PACIFIC GAS TRANSMISSION CO.	PG&E (ON BEHALF OF ITS UEG).	07–15–94	G–S	1,000,000	N	F	06–22–94	INDEF.
ST94–6038	CHANNEL INDUSTRIES GAS CO.	NORTHERN NATURAL GAS CO., ET AL.	07–15–94	C	75,000	Y	I	06–18–94	INDEF.
ST94–6039	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	07–15–94	C	25,000	Y	I	06–17–94	INDEF.
ST94–6040	COLUMBIA GAS TRANSMISSION CORP.	O&R ENERGY, INC.	07–15–94	G–ST	N/A	N	I	07–01–94	INDEF.
ST94–6041	COLUMBIA GAS TRANSMISSION CORP.	OHIO BEAR, INC .	07–15–94	G–S	1,000	N	I	07–01–94	INDEF.
ST94–6042	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF OHIO, INC.	07–15–94	G–S	200,000	Y	I	07–01–94	INDEF.
ST94–6043	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF PENNSYLVANIA, INC.	07–15–94	G–S	100,000	Y	I	07–01–94	INDEF.
ST94–6044	COLUMBIA GAS TRANSMISSION CORP.	COMMONWEALTH GAS SERVICES, INC.	07–15–94	G–S	20,000	Y	I	07–01–94	INDEF.
ST94–6045	VALERO TRANSMISSION, L.P.	EL PASO NATURAL GAS CO., ET AL.	07–18–94	C	50,000	N	I	07–01–94	INDEF.
ST94–6046	CHANNEL INDUSTRIES GAS CO.	AMERADA HESS CORP.	07–18–94	G–I	50,000	N	I	06–21–94	INDEF.
ST94–6047	MIDWESTERN GAS TRANSMISSION CO.	SOUTHERN INDIANA GAS & ELECTRIC CO.	07–18–94	G–S	10,938	N	F	07–01–94	INDEF.
ST94–6048	MIDWESTERN GAS TRANSMISSION CO.	MOBIL NATURAL GAS, INC.	07–18–94	G–S	1,000	N	F	07–07–94	INDEF.
ST94–6049	MIDWESTERN GAS TRANSMISSION CO.	H&H GAS LTD	07–18–94	G–S	6,258	N	F	06–17–94	INDEF.
ST94–6050	TEXAS EASTERN TRANSMISSION CORP.	ENRON GAS MARKETING, INC.	07–18–94	G–S	50,000	N	I	06–18–94	06–14–95
ST94–6051	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF OHIO, INC.	07–18–94	G–S	6,535	Y	F	06–27–94	INDEF.
ST94–6052	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF OHIO, INC.	07–18–94	G–S	39,040	Y	F	06–27–94	INDEF.
ST94–6053	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF OHIO, INC.	07–18–94	G–S	200,000	Y	I	06–27–94	INDEF.
ST94–6054	COLUMBIA GAS TRANSMISSION CORP.	COMMONWEALTH GAS SERVICES, INC.	07–18–94	G–S	61,252	Y	F	06–27–94	INDEF.
ST94–6055	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF PENNSYLVANIA, INC.	07–18–94	G–S	90,788	Y	F	06–27–94	INDEF.
ST94–6056	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF MARYLAND, INC.	07–18–94	G–S	15,012	Y	F	06–27–94	INDEF.
ST94–6057	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF KENTUCKY, INC.	07–18–94	G–S	20,014	Y	F	06–27–94	INDEF.
ST94–6058	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF KENTUCKY, INC.	07–18–94	G–S	28,252	Y	F	06–27–94	INDEF.
ST94–6059	COLORADO INTERSTATE GAS CO.	PEOPLES NATURAL GAS CO.	07–18–94	B	1,000	A	F	06–01–94	12–31–99

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ST94–6060	COLORADO INTERSTATE GAS CO.	PEOPLES NATURAL GAS CO.	07–18–94	B	1,000	A	I	06–01–94	INDEF.
ST94–6061	COLORADO INTERSTATE GAS CO.	PEOPLES NATURAL GAS CO.	07–18–94	B	32,460	A	F	04–06–94	05–31–94
ST94–6062	NATURAL GAS P/L CO. OF AMERICA.	CENERGY, INC	07–18–94	G–S	10,000	N	F	06–18–94	06–30–95
ST94–6063	TRANSOK GAS TRANSMISSION CO.	ANR PIPELINE CO., ET AL.	07–18–94	C	50,000	N	I	07–01–94	INDEF.
ST94–6064	TRANSOK GAS TRANSMISSION CO.	ANR PIPELINE CO., ET AL.	07–18–94	C	25,000	N	I	04–23–94	INDEF.
ST94–6065	NATIONAL FUEL GAS SUPPLY CORP.	CHAUTAUQUA ENERGY MARKETING, INC.	07–18–94	G–S	10,000	N	I	07–12–94	07–12–04
ST94–6066	VALERO TRANSMISSION, L.P.	NORTHERN NATURAL GAS CO.	07–19–94	C	12,000	N	I	07–01–94	INDEF.
ST94–6067	NORAM GAS TRANSMISSION CO.	CONAGRA FROZEN FOODS.	07–19–94	G–S	145	N	F	06–01–94	INDEF.
ST94–6068	NORAM GAS TRANSMISSION CO.	SWIFT/ECKRICH CO. DIV. OF CONAGRA.	07–19–94	G–S	220	N	F	06–01–94	INDEF.
ST94–6069	NORAM GAS TRANSMISSION CO.	ANTHONY FOREST.	07–19–94	G–S	417	N	F	07–01–94	INDEF.
ST94–6070	NORAM GAS TRANSMISSION CO.	ARKANSAS STATE UNIVERSITY.	07–19–94	G–S	1,294	N	F	07–01–94	INDEF.
ST94–6071	NORAM GAS TRANSMISSION CO.	PHILIPS LIGHTING.	07–19–94	G–S	361	N	F	07–01–94	INDEF.
ST94–6072	NORAM GAS TRANSMISSION CO.	RINGIER AMERICA.	07–19–94	G–S	284	N	F	07–01–94	INDEF.
ST94–6073	NORAM GAS TRANSMISSION CO.	TABER METALS ..	07–19–94	G–S	1,000	N	F	07–01–94	06–30–95
ST94–6074	NORAM GAS TRANSMISSION CO.	ARKAT FEEDS, INC.	07–19–94	G–S	355	N	F	07–01–94	INDEF.
ST94–6075	NORTHERN NATURAL GAS CO.	GEDI, INC	07–19–94	G–S	3,000	N	F	07–01–94	10–31–94
ST94–6076	NORTHERN NATURAL GAS CO.	NORTHERN ILLINOIS GAS CO.	07–19–94	B	30,000	N	F	07–01–94	10–31–94
ST94–6077	NORTHERN NATURAL GAS CO.	EQUITABLE RESOURCES MARKETING CO.	07–19–94	G–S	10,000	N	F	07–01–94	10–31–94
ST94–6078	MOBILE BAY PIPELINE CO.	MOBILE GAS SERVICE CORP.	07–19–94	G–S	19,084	N	I	07–01–94	08–01–94
ST94–6079	MOBILE BAY PIPELINE CO.	OXY USA, INC	07–19–94	G–S	19,084	N	I	07–01–94	08–01–94
ST94–6080	KOCH GATEWAY PIPELINE CO.	FINA NATURAL GAS CO.	07–19–94	G–S	185,000	N	F	06–26–94	INDEF.
ST94–6081	KOCH GATEWAY PIPELINE CO.	KOCH GAS SERVICES CO.	07–19–94	G–S	N/A	Y	I	07–01–94	INDEF.
ST94–6082	KOCH GATEWAY PIPELINE CO.	SIGCO MARKETING, INC.	07–19–94	G–S	N/A	N	I	07–01–94	INDEF.
ST94–6083	KOCH GATEWAY PIPELINE CO.	SHELL GAS TRADING CO.	07–19–94	G–S	N/A	N	I	07–01–94	INDEF.
ST94–6084	KOCH GATEWAY PIPELINE CO.	MOBIL NATURAL GAS, INC.	07–19–94	G–S	N/A	N	I	07–01–94	INDEF
ST94–6085	KOCH GATEWAY PIPELINE CO.	KERR-MCGEE NATURAL GAS, INC.	07–19–94	G–S	N/A	N	I	07–01–94	INDEF
ST94–6086	KOCH GATEWAY PIPELINE CO.	CONOCO, INC	07–19–94	G–S	N/A	N	I	07–01–94	INDEF

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ST94–6087	KOCH GATEWAY PIPELINE CO.	CHESAPEAKE ENERGY CORP.	07–19–94	G–S	N/A	N	I	07–01–94	INDEF.
ST94–6088	KOCH GATEWAY PIPELINE CO.	MISSISSIPPI GAS CORP.	07–19–94	G–S	175	N	F	07–01–94	04–01–97
ST94–6089	MOBILE BAY PIPELINE CO.	ORYX GAS MARKETING.	07–19–94	G–S	95,420	N	I	07–01–94	08–01–94
ST94–6090	COLUMBIA GAS TRANSMISSION CORP.	ASHLAND EXPLORATION, INC.	07–19–94	G–S	20,000	N	F	07–01–94	09–15–94
ST94–6091	WILLISTON BASIN INTER. P/L CO.	COASTAL GAS MARKETING CO.	07–19–94	G–S	1,500	A	I	06–19–94	06–18–96
ST94–6092	STINGRAY PIPELINE CO.	COAST ENERGY GROUP, INC.	07–19–94	K–S	50,000	N	I	07–01–94	INDEF.
ST94–6093	TEXAS EASTERN TRANSMISSION CORP.	TRANSCO ENERGY MARKETING CO.	07–20–94	G–S	1,200,000	N	I	06–21–94	INDEF.
ST94–6094	TENNESSEE GAS PIPELINE CO.	TENNESSEE AIR NATIONAL GUARD.	07–20–94	G–S	296	N	F	07–07–94	INDEF.
ST94–6095	FLORIDA GAS TRANSMISSION CO.	ORYX GAS MARKETING, L.P.	07–20–94	G–S	40,000	N	I	06–27–94	INDEF.
ST94–6096	NORTHERN NATURAL GAS CO..	LONE STAR GAS CO.	07–20–94	B	100,000	N	I	07–01–94	INDEF.
ST94–6097	FLORIDA GAS TRANSMISSION CO.	CORNERSTONE GAS RESOURCES.	07–21–94	G–S	20,000	N	I	07–02–94	INDEF.
ST94–6098	COLUMBIA GAS TRANSMISSION CORP.	OSRAM SYLVANIA, INC.	07–21–94	G–S	867	N	I	06–01–94	INDEF.
ST94–6099	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF OHIO, INC.	07–21–94	G–S	502,717	Y	F	06–27–94	INDEF.
ST94–6100	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF PENNSYLVANIA, INC.	07–21–94	G–S	100,000	Y	I	06–27–94	INDEF.
ST94–6101	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF KENTUCKY, INC.	07–21–94	G–S	40,000	Y	I	06–27–94	INDEF.
ST94–6102	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA GAS OF MARYLAND, INC.	07–21–94	G–S	15,000	Y	I	06–27–94	INDEF.
ST94–6103	COLUMBIA GAS TRANSMISSION CORP.	COMMONWEALTH GAS SERVICES, INC.	07–21–94	G–S	69,000	Y	I	06–27–94	INDEF.
ST94–6104	CYPRESS GAS PIPELINE CO.	KOCH GATEWAY PIPELINE CO., ET AL.	07–21–94	C	5,000	N	I	06–01–94	INDEF.
ST94–6105	ACADIAN GAS PIPELINE SYSTEM.	NATURAL GAS P/L CO. OF AMER., ET AL.	07–21–94	C	30,000	N	F/I	07–01–94	INDEF.
ST94–6106	TENNESSEE GAS PIPELINE CO.	GREENBACK INDUSTRIES, INC.	07–21–94	G–S	394	N	F	07–01–94	INDEF.
ST94–6107	PANHANDLE EASTERN PIPELINE CO.	ARCADIAN PARTNERS, L.P.	07–22–94	G–S	4,500	N	F	06–01–94	03–31–95
ST94–6108	COLUMBIA GAS TRANSMISSION CORP.	OSRAM SYLVANIA, INC.	07–22–94	G–S	400	N	F	07–01–94	INDEF.
ST94–6109	SOUTH GEORGIA NATURAL GAS CO.	CATEX ENERGY, INC.	07–22–94	G–S	50,000	Y	I	07–01–94	INDEF.
ST94–6110	FLORIDA GAS TRANSMISSION CO.	CORNERSTONE GAS RESOURCES.	07–22–94	G–S	20,000	N	I	07–01–94	INDEF.
ST94–6111	EL PASO NATURAL GAS CO.	FINA NATURAL GAS CO.	07–22–94	G–S	77,250	N	I	07–01–94	INDEF.
ST94–6112	PHILLIPS GAS PIPELINE CO.	SEAGAS PIPELINE CO.	07–22–94	B	75,000	Y	I	01–01–93	INDEF.
ST94–6113	PHILLIPS GAS PIPELINE CO.	SEAGAS PIPELINE CO.	07–22–94	B	25,000	Y	I	01–01–93	INDEF.

Docket number[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94–6114	PHILLIPS GAS PIPELINE CO.	SEAGAS PIPELINE CO.	07–22–94	B	75,000	Y	I	01–01–93	INDEF.
ST94–6115	TEXAS GAS TRANSMISSION CORP.	HEATH PETRA RESOURCES, INC.	07–22–94	G–S	10,000	N	I	04–01–94	INDEF.
ST94–6116	SOUTH GEORGIA NATURAL GAS CO.	CITY OF CORDELE.	07–22–94	G–S	250	Y	F	07–08–94	09–01–03
ST94–6117	TENNESSEE GAS PIPELINE CO.	HAWKINS COUNTY UTILITY DISTRICT.	07–22–94	G–S	2,407	N	F	07–01–94	INDEF.
ST94–6118	VIKING GAS TRANSMISSION CO.	NGC TRANSPORTATION.	07–22–94	G–S	20,000	N	F	06–14–94	10–31–94
ST94–6119	VIKING GAS TRANSMISSION CO.	NGC TRANSPORTATION.	07–22–94	G–S	5,076	N	F	07–01–94	10–31–94
ST94–6120	CHANNEL INDUSTRIES GAS CO.	BROOKLYN INTERSTATE NAT. GAS CORP.	07–22–94	G–I	50,000	N	I	07–01–94	INDEF.
ST94–6121	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	07–22–94	C	100,000	Y	I	06–24–94	INDEF.
ST94–6122	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	07–22–94	C	70,000	Y	I	06–22–94	INDEF.
ST94–6123	EL PASO NATURAL GAS CO.	UNIMARK L.L.C	07–22–94	G–S	21	N	I	07–01–94	INDEF.
ST94–6124	LOUISIANA RESOURCES. P/L CO	ANR PIPELINE CO., ET AL.	07–25–94	C	50,000	N	I	06–01–94	INDEF.
ST94–6125	LOUISIANA RESOURCES. P/L CO	COLUMBIA GULF TRANSMISSION CO.	07–25–94	C	50,000	N	I	05–01–94	INDEF.
ST94–6126	LOUISIANA RESOURCES. P/L CO	TRANSCONTINENTAL GAS PIPE LINE CORP.	07–25–94	C	150,000	N	I	05–09–94	09–30–94
ST94–6127	LOUISIANA RESOURCES. P/L CO	ANR PIPELINE CO., ET AL.	07–25–94	C	5,000	N	I	06–01–94	INDEF.
ST94–6128	LOUISIANA RESOURCES. P/L CO	ANR PIPELINE CO., ET AL.	07–25–94	C	50,000	N	I	04–01–94	INDEF.
ST94–6129	LOUISIANA RESOURCES. P/L CO.	ANR PIPELINE CO., ET AL.	07–25–94	C	50,000	N	I	04–01–94	INDEF.
ST94–6130	KERN RIVER GAS TRANSMISSION CO.	NEVADA POWER CO.	07–25–94	G–S	15,000	N	F	07–03–94	07–31–94
ST94–6131	WESTAR TRANSMISSION CO.	RED RIVER GAS PIPELINE CORP.	07–25–94	C	11,000	N	I	04–01–94	INDEF.
ST94–6132	TRANSOK, INC	ANR PIPELINE CO., ET AL.	07–25–94	C	50,000	N	I	06–01–94	INDEF.
ST94–6133	SOUTHERN NATURAL GAS CO.	RIVERWOOD INTERNATIONAL CORP.	07–25–94	G–S	200	N	F	07–01–94	07–01–97
ST94–6134	SOUTHERN NATURAL GAS CO.	CATEX ENERGY, INC.	07–25–94	G–S	20,000	N	I	07–01–94	INDEF.
ST94–6135	SOUTHERN NATURAL GAS CO.	CITY OF CARTERSVILLE.	07–25–94	G–S	2,000	N	F	07–01–94	07–01–95
ST94–6136	SOUTHERN NATURAL GAS CO.	FORD MOTOR CO	07–25–94	G–S	560	N	F	07–04–94	07–31–94
ST94–6137	CHANNEL INDUSTRIES GAS CO.	TEXACO GAS MARKETING, INC.	07–26–94	G–I	25,000	N	I	07–01–94	INDEF.
ST94–6138	TRANSOK, INC	ANR PIPELINE CO., ET AL.	07–26–94	C	50,000	N	I	03–01–94	INDEF.

Docket number[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94–6139	CNG TRANSMISSION CORP.	COLUMBIA ENERGY SERVICES.	07–27–94	G–S	672	N	I	07–01–94	08–31–94
ST94–6140	TRUNKLINE GAS CO.	CMS GAS MARKETING CO.	07–27–94	G–S	103,500	N	I	07–17–94	INDEF.
ST94–6141	NATURAL GAS P/L CO. OF AMERICA.	POCO PETROLEUMS LTD.	07–28–94	G–S	10,000	N	F	07–01–94	10–31–01
ST94–6142	NATURAL GAS P/L CO. OF AMERICA.	NGC TRANSPORTATION, INC.	07–28–94	G–S	30,000	N	F	07–01–94	10–31–01
ST94–6143	NATURAL GAS P/L CO. OF AMERICA.	ARCADIAN CORPORATION.	07–28–94	G–S	13,000	N	F	07–01–94	07–31–94
ST94–6144	LONE STAR GAS CO.	EL PASO NATURAL GAS CO., ET AL.	07–28–94	C	40,000	N	I	07–01–94	INDEF.
ST94–6145	ALGONQUIN GAS TRANSMISSION CO.	O&R ENERGY, INC.	07–28–94	B	300,000	N	I	07–01–94	INDEF.
ST94–6146	CNG TRANSMISSION CORP.	TRANSPORT GAS CORP.	07–27–94	G–S	10	N	I	07–13–94	08–31–94
ST94–6147	CNG TRANSMISSION CORP.	SABINE HUB SERVICES CO.	07–27–94	G–S	7,331	N	I	07–05–94	08–31–94
ST94–6148	TENNESSEE GAS PIPELINE CO.	CITIZENS GAS UTILITY DISTRICT.	07–28–94	G–S	325	N	F	07–01–94	INDEF.
ST94–6149	TENNESSEE GAS PIPELINE CO.	LEWISBURG GAS DEPARTMENT, TENNESSEE.	07–28–94	G–S	2,039	N	F	07–01–94	INDEF.
ST94–6150	TENNESSEE GAS PIPELINE CO.	MONSANTO CO ...	07–28–94	G–S	152	N	F	07–01–94	INDEF.
ST94–6151	EAST TENNESSEE NATURAL GAS CO.	CITY OF COOKEVILLE.	07–28–94	G–S	670	N	F	07–01–94	INDEF.
ST94–6152	EAST TENNESSEE NATURAL GAS CO.	CITIZENS GAS UTILITY DISTRICT.	07–28–94	G–S	665	N	F	01–01–94	INDEF.
ST94–6153	EAST TENNESSEE NATURAL GAS CO.	UNICOI COUNTY UTILITY DISTRICT.	07–28–94	G–S	4,120	N	F	01–01–94	INDEF.
ST94–6154	MIDWESTERN GAS TRANSMISSION CO.	TENNECO GAS MARKETING CO.	07–28–94	G–S	3,400	A	F	07–02–94	INDEF.
ST94–6155	MIDWESTERN GAS TRANSMISSION CO.	TENNECO GAS MARKETING CO.	07–28–94	G–S	20,000	A	F	07–07–94	INDEF.
ST94–6156	MIDWESTERN GAS TRANSMISSION CO.	H & N GAS, LTD ..	07–28–94	G–S	5,000	N	F	07–09–94	INDEF.
ST94–6157	MIDWESTERN GAS TRANSMISSION CO.	TENNECO GAS MARKETING CO.	07–28–94	G–S	10,000	A	F	07–01–94	INDEF.
ST94–6158	MIDWESTERN GAS TRANSMISSION CO.	H & N GAS, LTD ..	07–28–94	G–S	8,922	N	F	07–01–94	INDEF.
ST94–6159	COLUMBIA GAS TRANSMISSION CORP.	EASTERN MARKETING CORP.	07–28–94	G–ST	N/A	N	I	07–25–94	INDEF.
ST94–6160	VALERO TRANSMISSION, L.P.	EL PASO NATURAL GAS CO.	07–29–94	C	25,000	N	I	07–01–94	INDEF.
ST94–6161	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	07–29–94	C	100,000	Y	I	07–01–94	INDEF.
ST94–6162	DELHI GAS PIPELINE CORP.	NORAM GAS TRANSMISSION CO., ET AL.	07–29–94	C	1,500	N	I	07–01–94	INDEF.
ST94–6163	MIDCON TEXAS PIPELINE CORP.	TRANSCONTINENTAL GAS PIPELINE CORP.	07–29–94	C	9,000	N	I	07–01–94	INDEF.

Docket number [1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	AFF Y/A/ N [3]	Rate sch.	Date commenced	Projected termination date
ST94–6164	MISSISSIPPI RIVER TRANS. CORP.	TIDE WEST TRADING AND TRANSPORT CO.	07–29–94	G–S	100,000	Y	I	07–01–94	INDEF.
ST94–6165	MISSISSIPPI RIVER TRANS. CORP.	KOCH GAS SERVICES CO.	07–29–94	G–S	100,000	Y	I	07–01–94	INDEF.
ST94–6166	MISSISSIPPI RIVER TRANS. CORP.	SEAGULL MARKETING SERVICES INC.	07–29–94	G–S	100,000	Y	I	07–01–94	INDEF.
ST94–6167	MISSISSIPPI RIVER TRANS. CORP.	MOUNTAIN FRONT PIPELINE CO., INC.	07–29–94	G–S	100,000	Y	I	07–01–94	INDEF.
ST94–6168	COLUMBIA GULF TRANSMISSION CO.	VICTORIA INTERNATIONAL LIMITED.	07–29–94	G–S	5,000	N	I	07–01–94	INDEF.
ST94–6169	COLUMBIA GULF TRANSMISSION CO.	TENNECO GAS PROCESSING CO.	07–29–94	G–S	30,000	N	I	07–01–94	INDEF.
ST94–6170	COLUMBIA GULF TRANSMISSION CO.	GASLANTIC CORP.	07–29–94	G–S	100,000	N	I	07–01–94	INDEF.
ST94–6171	COLUMBIA GULF TRANSMISSION CO.	CONSOLIDATED ALUMINUM CO.	07–29–94	G–S	15,000	N	I	07–01–94	INDEF.
ST94–6172	GREAT LAKES GAS TRANSMISSION L.P.	WESTERN GAS MARKETING INC.	07–29–94	G–S	50,000	Y	F	07–01–94	07–31–94
ST94–6173	TENNESSEE GAS PIPELINE CO.	FAYETTEVILLE GAS SYSTEM.	07–29–94	G–S	2,819	N	F	07–01–94	INDEF.
ST94–6174	TENNESSEE GAS PIPELINE CO.	CITY OF PULASKI	07–29–94	G–S	270	N	F	07–01–94	INDEF.
ST94–6175	MIDWESTERN GAS TRANSMISSION CO.	H & N GAS, LTD ..	07–29–94	G–S	7,876	N	F	07–15–94	INDEF.
ST94–6176	TEXAS EASTERN TRANSMISSION CORP.	INTERENERGY GAS SERVICES CORP.	07–29–94	G–S	25,000	N	I	07–01–94	INDEF.
ST94–6177	TEXAS EASTERN TRANSMISSION CORP.	GULF GAS UTILITIES CO.	07–29–94	G–S	1,000	N	I	07–01–94	INDEF.
ST94–6178	TRANSWESTERN PIPELINE CO.	U.S. GAS TRANSPORTATION, INC.	07–29–94	G–S	10,000	N	F	06–28–94	06–30–94
ST94–6179	TRANSWESTERN PIPELINE CO.	BRIDGE GAS U.S.A..	07–29–94	G–S	10,000	N	F	06–29–94	06–30–94
ST94–6180	TRANSWESTERN PIPELINE CO.	U.S. GAS TRANSPORTATION, INC.	07–29–94	G–S	20,000	N	F	06–28–94	06–30–94
ST94–6181	TRANSWESTERN PIPELINE CO.	BRIDGE GAS U.S.A..	07–29–94	G–S	20,000	N	F	06–28–94	06–30–94
ST94–6182	TRANSWESTERN PIPELINE CO.	BRIDGE GAS U.S.A..	07–29–94	G–S	13,121	N	F	06–25–94	06–27–94
ST94–6183	TRANSWESTERN PIPELINE CO.	U.S. GAS TRANSPORTATION, INC.	07–29–94	G–S	20,000	N	F	06–25–94	06–27–94
ST94–6184	TRANSWESTERN PIPELINE CO.	BRIDGE GAS U.S.A.	07–29–94	G–S	10,000	N	F	06–22–94	06–24–94
ST94–6185	TRANSWESTERN PIPELINE CO.	U.S. GAS TRANSPORTATION, INC.	07–29–94	G–S	20,000	N	F	06–22–94	06–22–94
ST94–6186	WILLISTON BASIN INTER. P/L CO.	MONTANA-DAKOTA UTILITIES CO.	07–29–94	B	228,512	A	F	07–01–94	06–30–97
ST94–6187	WILLISTON BASIN INTER. P/L CO.	MONTANA-DAKOTA UTILITIES CO.	07–29–94	B	50,985	A	F	07–01–94	06–30–97
ST94–6188	NATURAL GAS P/L CO. OF AMERICA.	NGC TRANSPORTATION, INC.	07–29–94	G–S	7,500	N	F	06–01–94	06–30–94

Docket number[1]	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94–6189	NATURAL GAS P/L CO. OF AMERICA.	WESTCOAST GAS SERVICES, INC.	07–29–94	G–S	10,000	N	F	07–01–94	INDEF
ST94–6190	NATURAL GAS P/L CO. OF AMERICA.	MOBIL NATURAL GAS INC.	07–29–94	G–S	12,000	N	F	07–19–94	07–31–94
ST94–6191	NATURAL GAS P/L CO. OF AMERICA.	AQUILA ENERGY MARKETING CORP.	07–29–94	G–S	15,000	N	F	07–01–94	07–31–94

[1] NOTICE OF TRANSACTIONS DOES NOT CONSTITUTE A DETERMINATION THAT FILINGS COMPLY WITH COMMISSION REGULATIONS IN ACCORDANCE WITH ORDER NO. 436 (FINAL RULE AND NOTICE REQUESTING SUPPLEMENTAL COMMENTS, 50 FR 42,372, 10/10/85).
[2] ESTIMATED MAXIMUM DAILY VOLUMES INCLUDES VOLUMES REPORTED BY THE FILING COMPANY IN MMBTU, MCF AND DT.
[3] AFFILIATION OF REPORTING COMPANY TO ENTITIES INVOLVED IN THE TRANSACTION. A "Y" INDICATES AFFILIATION, AN "A" INDICATES MARKETING AFFILIATION, AND A "N" INDICATES NO AFFILIATION.

[FR Doc. 94–22061 Filed 9–6–94; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. RM93–11–000]

Producer Price Index for Finished Goods; Annual Change

Issued September 1, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Annual Change in the Producer Price Index for Finished Goods, Minus One Percent.

SUMMARY: The Commission is issuing the index that oil pipelines must apply to their December 31, 1994 rates to compute their rate ceiling level for the period January 1, 1995, through June 30, 1995, in accordance with the provisions of 18 CFR 342.3(d)(4). This index, which is the percent change in the annual average Producer Price Index for Finished Goods from 1992 to 2993, minus one percent, is 0.2175 percent.

FOR FURTHER INFORMATION CONTACT: Lucille M. Langlois, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2141.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits an 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this proposed rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

In Order No. 561 the Federal Energy Regulatory Commission issued a Final Rule adopting regulations to implement the requirements of the Energy Policy Act of 1992.[1] The Final Rule provided a methodology for oil pipelines to change their rates through use of an index system to establish ceiling levels for such rates. The index system as set forth in the Commission's regulations at 18 CFR 342.3, is based on the annual change in the Producer Price Index for Finished Goods (PPI–FG), minus one percent. The regulations provide that each year the Commission will publish an index reflecting the final change in the PPI–FG, minus one percent, after the final PPI–FG is made available in May of each calender year. For the first adjustment under the indexing methodology, commencing January 1, 1995, the Commission in May 1994 was to have published the index that pipelines would apply to their rates on December 31, 1994.

The Commission did not publish this index in May. At that time requests for rehearing of Order No. 561 were pending. Now that the Commission has issued Order No. 561–A affirming the indexing methodology for oil pipeline ratemaking,[2] the Commission by this Notice is publishing that index.

Information published by the Bureau of Labor Statistics shows that the annual average PPI–FG figure for 1992 was 123.2 and that the annual average PPI–FG figure for 1993 was 124.7 for 1993.[3] Thus, the percent change in the annual average PPI–FG for these two years, minus one percent, is 0.2175 percent. This figure is the index that oil pipelines must apply to their December 31, 1994 rates to compute their rate ceiling level for the period January 1, 1995, through June 30, 1995, in accordance with the provisions of 18 CFR 342.3(d)(4).

Lois D. Cashell,

Secretary.

[FR Doc. 94–22098 Filed 9–7–94; 8:45 am]
BILLING CODE 6717–01–M

[1] III FERC Stats. & Regs. ¶ 30.985 (1993); 58 FR 58753 (November 4, 1993).

[2] III FERC Stats. & Regs. ¶ 31.000 (1994).

[3] The final figure for the annual average PPI–FG is published by the Bureau of Labor Statistics in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the Bureau of Labor Statistics, at (202) 606–7705, and is available in print in August in Table 1 of the annual data supplement to the BLS publication *Producer Price Indexes*.

[Docket No. RP94–335–001]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1994.

Take notice that on August 29, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with the proposed effective date of September 1, 1994:

Substitute First Revised Sheet No. 98
Substitute Original Sheet No. 99

Columbia states that the instant filing is being submitted in compliance with Columbia's July 29, 1994, filing in Docket No. RP94–335, wherein Columbia stated it would submit a reconciliation filing by August 30, 1994, reflecting actual Account No. 191 balances as reflected on its books through July 31, 1994.

Columbia states that copies of the filing were served upon Columbia's 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, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 9, 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22064 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–746–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 1, 1994.

Take notice that on August 29, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP94–746–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new point of delivery in Westmoreland County, Pennsylvania, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a new point of delivery requested by Latrobe Steel Company (Latrobe). The delivery point will consist of a 4-inch tap, 2 filter separators, 16 x 12 foot building and electronic measurement. According to Columbia the proposed transportation for Latrobe can be accomplished without any impact upon existing firm transportation to other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22063 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–32–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

September 1, 1994.

Take notice that on July 18, 1994, Colorado Interstate Gas Company (CIG), pursuant to the Commission's order issued July 1, 1994, filed workpapers and all relevant information to support its proposed increase in the Fuel Reimbursement Percentage for Lost Unaccounted-For and Other Fuel Gas from 0.49% to 0.78%, in the above-captioned docket. CIG's July 18 filing did not include any commercially-sensitive materials.

On August 4, 1994, CIG filed the balance of the data required by the Commission's July 1, 1994 order, including commercially-sensitive materials. CIG requests confidential treatment pursuant to § 388.112 of the Commission's regulations with respect to all parts of all documents filed on August 4.

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 Procedure. All such protests should be filed on or before September 9, 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22062 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1994.

Take notice that on August 30, 1994, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such tariff sheets bear a proposed effective date of October 1, 1994.

Eastern Shore states that the purpose of the instant filing is to reflect a decrease of $0.0002 per dt in the Annual Charge Adjustment (ACA) in the commodity portion of its sales and transportation rates. Pursuant to Order No. 472, the Commission assessed Eastern Shore its annual ACA charge based on $0.0024 per Mcf for the annual period commencing October 1, 1994. In accordance with Section 25 of the General Terms and Conditions of Eastern Shore's FERC Gas Tariff, Eastern Shore's proposed tariff sheets track the Commission approved ACA unit rate of $0.0024 per Mcf ($0.0023 per dt on Eastern Shore's system) commencing October 1, 1994.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or 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 Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 9, 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. 94–22065 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–739–000]

Florida Gas Transmission Co.; Notice of Request Under Blanket Authorization

September 1, 1994.

Take notice that on August 26, 1994, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–739–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate facilities to implement a new delivery point, under its blanket certificate issued in Docket No. CP82–553–000,[1] to accommodate natural gas deliveries to Enerfin Resources Company (Enerfin), all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Enerfin has requested that FGT change an existing inactive point of receipt into a point of delivery to effectuate FGT's transportation of natural gas for Enerfin. The subject point is located on FGT's 30-inch mainline in Mobile County, Alabama, upstream from FGT's compressor station no. 11. Enerfin owns the existing meter station (called the Anthem-Citronelle Receipt Point), and all construction work will be performed by Enerfin above ground within the existing station yard.

FGT will transport the gas under its blanket certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP89–555–000.[2] FGT states it has entered into an interruptible transportation service agreement with Enerfin for delivery of up to 5,475,000 MMBtu per year and 15,000 MMBtu per day. FGT states that the gas quantity proposed to be delivered by FGT will have no incremental effect on FGT's pipeline system, and will not impact FGT's peak day delivery requirements nor FGT's annual gas deliveries.

FGT states that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. FGT states that construction of the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to deliver the requested gas volumes without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22066 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[1] *See*, 21 FERC ¶ 62,235 (1982).

[2] *See*, 51 FERC ¶ 61,309 (1990).

Office of Technical and Financial Assistance; Energy Efficiency and Renewable Energy; Award Based on Acceptance of a non-Competitive Application; American Forestry Association; Cool Communities Action Program

AGENCY: Department of Energy (DOE).

ACTION: DOE, Office of Technical and Financial Assistance, Energy Efficiency and Renewable Energy, through the Region 3 Support Office—Philadelphia, announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(ii), DOE intends to award a grant to the American Forestry Association. The overall objective of this project is to apply current knowledge of the urban environment and citizen action to reduce energy use in existing communities.

SUPPLEMENTARY INFORMATION: The grant of $190,000 will fund the American Forestry Association in order to continue growth and development of Model Communities and to develop a strategic plan for 1995 Cool Communities Action Program.

The project term of this grant shall be nine (9) months from the effective date of the award.

DOE support of this activity would enhance the public benefit to be derived and DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for non-competitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: Nancy A. Costa, Region 3 Support Office—Philadelphia, U.S. Department of Energy, Suite 501, 1880 J.F. Kennedy Boulevard, Philadelphia, PA 19103–7483, (215) 656–6961.

Issued at Golden, Colorado on August 17, 1994.

John W. Meeker,

Contracting Officer, Golden Field Office.

[FR Doc. 94–22154 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP94–376–000]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

September 1, 1994.

Take notice that on August 30, 1994, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume Nos. 1–A and 1–B, the following revised tariff sheets:

Fourth Revised Sheet No. 4–A
Fourth Revised Sheet No. 4–B
Fourth Revised Sheet No. 4–C
Fifth Revised Sheet No. 5–D

KNI states that it is making this filing to reflect the recalculation of its rates based on the approximately ten percent reduction in mainline transmission contract demand levels and fifteen percent reduction in storage contract demand levels resulting from its shippers' exercising their right of first refusal rights. KNI requests an effective date of October 1, 1994, and requests that the rates only be suspended for a one-day period.

KNI states that the redesigned rates utilize the same cost of service recently placed into effect pursuant to the Commission's Order in Docket No. RP94–93–000. KNI, therefore, requests a waiver of the base and test period requirements of § 154.63 of the Commission's Regulations. KNI also asks that the Commission consolidate this proceeding with Docket No. RP94–93–000.

KNI states that copies of this filing were served upon KNI's customers and interested public bodies.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 9, 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 application are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22067 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–47–010]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

September 1, 1994.

Take notice that on August 29, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet Nos. 213, 214, 215, 216; First Revised Sheet Nos. 216A and 217; Original Sheet No. 216B; and Fourth Revised Sheet No. 222, to be effective on July 29, 1994.

National states that these tariff sheets are filed in compliance with the Commission's July 28, 1994, order in the above-captioned docket, requiring that National offer its customers the option of a 36-month amortization period for additional take-or-pay charges incurred as a result of the Commission's orders in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 9, 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. 94–22068 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–80–005]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

September 1, 1994.

Take notice that on August 30, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, tariff sheets set forth in Attachment A to National's filing in its Ellisburg-Leidy Hub proceeding.

National states that its filing is submitted to, among other things, correct typographical and pagination errors made in the July 25, 1994, compliance filing in the above captioned docket.

First, National states that it has removed any references to Rate Schedule GSS in the curtailment provisions of the General Terms and Conditions of its tariff and replaced them with reference to its SS–1 and SS–2 Rate Schedules which replaced GSS service under the merger of National and Penn-York Energy Corporation.

Second, National states that it is correcting a pagination error made on the P–2 and IR–2 Form of Service Agreements included in the July 25 filing. National also states that it is revising the introductory language in the Form of Service Agreements for Rate Schedules IR–2 and IR–1 to be consistent with the language of those rates.

Third, National states that it has added Rate Schedule EFT to the list of National's transportation services which may be utilized by a Shipper in the parking or advance of gas under Section 2.3 of both the P–2 and IR–2 Rate Schedules.

Fourth, National states that it has revised language in Section 4.1 of the IR–1 and IR–2 Rate Schedules to clarify that there are separate First Day and Subsequent Day charges for the advance of gas under those schedules.

Further, National states that it is filing Substitute Second Revised Sheet No. 133A to correct typographical errors and to update meter numbers included in the General Terms and Conditions of its tariff concerning Hub Point locations.

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 Procedure (18 CFR 385.211). All such protest should be filed on or before September 9, 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. 94–22069 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–372–000]

Southern Union Gas Company v. Northern Natural Gas Company Notice of Compliant

September 1, 1994.

Take notice that on August 26, 1994, Southern Union Gas Company (Southern Union) filed a complaint and motion for expedited relief against Northern Natural Gas Company (Northern).

Southern Union states that on or about July 1993, Northern reduced the delivery pressure into Southern Union's Brewer System. As a result of Northern's decision to reduce delivery pressure, Southern Union states that it has been unable to deliver natural gas to its customers on the Brewer System at a sufficient pressure to meet their agricultural needs, which are primarily irrigation of farm lands.

Southern Union states that Northern's failure to comply with the terms and conditions of its tariff is unreasonable and discriminatory, and is impairing Southern Union's ability to deliver gas to its customers. Southern Union states that Northern's actions are causing Southern Union to lose customers and revenue.

Southern Union requests the Commission to order Northern to deliver gas to Southern Union at the 50 pounds per square inch (psi) pressure standard stated in Northern's Gas Tariff, Fifth Revised Volume No. 1, effective November 1, 1993.

Any person desiring to be heard or to protest said complaint 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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before September 19, 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. Answers to this complaint shall be due on or before September 19, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22070 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–375–000 and RP94–125–006]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1994.

Take notice that on August 30, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of September 30, 1994:

Original Sheet No. 226D
Original Sheet No. 226E
Original Sheet No. 226F
Original Sheet No. 226G
Original Sheet No. 226H
Original Sheet No. 226I

Texas Gas states that the tariff sheets are being filed as a limited Section 4(e) filing to implement Texas Gas's second direct billing of Account No. 191 balance pursuant to Section 33.2 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. Texas Gas also states that the filing reflects activity affecting Texas Gas's pre-November 1, 1993, Account No. 191 balance, which were actually paid between November 1, 1993, and July 31, 1994, the nine-month clear-up period, resulting in a balance of approximately $9.3 million to be direct billed. The instant filing also satisfies the reporting requirement contained in Section 33.2(b) and complies with the March 1, 1994, Order issued in Docket No. RP94–125, Texas Gas's first direct billing of Account No. 191, purchased gas costs.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected former jurisdictional sales customers, interested state commissions, and the parties appearing on the official service list in Docket No. RP94–125, et al.

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, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22071 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–296–001]

Williams Natural Gas Company; Notice of Compliance Filing

September 1, 1994.

Take notice on August 4, 1994, Williams Natural Gas Company (WNG) pursuant to Ordering Paragraph (C) of the Commission's order dated July 20, 1994, submits for filing its original filing made on June 20, 1994, and Schedule A1 which has not been included in WNG's original filing made on June 20, 1994.

WNG states that a copy of Schedule A1 was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with 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 September 9, 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 proceedings. 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. 94–22072 Filed 9–7–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and Time: November 7, 1994—9:00 a.m.–5:00 p.m.; November 8, 1994—9:00 a.m.–5:00 p.m.

Place: Director's Conference Room, Room 5132, Building 50A, Lawrence Berkeley Laboratory, One Cyclotron Road, Berkeley, California 94720.

Contact: Murray Schulman, Office of Health and Environmental Research (ER–70), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, Telephone: 301–903–3338.

Purpose of the Committee: To provide advice on a continuing basis to the Director of Energy Research of the Department of Energy (DOE), on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative Agenda: Briefings and discussions of:

November 7, 1994

- New Business
- DOE Science and Technology Policy Outlook
- HER Program Overview: Scope, Issues, Budget
- Program Presentations
  - Health Effects and Life Sciences Research
  - Medical Applications
  - Environmental Sciences
- Public Comment (10 minute rule)

November 8, 1994

- Proposed New Charges for HERAC
- Review of Subcommittee Reports
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Murray Schulman at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 2, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–22143 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180949A; FRL–4910–9]

Receipt of Application for Emergency Exemption to use Sodium Fluoroacetate; Solicitation of Public Comment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On its own initiative, EPA is extending for 15 days the comment period on a notice of a public health exemption request from the Texas Department of Agriculture (Applicant) to use the pesticide sodium fluoroacetate (CAS 62-74-8) to treat up to 34,837,687 acres in gray fox rabies epizootic areas in Texas to control vectors of rabies. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before September 23, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180949A" should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA, (703)-308-8326.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 24, 1994 (59 FR 43580), EPA issued a notice stating that pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may exempt a State agency from any registration provision of FIFRA if it can be determined that emergency conditions exist which require such exemption and that the Applicant had requested the Administrator to issue a public health exemption for the use of sodium fluoroacetate (Compound 1080) to reduce gray fox, red fox, coyote, bobcat, striped skunk, ringtail, and raccoon populations in 43 counties in central Texas. Information in accordance with 40 CFR part 166 was submitted as part of the request.

This notice announces that EPA, on its own initiative, is extending the time for public comment on the notice (59 FR 43580; August 24, 1994), from September 8, 1994, to September 23, 1994. Procedures for filing comments on this notice are described under the **ADDRESSES** heading above in this document.

List of Subjects

Environmental protection, Crises exemptions, Pesticides and pests.

Dated: September 2, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–22341 Filed 9–6–94; 2:19 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/state	File No.	MM docket No.
A. Board of Regents, State of Florida, acting for on behalf of the University of Florida	Crystal River, Florida	BPED–930114MA	94–92
B. Marion Community Radio, Inc.	Crystal River, Florida	BPED–930413MA	

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. Comparative Noncommercial Educational.	A, B
2. Ultimate	A, B

3. If there are any non-standardized issues in this processing, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Linda Blair,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 94–22083 Filed 9–7–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

American Bancorporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f)

of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later thanSeptember 30, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. American Bancorporation, Wheeling, West Virginia; to acquire loan servicing rights of Buckeye Savings Bank, Bellaire, Ohio, through its wholly-owned subsidiary, American Mortgages, Inc., and engage in making, acquiring, and servicing loans under § 225.25(b)(1) of the Board's Regulation Y.

2. National City Corporation, Cleveland, Ohio; to acquire Central Indiana Bancorp, Kokoma, Indiana, and thereby indirectly acquire First Federal Savings Bank of Kokomo, Kokomo, Indiana, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. St. Francis Capital Corporation, Milwaukee, Wisconsin; to acquire St. Francis Insurance Corporation, Milwaukee, Wisconsin, a wholly-owned subsidiary of St. Francis Bank, F.S.B., Milwaukee, Wisconsin, and thereby engage in acting as an agent and broker for insurance that is directly related to an extension of credit, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 1, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-22095 Filed 9-7-94; 8:45 am]

BILLING CODE 6210-01-F

Franklin Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 30, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Franklin Bancorporation, Inc., Washington, D.C.; to merge with The George Washington Banking Corporation, Alexandria, Virginia, and thereby indirectly acquire George Washington National Bank, Alexandria, Virginia.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Abrams Centre Bancshares, Inc., Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Abrams Centre National Bank, Dallas, Texas.

2. Olney Bancorp of Delaware, Inc., Wilmington, Delaware; Olney Bancshares, Inc., Olney, Texas; Olney Bancshares of Texas, Inc., Olney, Texas; and Thirdtier, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Citizens National Bank of Breckenridge, Breckenridge, Texas.

Board of Governors of the Federal Reserve System, September 1, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-22096 Filed 9-7-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 931 0090]

First Data Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, First Data Corporation to acquire Western Union Financial Services, Inc. as long as it divests either its own consumer money wire transfer business or that of Western Union. The divestiture would require Commission approval, would have to be completed in a specified time period, and would require the respondent to provide personnel, assistance and training to the new acquirer. In addition, the consent agreement would require the respondent, for ten years, to obtain Commission approval before acquiring any interest in any entity engaged in the consumer money wire transfer business.

DATES: Comments must be received on or before November 7, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Casey Triggs or James Egan, Jr., FTC/S–

2224, Washington, DC 20580. (202) 326–2682 or 326–2886.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of all of the voting stock of Western Union Financial Services, Inc. ("Western Union"), by First Data Corporation ("First Data"), and it now appearing that First Data, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an Order to divest certain assets, and to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed respondent First Data Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 401 Hackensack Avenue, Hackensack, New Jersey 07601.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

It is ordered that, as used in this Order (including Appendix I), the following definitions shall apply:

A. "Respondent" Or "First Data" means First Data Corporation, its subsidiaries, divisions, groups and affiliates controlled by First Data Corporation, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

B. "Western Union" means Western Union Financial Services, Inc., a wholly-owned subsidiary of New Valley Corporation, with its principal office and place of business located at One Mack Center Drive, Paramus, New Jersey 07652. Western Union provides and markets, among other things, consumer money wire transfer services.

C. "Commission" means the Federal Trade Commission.

D. "Acquisition" means the direct or indirect acquisition of all of the voting stock or substantially all of the assets of Western Union Financial Services, Inc., a wholly-owned subsidiary of New Valley Corporation, by Respondent First Data.

E. "Consumer Money Wire Transfer Service" means the business of transferring the right to money using computer or telephone lines from one person through the location of a Selling Agent to a different person physically present at the location of a Selling Agent available to the general public through Selling Agents at retail outlets as currently offered by First Data and Western Union. "Consumer Money Wire Transfer Service" does not include transactions involving automatic teller machines and other point of sale devices, debit cards, cash advances utilizing credit cards, home banking, prepaid telephone and cash cards, money orders, and utility bill payment services and further does not include the provision of data processing services to a Consumer Money Wire Transfer Service business.

F. "Selling Agent" means a person or business, such as a check cashing store, a drug store, a supermarket, a postal service, a bus station, or a travel agency, that contracts with Consumer Money Wire Transfer Service providers to provide the Consumer Money Wire Transfer Service to customers.

G. "MoneyGram Service" means First Data's Consumer Money Wire Transfer Service marketed under the name "MoneyGram."

H. "MoneyGram Assets" or "MoneyGram Business" include all assets, properties, business and goodwill, tangible and intangible, related to the sale and marketing of the MoneyGram Service, including, but not limited to:

1. The MoneyGram trade name, trade dress, trade marks, and service marks; and,

2. A group of contracts with Selling Agents to provide the MoneyGram Service that provides a network of Selling Agents at least comparable to the group of Selling Agents under contract to provide the MoneyGram Service on January 1, 1994 other than the American Express Travel Related Services Company Travel Service Offices, based on characteristics of the Selling Agents such as the countries and cities served, number of Selling Agents, and type of outlet.

I. "Western Union Service" means Western Union's Consumer Money Wire Transfer Service.

J. "Western Union Assets" or "Western Union Business" include all assets, properties, business and goodwill, tangible and intangible, related to the sale and marketing of the Western Union Service, including, but not limited to:

1. The Western Union trade name, trade dress, trade marks, and service marks; and,

2. All contracts with selling agents to provide the Western Union Service.

K. "Assets To Be Divested" means either the MoneyGram Assets or the Western Union Assets. The definition of "Assets To Be Divested" as well as any other provision in this order, however, shall not be construed to prohibit First Data from divesting both the MoneyGram Assets and the Western Union Assets to different acquirers.

L. "Marketability, Viability, and Competitiveness" of the Assets To Be Divested means that such assets when used in conjunction with the assets of the acquirer or acquirers are capable of providing a Consumer Money Wire Transfer Service substantially similar to the Consumer Money Wire Transfer Service that the Assets To Be Divested are capable of providing at the time of the Acquisition.

M. "Non-public information" means any information not in the public domain furnished to First Data in its capacity as a provider of data processing services by a Consumer Money Wire Transfer Service provider.

II.

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within the later of (i) fifteen (15) months after the date this Order becomes final or (ii) three (3) months after the date the Acquisition takes place pursuant to an order of the United States Bankruptcy Court for the District of New Jersey in "In re New Valley Corporation, Debtor," Case No. 91–27704 NW, the Assets To Be Divested and shall also divest such additional ancillary assets and businesses other than money order or utility bill payments businesses and effect such arrangements as are necessary to assure the Marketability, Viability, and Competitiveness of the Assets To Be Divested.

B. Respondent shall divest the Assets To Be Divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Assets To Be Divested is to ensure the continued use of the Assets To Be Divested in the same businesses in which the Assets To Be Divested are presently engaged, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Respondent shall make available to the acquirer or acquirers such First Data personnel, assistance and training as the acquirer or acquirers reasonably need to transfer technology and know-how, and First Data shall continue providing such personnel, assistance and training at no additional cost for a period of time sufficient to satisfy the acquirer's or acquirers' management that its personnel are appropriately trained in the business. However, Respondent shall not be required to continue providing such personnel, assistance and training for more than six (6) months after the Assets To Be Divested are divested pursuant to this Order.

D. Pending divestiture of the Assets To Be Divested, Respondent shall take such actions as are necessary to maintain the Marketability, Viability, and Competitiveness of the Assets To Be Divested, and to prevent the destruction, removal, wasting, deterioration or impairment of any of the Assets To Be Divested except for ordinary wear and tear. *Provided, however,* that nothing in this Paragraph shall be construed to prohibit First Data from competing in the ordinary course of business.

E. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this Order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as Respondent has divested all Assets To Be Divested as required by this Order.

III.

It is further ordered that:

A. If First Data has not divested, absolutely and in good faith, and with the Commission's prior approval, the Assets To Be Divested within the time period specified in Paragraph II.A. of this Order, the Commission may appoint a trustee to divest the Western Union Assets. In the event that the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, First Data shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III. A. of this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Western Union Assets.

3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III. B. 3. to accomplish the

divestiture of the Western Union Assets, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Western Union Assets or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II. of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Western Union Assets.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this Paragraph of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Western Union Assets.

12. The trustee shall report in writing to Respondent and the Commission every thirty (30) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered that if First Data divests the MoneyGram Assets pursuant to Paragraphs II. or III. of this Order, First Data shall not enter into any Consumer Money Wire Transfer Service contract with any Selling Agent who is under contract to provide the MoneyGram Service at the time of the divestiture; provided, however, that First Data may enter into such a Consumer Money Wire Transfer Service contract (i) after the time the Selling Agent's contract with First Data would have expired had the divestiture not occurred determined without regard to any contract extension or renewal that could occur after the date of the divestiture or (ii) if the contract is terminated in accordance with its terms other than as may be permitted as a result of the divestiture of the MoneyGram Assets.

V.

It is further ordered that nothing in this Order shall be construed as prohibiting First Data from entering into agreements with any Consumer Money Wire Transfer Service provider, including the acquirer or acquirers of the MoneyGram Business and the Western Union Business, for the provision of data processing services provided that:

A. No First Data officer, employee or agent who is involved in providing First Data's Consumer Money Wire Transfer Service receives non-public information of any other Consumer Money Wire Transfer Service provider;

B. First Data uses any non-public information obtained by First Data only in First Data's capacity as a provider of data processing services; and

C. First Data delivers a copy of this Order to each officer, employee or agent involved in marketing First Data's Consumer Money Wire Transfer Service or in providing data processing to any other Consumer Money Wire Transfer Service provider prior to First Data's obtaining any non-public information relating to the provider's business.

VI.

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, Respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, presently engaged in, or within six months preceding such acquisition engaged in, providing a Consumer Money Wire Transfer Service in the United States; provided, however, that no agreement with a Selling Agent, or actions connected with such an agreement, relating to the Selling Agent's providing a First Data Consumer Money Wire Transfer Service shall be construed as such an acquisition; or

B. Acquire any assets used at the time of such acquisition for or previously used for (and still suitable for use for) providing a Consumer Money Wire Transfer Service in the United States other than the acquisition of assets in connection with the provision of services described in Paragraph V. of this Order.

VII.

It is further ordered that: A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondent has fully

complied with the provisions of Paragraphs II. and III. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and III. of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs IV., V. and VI. of this Order.

VIII.

It is further ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

IX.

It is further ordered that, for the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege, and upon written request with reasonable notice to First Data made to its General Counsel, Respondent shall permit any duly authorized representative of the Commission:

A. Access during office hours of First Data and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Upon five days' notice to Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent, who may have counsel present regarding such matters.

X.

It is further ordered that Respondent shall not be obligated to comply with this Order if First Data abandons the proposed acquisition of Western Union after submitting a bona fide bid to the United States Bankruptcy Court for the District of New Jersey in connection with "In re New Valley Corporation, Debtor," Case No. 91–27704 NW and losing that bid. For purposes of this Order, First Data will be deemed to have abandoned the proposed acquisition of Western Union after it provides written notice to the Commission that it has abandoned its proposed acquisition and has withdrawn any related notifications filed pursuant to Section 7A of the Clayton Act, as amended, 15 U.S.C. 18a.

Appendix I

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and between First Data Corporation ("First Data"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 401 Hackensack Avenue, Hackensack New Jersey 07601; and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, et seq. (collectively, the "Parties").

Premises

Whereas, First Data has proposed to acquire, directly or indirectly, all of the voting stock or substantially all of the assets of Western Union Financial Services, Inc. ("Western Union"), a wholly-owned subsidiary of New Valley Corporation, (hereinafter "Acquisition"); and

Whereas, First Data, with its principal office and place of business located at 401 Hackensack Avenue, Hackensack, New Jersey 07601, provides and markets, among other things, Consumer Money Wire Transfer Services; and

Whereas, Western Union, a wholly-owned subsidiary of New Valley, with its principal office and place of business located at One Mack Center, Paramus, New Jersey 07652, provides and markets, among other things, Consumer Money Wire Transfer Services; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status quo ante of the MoneyGram Business during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Assets To Be Divested as described in Paragraph I. of the Consent Order and the Commission's right to have the MoneyGram Business continued as a viable competitor; and

Whereas, the purpose of the Agreement and the Consent Order is:

1. To preserve the viability of the MoneyGram business pending the divestiture of the Assets To Be Divested as a viable and ongoing enterprise,

2. To remedy any anticompetitive effects of the Acquisition, and

3. To preserve the MoneyGram Business as an ongoing and competitive Consumer Money Wire Transfer Service until divestiture is achieved; and

Whereas, First Data's entering into this Agreement shall in no way be construed as an admission by First Data that the Acquisition is illegal; and

Whereas, First Data understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Order, it will not seek further relief from First Data with respect to the Acquisition, except that the Commission may exercise any and all

rights to enforce this Agreement to Hold Separate and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Western Union Assets pursuant to the Consent Order, as follows:

1. First Data agrees to execute and be bound by the attached Consent Order.

2. First Data agrees that from October 3, 1994 until the earliest of the dates listed in subparagraphs 2.a–2.b., it will comply with the provisions of Paragraph 3. of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's rules;

b. The day after the divestiture required by the Consent Order has been completed.

3. To ensure the complete independence and viability of the MoneyGram Business and to assure that no competitive information is exchanged between the MoneyGram Business and First Data, First Data shall hold the MoneyGram Business separate and apart on the following terms and conditions:

a. First Data will appoint three individuals to manage and maintain the MoneyGram Business. These individuals ("the management team") shall manage the MoneyGram Business independently of the management of First Data's other businesses. The individuals on the management team shall not be involved in any way in the marketing, selling or management of any other First Data business, including the Western Union Business.

b. The management team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by First Data. The independent auditor/manager shall have expertise in management and marketing. The independent auditor/manager shall have exclusive control over the operations of the MoneyGram Business, with responsibility for the management of the MoneyGram Business and for maintaining the independence of that business.

c. First Data shall not exercise direction or control over, or influence directly or indirectly the independent auditor/manager or the management team or any of its operations relating to the operations of the MoneyGram Business; provided, however, that First Data may exercise only such direction and control over the independent auditor/manager, management team and MoneyGram Business as is necessary to assure compliance with this Agreement and with all applicable laws.

d. First Data shall maintain the Marketability, Viability, and Competitiveness of the MoneyGram Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their Marketability, Viability or Competitiveness.

e. Except for the management team, sales and marketing employees involved in the Moneygram Business, and support service employees involved in the MoneyGram Business, such as Human Resource, Legal, Tax, Accounting, Insurance, and Internal Audit employees, First Data shall not permit any other First Data employee, officer, or director to be involved in the management of the MoneyGram Business. Sales and marketing employees involved in the MoneyGram Business, shall not be involved in any other First Data business, including the Western Union Business. Support service employees involved in the MoneyGram Business shall not be involved in the Western Union Business.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to divest assets, First Data, other than sales and marketing employees involved in the MoneyGram Business, or support service employees involved in the MoneyGram Business, shall not receive or have access to, or the use of, any material confidential information about the MoneyGram Business, the activities of the management team, sales and marketing employees involved in the MoneyGram Business, or support service employees involved in the MoneyGram Business in managing that business not in the public domain, nor shall the management team, sales and marketing employees involved in the MoneyGram Business, or support service employees involved in the MoneyGram Business receive or have access to, or the use of, any material confidential information about the Western Union Business or the activities of First Data in managing the Western Union Business not in the public domain. Any such information that is obtained pursuant to this subparagraph shall be used only for the purpose set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to First Data from sources other than the management team, sales and marketing employees involved in the MoneyGram business, or support service employees involved in the MoneyGram Business and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

g. First Data shall not change the composition of the management team unless the independent auditor/manager consents. The independent auditor/manager shall have the power to remove members of the management team and to require First Data to appoint replacement members to the management team in the same manner as provided in Paragraph 3.a. of this Agreement to Hold Separate.

h. First Data shall circulate to all its employees and appropriately display a notice of this Hold Separate Agreement and Consent Order in the form attached hereto as Attachment A.

i. First Data shall make available for use in the MoneyGram Business each quarter until divestiture an amount of money for advertising and trade promotion of the MoneyGram Service not lower than $5 million per quarter. First Data shall pay all direct costs and indirect overheads for the MoneyGram Business. The MoneyGram Business shall not be charged with the compensation and expenses of the independent auditor/manager.

j. The independent auditor/manager shall serve at the cost and expense of First Data. First Data shall indemnify the independent auditor/manager against any losses or claims of any kind that might arise out of his or her involvement under this Agreement to Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the independent auditor/manager.

k. If the independent auditor/manager ceases to act or fails to act diligently, a substitute auditor/manager shall be appointed in the same manner as provided in Paragraph 3.b. of this Agreement to Hold Separate.

l. The independent auditor/manager shall have access to and be informed about all companies who inquire about, seek or propose to buy the MoneyGram Assets. First Data may require the independent auditor/manager to sign a confidentiality agreement prohibiting the disclosure of any material confidential information gained as a result of his or her role as independent auditor/manager to anyone other than the Commission.

m. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a.–3.n.

hereof, shall be subject to a majority vote of the management team. In case of a tie, the independent auditor/manager shall cast the deciding vote.

n. The independent auditor/manager shall report in writing to the Commission every thirty (30) days concerning the independent auditor/manager's efforts to accomplish the purposes of this Agreement to Hold Separate.

4. Should the Federal Trade Commission seek in any proceeding to compel First Data to divert itself of the MoneyGram Assets or the Western Union Assets, or to seek any other equitable relief, First Data shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. First Data also waives all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to First Data made to its General Counsel, First Data shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of First Data and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of First Data relating to compliance with this Agreement;

b. Upon five (5) days notice to First Data, and without restraint or interference from it, to interview officers or employees of First Data, who may have counsel present, regarding any such matters.

6. This Agreement shall not be binding until approved by the Commission.

Attachment A—Divestiture and Requirement for Confidentiality

First Data Corporation ("First Data") has entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the diverstiture of the MoneyGram Business or the Western Union Business. Until after the Commission's Order becomes final and First Data's interest in either the MoneyGram Business or the Western Union Business is divested, the MoneyGram Business must be managed and maintained as a separate, ongoing business, independent of all other First Data businesses and independent of the Western Union Business. All competitive information relating to the MoneyGram Business, except information received by First Data in connection with the provision of data processing services to the MoneyGram Business as described in and protected by the confidentiality provision of Paragraph IV. of the Consent Order, must be retained and maintained by the persons involved in the MoneyGram Business on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other First Data business, including the Western Union Business. Similarly, all such persons involved in the Western Union Business shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such business to or with any person whose employment involves the MoneyGram business.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the Consent Order, may subject First Data to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted provisionally an agreement containing a proposed consent order from First Data Corporation ("First Data"), under which First Data would divest either the MoneyGram or Western Union consumer money transfer business.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

First Data has proposed to acquire the stock or assets associated with Western Union's consumer money transfer business by submitting a bid with the New Jersey bankruptcy court, which is auctioning the company in September of 1994.

The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for consumer money transfer services. The proposed Consent Order would remedy the alleged violation by replacing the lost competition that would result from the acquisition.

The proposed Consent Order provides that, within the later of fifteen (15) months after the date the Order becomes final or three (3) months after the date the acquisition takes place pursuant to an order of the bankruptcy court, First Data shall divest either the consumer money transfer assets of MoneyGram or those of Western Union. If First Data is unable to divest these assets during the allotted time period, then a trustee may be appointed to divest the Western Union assets within a twelve (12) month period. If, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the time period for divestiture can be extended by the Commission, or, in the case of a court-appointed trustee, by the court. The Commission, however, may extend this period only two (2) times.

A Hold Separate Agreement signed by First Data provides that during any period in which First Data possesses an ownership interest in the Western Union assets, these assets will be operated independently of the MoneyGram assets. Under the provisions of the Order, First Data is also required to provide to the Commission a report of compliance with the divestiture provisions of the Order within sixty (60) days following the date this Order becomes final, and every sixty (60) days thereafter until First Data has completely divested its interest in either the MoneyGram or Western Union assets.

The Order also provides that, if First Data divests the MoneyGram assets, First Data is prohibited from entering into a contract with any selling agent who is under contract to provide the MoneyGram service at the time of the divestiture. However, the Order does permit First Data to enter into a contract with such an agent after the agent's contract with First Data would have expired absent the divestiture.

The Order also prohibits First Data from acquiring any interest in any other company providing a consumer money transfer service without prior approval from the Commission for a ten-year period.

The Order expressly allows First Data to supply data processing services to other consumer money transfer suppliers, provided that it shield any First Data employee who is involved in providing First Data's consumer money transfer service from non-public information of any other consumer

money transfer provider. This provision will allow competing consumer money transfer companies to use First Data's data processing service while preventing the facilitation of collusion that could occur as a result of the transfer of proprietary information from other consumer money transfer providers to First Data, through its role as a data processor.

The Order removes First Data's obligation to comply with the Order if the bankruptcy court fails to award the Western Union assets to First Data.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga in First Data Corporation, File 931–0090

Although I have voted to publish the proposed consent agreement for comment, I see no reason to allow this respondent fifteen months as opposed to the usual year in which to accomplish divestiture. Fifteen months is too long to permit the alleged competitive overlap to persist. Pending divestiture, even in the presence of a hold-separate agreement, the competitive viability of the assets to be divested is threatened and the restoration of competition is delayed. The danger to the business to be divested may be particularly acute in this case, where a large part of the assets consists of short-term contracts with the independent agents that deliver wire transfer services to consumers. No justification for the extended divestiture period has been offered, and none is apparent.

[FR Doc. 94–22118 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3522]

American Institute of Habit Control, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Florida-based company and its president from making any representation about the relative or absolute performance or efficacy of any smoking cessation or weight loss program, unless they possess and rely upon competent and reliable scientific evidence to substantiate the representation, and from representing that the Surgeon General's 1989 report states that the hypnosis method used by the respondents is one of the most effective ways to stop smoking.

DATES: Complaint and Order issued August 23, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, FTC/H–200, Washington, DC 20580. (202) 326–3291.

SUPPLEMENTARY INFORMATION: On Friday, March 4, 1994, there was published in the **Federal Register**, 59 FR 10386, a proposed consent agreement with analysis In the Matter of American Institute of Habit Control, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–22113 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3515]

Beverly Hills Weight Loss Clinics International, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a commercial diet program company from misrepresenting the performance or safety of any diet program it offers in the future, and requires the respondent to possess competent and reliable scientific evidence to substantiate any future claims it makes about weight loss, weight loss maintenance, or rate of weight loss; to make a number of disclosures regarding maintenance success claims; and to disclose all mandatory fees.

DATES: Complaint and Order issued August 11, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Gary Cooper, FTC/Boston Regional Office, 101 Merrimac St., Suite 810, Boston, MA 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: On Thursday, June 2, 1994, there was published in the **Federal Register**, 59 FR 28535, a proposed consent agreement with analysis In the Matter of Beverly Hills Weight Loss Clinics International, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94–22114 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3516]

Doctors Medical Weight Loss Centers, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Florida commercial diet program companies and their officer from misrepresenting the performance or safety of any diet program they offer in the future, and requires the respondents to possess competent and reliable scientific evidence to substantiate any future claims they make about weight loss, weight loss maintenance, or rate of weight loss; to make a number of

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

disclosures regarding maintenance success claims; and to disclose all mandatory fees.

DATES: Complaint and Order issued August 11, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Eric Bash, FTC/H–200, Washington, DC 20580. (202) 326–2892.

SUPPLEMENTARY INFORMATION: On Thursday, June 2, 1994, there was published in the **Federal Register**, 59 FR 28535, a proposed consent agreement with analysis In the Matter of Doctors Medical Weight Loss Centers, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94–22115 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3521]

Dominican Santa Cruz Hospital, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the California non-profit corporations from acquiring, for ten years, without prior Commission approval, all or any significant part of a general acute care hospital in Santa Cruz County, CA. The consent order also prohibits, for ten years, the respondents from selling or transferring any hospital in the county to a non-respondent prior to the acquirer agreeing to be bound by the Commission's order.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DATES: Complaint and Order issued August 18, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Thursday, March 18, 1993, there was published in the **Federal Register**, 58 FR 14573, a proposed consent agreement with analysis In the Matter of Dominican Santa Cruz Hospital, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–22116 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3520]

Eggland's Best, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Pennsylvania company from misrepresenting the amount of nutrients or other ingredients, such as cholesterol and fat, that is in its eggs or foods containing egg yolks, and requires the respondent to have competent and reliable scientific evidence to substantiate future health-benefit claims for such foods and, for one year, to label certain egg packages with a corrective notice stating that no studies show Eggland's eggs are different from other eggs in their effect on serum cholesterol.

[1] Copies of the Complaint, the Decision and Order, and statements by Commissioners Steiger, Azcuenaga and Yao are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DATES: Complaint and Order issued August 15, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Michelle Rusk, FTC/S–4002, Washington, DC 20580. (202) 326–3148.

SUPPLEMENTARY INFORMATION: On Wednesday, February 23, 1994, there was published in the **Federal Register**, 59 FR 8638, a proposed consent agreement with analysis In the Matter of Eggland's Best, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94–22117 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3513]

Lifestyle Fascination, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey-based corporation, its owner, and its general manager from making specified false representations for five products (a gasoline additive, an automobile retrofit device, an electric stimulation device, an electric acupuncture device, and pinhole eyeglasses), advertised in their catalog. It also prohibits the respondents from making any claim regarding the performance, safety, attributes, benefits, or efficacy of the electric and electronic products they market unless they possess competent and reliable scientific evidence that substantiates the

[1] Copies of the Complaint, the Decision and Order, and statements by Commissioners Azcuenaga, Owen, Yao, and Starek are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

representation. In addition, the consent order prohibits the respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study, and from misrepresenting that any endorsement or testimonial for health related products represents the typical or ordinary experiences of users.

DATES: Complaint and Order issued August 4, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Lesley Fair, FTC/S–4002, Washington, D.C. 20580. (202) 326–3081.

SUPPLEMENTARY INFORMATION: On Tuesday, May 24, 1994, there was published in the **Federal Register,** 59 FR 26796, a proposed consent agreement with analysis In the Matter of Lifestyle Fascination, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94–22120 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 9264]

Hawthorne Communications, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Iowa corporation from making any representations about the performance, benefits, efficacy, or success rate of any product or service concerning business opportunities unless the respondent possesses competent and reliable evidence that substantiates such representations. In addition, the consent order prohibits the respondent from using any testimonial or endorsement unless it reflects the typical or ordinary experience of consumers who use the product.

DATES: Complaint issued November 16, 1993. Order issued August 9, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Dahnke, FTC/Denver Regional Office, 1405 Curtis St., Suite 2900, Denver, CO 80202–2393. (303) 844–2254.

SUPPLEMENTARY INFORMATION: On Tuesday, May 24, 1994, there was published in the **Federal Register** 59 FR 26791, a proposed consent agreement with analysis In the Matter of Hawthorne Communications, Inc., for the purposes of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–22119 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3519]

TCH Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, two California-based corporations to divest, within one year, to a Commission-approved buyer, the pharmacy business in either the Payless or the Thrifty or Bi-Mart stores in six designated areas, requires the respondents to ensure that the assets to be divested remain viable and marketable, and for ten years requires that the respondents obtained Commission approval prior to acquiring any stock or other interest in any entity engaged in the business of selling prescription drugs at retail stores in the six areas designated.

DATES: Complaint and Order issued August 16, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Laura Wilkinson or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2830 or 326–2682.

SUPPLEMENTARY INFORMATION: On Monday, April 4, 1994, there was published in the **Federal Register,** 59 FR 15736, a proposed consent agreement with analysis In the Matter of TCH Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the modified complaint, made its jurisdictional findings and entered an order to divest in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–22123 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3517]

Quick Weight Loss Centers, Inc., et al. (Texas); Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Texas commercial diet program company and its officers from misrepresenting the performance or safety of any diet program they offer in the future, and requires the respondents to possess competent and reliable scientific evidence to substantiate any future claims they make about weight loss, weight loss maintenance, or rate of weight loss; to make a number of disclosures regarding maintenance success claims; and to disclose all mandatory fees.

DATES: Complaint and Order issued August 11, 1994.[1]

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Owen's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public

FOR FURTHER INFORMATION CONTACT: Eric Bash, FTC/H–200 Washington, DC. 20580. (202) 326–2892.

SUPPLEMENTARY INFORMATION: On Thursday, June 2, 1994, there was published in the **Federal Register**, 59 FR 28535, a proposed consent agreement with analysis In the Matter of Quick Weight Loss Centers, Inc., et al. (Texas), for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94–22122 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3518]

Quick Weight Loss Centers, Inc., et al. (Georgia); Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Georgia commercial diet program company and its officer from misrepresenting the performance or safety of any diet program they offer in the future, and requires the respondents to possess competent and reliable scientific evidence to substantiate any future claims they make about weight loss, weight loss maintenance, or rate of weight loss; to make a number of disclosures regarding maintenance success claims; and to disclose all mandatory fees.

DATES: Complaint and Order issued August 11, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Eric Bash, FTC/H–200, Washington, DC 20580. (202) 326–2892.

SUPPLEMENTARY INFORMATION: On Thursday, June 2, 1994, there was published in the **Federal Register**, 59 FR 28535, a proposed consent agreement with analysis In the Matter of Quick Weight Loss Centers, Inc., et al. (Georgia), for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94–22121 Filed 9–7–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Phoenix Federal Building-United States Courthouse; Notice of Availability Draft Environmental Impact Statement

ACTION: Pursuant to the Council on Environmental Quality Regulations (40 Code of Federal Regulations 1500–1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the U.S. General Services Administration (GSA) hereby gives notice that a DEIS for the construction of a new FB–CT within the City of Phoenix, Arizona has been prepared and filed with the United States Environmental Protection Agency (EPA). The proposed project would include the construction of a new FB–CT with approximately 515,010 gross square feet (GSF) of building space and 360 onsite parking spaces. The preferred site encompasses approximately 4.5 acres and is located within the city's redevelopment area known as the Government Mall. The site is bound by Washington Street to the north, 4th Avenue to the east, Jefferson Street to the south and 6th Avenue to the west. Under the Proposed Action, 5th and 6th Avenues would be closed to vehicular traffic.

Alternatives: In addition to the Proposed Action, the DEIS examined three alternatives including: (1) construction of the FB–CT on the same site as the Proposed Action with 6th Avenue remaining open to vehicular traffic; (2) construction of the FB–CT on an alternate site within the CBA; and (3) no action or continued use of the existing FB–CT and lease space.

Public Involvement: The DEIS, prepared by GSA addressing this action, is on file and may be obtained from: Mr. Alan R. Campbell, U.S. General Services Administration, Planning Staff (9PL), 525 Market Street, San Francisco, CA 94105–2799, Telephone: (415) 744–5252. A limited number of copies of the DEIS are available to fill single copy requests. Loan copies of the DEIS are available for review at the City of Phoenix Central Library and at the GSA Field Office, 200 North 1st Avenue, Phoenix, Arizona.

A public hearing is scheduled to provide the community with an opportunity to submit comments on the DEIS. The meeting will be held Thursday, October 13, 1994 from 4 p.m. to 7 p.m., at the Phoenix City Council Chambers, 200 West Jefferson Street, Phoenix, Arizona. In addition, written comments on the DEIS can be submitted until October 21, 1994 to the address listed above.

Dated: August 29, 1994.

Aki K. Nakao,

Acting Regional Administrator (9A).

[FR Doc. 94–22046 Filed 9–7–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Privacy Act of 1974; System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New Routine Use, Altered System of Records, and Minor Revisions.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we are issuing public notice of our intent to:

(1) Establish a new routine use applicable to the majority of SSA's systems of records. The proposed routine use would provide for disclosure from the systems to student volunteers and participants in certain programs (non-Federal workers) when SSA is authorized by Federal law to use their services and they need the

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Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

information to perform functions for SSA.

(2) Alter the system of records entitled *Personal Identification Number File (PINFile) HHS/SSA/OPIR, 09–60–0214.* The proposed alteration will expand the categories of individuals covered by the system to include non-Federal workers who perform functions for SSA.

(3) Make minor revisions to the notice of the PINFile system of records to make it accurate and up to date.

We invite public comment on this publication.

DATES: We filed a report of an altered system of records with the Chairman, Committee on Government Operations of the House of Representatives, and the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on September 1, 1994. The alteration and routine use will become effective as proposed, without further notice October 18, 1994, unless we receive comments on or before that date that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mrs. Alicia Matthews, Social Insurance Specialist, Confidentiality and Disclosure Branch, Division of Technical Documents and Privacy, Office of Regulations, Office of Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–1723.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Routine Use

A. Background

Under certain Federal statutes, SSA is authorized to use the services of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs are: 5 U.S.C. 3111 regarding student volunteers; 42 U.S.C. 2753 regarding the College Work Study Program; 42 U.S.C. 682(f) regarding the Community Work Experience Program. These individuals are not compensated as Federal employees for their work, but some receive compensation from other organizations under government grant and assistance programs.

In the course of their training and work experience at the SSA worksite under the supervision of SSA staff, these non-Federal workers may perform many of the same duties performed by current SSA employees. Some of these duties cannot be performed unless the workers have access to, and can retrieve, personally identifiable information from SSA systems of records. These non-Federal workers are required to comply with the same confidentiality requirements and disclosure restrictions as SSA employees.

B. Disclosures to Non-Federal Workers

The non-Federal workers described in paragraph I.A. above function as Agency staff under Agency supervision, and we believe that they may be deemed to have the same status under the Privacy Act as HHS employees for purposes of disclosing to them, pursuant to 5 U.S.C. 552a(b)(1), information which they need to know in order to discharge their assigned duties. However, since their status under that statutory provision is not entirely clear, we propose to establish the new routine use to ensure that these non-Federal workers have sufficient access to information in appropriate systems of records to perform their assigned functions. The proposed routine use will permit disclosure:

To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

We are not republishing in their entirety the notices of the systems of records to which we are adding the new routine use statement because of the large number of those systems of records and the costs of republishing the individual notices of each one. Instead, we are republishing only the identification number and the name of each such system, and the volume, page number, and date of the **Federal Register** issue in which the system notice was last published, either in a composite listing of systems of records or as an individual system's notice.

The following systems were last published at 52 FR 12084, April 14, 1987, in a composite listing which added a routine use:

09–60–0001—Commissioner's Correspondence File, HHS/SSA/OC;
09–60–0002—Automated Document Control and Retrieval System, HHS/SSA/OGA;
09–60–0003—Attorney Fee File, HHS/SSA/OHA;
09–60–0004—Working File of the Appeals Council, HHS/SSA/OHA;
09–60–0005—Administrative Law Judge Working File on Claimant Cases, HHS/SSA/OHA;
09–60–0006—Storage of Hearings Records: Tape Cassettes and Audiograph Discs, HHS/SSA/OHA;
09–60–0008—Administrative Law Judge Docket of Claimant Cases, HHS/SSA/OHA;
09–60–0009—Hearings and Appeals Case Control System, HHS/SSA/OHA;
09–60–0012—Listing of Alphabetical Name File (Folder) of Vocational Experts and Medical Advisors, HHS/SSA/OHA;
09–60–0013—Records of Usage of Medical Advisors and Vocational Experts, HHS/SSA/OHA;
09–60–0014—Curriculum Vitae and Professional Qualifications of Medical Advisors and Résumés of Vocational Experts, HHS/SSA/OHA;
09–60–0017—Personnel Research and Merit Promotion Test Records, HHS/SSA/OM;
09–60–0031—Employee Production and Accuracy Records, HHS/SSA/OM;
09–60–0032—Employee Indebtedness Counseling System, HHS/SSA/OM;
09–60–0037—General Criminal Investigations Files, HHS/SSA/OM;
09–60–0038—Employee Building Pass Files, HHS/SSA/OM;
09–60–0040—Quality Review System, HHS/SSA/OPIR;
09–60–0042—Quality Review Case Files, HHS/SSA/OPIR;
09–60–0044—Disability Determination Service Processing File, HHS/SSA/OD;
09–60–0050—Completed Determination Record—Continuing Disability Determinations, HHS/SSA/OP;
09–60–0063—Resource Accounting System, HHS/SSA/OSR:
09–60–0066—Claims Development Record, HHS/SSA/RO;
09–60–0077—Congressional Inquiry File, HHS/SSA/RO;
09–60–0078—Public Inquiry Correspondence File, HHS/SSA/RO;
09–60–0094—Recovery of Overpayments, Accounting and Reporting, HHS/SSA/OSR;
09–60–0095—Health Insurance Overpayment Ledger Cards, HHS/SSA/OSR;
09–60–0110—Supplemental Security Income File of Refunds, HHS/SSA/OSR;
09–60–0111—Double Check Negotiation (DCN) File (SSI), HHS/SSA/OSR;
09–60–0118—Non-Contributory Military Service Reimbursement System, HHS/SSA/OACT;
09–60–0184—Hearing Office Master Docket of Claimant Cases, HHS/SSA/OHA;
09–60–0186—SSA Litigation Tracking System, HHS/SSA/ODCP;
09–60–0210—Record of Individuals Authorized Entry to Secured Automated Data Processing Areas, HHS/SSA/OS;
09–60–0212—Supplemental Security Income Quality Initial Claims Review Process System, HHS/SSA/OPIR;
09–60–0213—Quality Review of Hearings/Appellate Process, HHS/SSA/OHA; and
09–60–0220—Kentucky Birth Records System, HHS/SSA/DO(KY).

The following systems were published as an individual notice:

09–60–0045—Black Lung Payment System, HHS/SSA/OSR (53 FR 18166, May 20, 1988);
09–60–0046—Disability Determination Service Consultant's File, HHS/SSA/OD (57 FR 27855, July 24, 1987);
09–60–0057—Quality Evaluation Data Records, HHS/SSA/OPIR (54 FR 25690, June 19, 1989);
09–60–0058—Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR (59 FR 37252, July 21, 1994);
09–60–0059—Earnings Recording and Self-Employment Income System, HHS/SSA/OSR (58 FR 48525, September 16, 1993);
09–60–0089—Claims Folders System, HHS/SSA/OP (58 FR 35025, June 30, 1993);
09–60–0090—Master Beneficiary Record, HHS/SSA/OSR (58 FR 35025, June 30, 1993);
09–60–0103—Supplemental Security Income Record, HHS/SSA/OSR (58 FR 35025, June 30, 1993);
09–60–0218—Disability Insurance and Supplemental Security Income Demonstration Projects and Experiments System, HHS/SSA/OP (57 FR 60531, December 21, 1992);
09–60–0221—Vocational Rehabilitation Reimbursement Case Processing System, HHS/SSA/OD (58 FR 52782, October 12, 1993);
09–60–0222—Master Representative Payee File, HHS/SSA/ORSI (57 FR 41147, September 9, 1992); and
09–60–0223—Telephone Call Receipt System, HHS/SSA/DCO (57 FR 29879, July 7, 1992).

C. Compatibility of Proposed Routine Use

We are proposing the changes discussed above in accordance with the Privacy Act (5 U.S.C. 552a (a)(7), (b)(3), and (e)(11)) and our disclosure regulation (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consent for a routine use, i.e., where the information will be used for a purpose that is compatible with the purpose for which we collected the information. By regulation, we have determined that disclosures that are necessary to administer SSA programs are compatible with the purposes for which we collect information (20 CFR 401.310(c)). In order to perform their assigned duties which assist SSA in the administration of the Social Security Act, non-Federal workers may need to have access to information on individuals maintained in the systems of records listed above. The purposes of their use of such information are identical to the purposes for which SSA collects the information and, thus, meet the criteria for the establishment of a routine use under the Privacy Act and the regulation.

D. Effect of the Proposal on Individual Rights

As discussed above, the proposed new routine use will permit SSA to disclose information, as necessary, to non-Federal workers whose services SSA is authorized by Federal law to use in performing its functions. Access to this information will be given to these workers only to perform their assigned duties. Also, as a part of their orientation, these individuals will be told of their responsibility to maintain the confidentiality of SSA records and of the criminal penalties for unauthorized access to, use of, and disclosure of SSA records. Thus, we do not anticipate that the disclosures to these non-Federal workers will have any unwarranted effect on the privacy or other rights of individuals.

II. Alteration to the PINFile System

A. Proposed Expansion of the Categories of Individuals Covered by the PINFile System of Records

Before an individual is granted direct terminal access to SSA data bases, as a security safeguard, SSA assigns the individual a personal identification number (PIN). Identifying information about each individual who is assigned a PIN, including the PIN itself, is maintained in the PINFile system of records. The system currently covers SSA employees, some employees of the State Disability Determination Services, some Health Care Financing Administration employees, carriers and intermediaries, certain employees of HHS and employees of other Federal government agencies who have been granted direct terminal access to SSA's data bases.

SSA proposes to alter the categories of individuals covered by the PINFile system of records to include student volunteers and other non-Federal workers, described in I.A. above, to whom SSA decides to grant direct terminal access to its data bases. This alteration will allow SSA to issue PINS to those non-Federal workers and to maintain information about them in the PINFile system of records.

B. Effect of the Proposed Alteration on the Rights of Individuals

Information in the PINFile system of records will be used only for the purpose of determining which individuals are authorized to have direct terminal access to SSA data bases.

Only SSA security officers (regional, local, component and systems) and managers with security responsibilities will have access to data in the PINFile. Any other individual will have access only to such information in the PINFile that is retrieved by his or her personal identifier. SSA will assign command codes, numbers, and profiles to each security officer and manager with security responsibilities. Since the PINFile complies with the requirements of the Privacy Act, we anticipate no unwarranted effect on the privacy or other personal or property rights of individuals.

III. Minor Revisions to the PINFile System of Records

We have made a number of editorial and general housekeeping changes to the notice of the PINFile system to make it accurate and up to date. These changes are reflected in the notice following this preamble.

Dated: August 22, 1994.

Shirley S. Chater,

Commissioner of Social Security.

09–60–0214

SYSTEM NAME:

Personal Identification Number File (PINFile) HHS/SSA/OPIR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of System Operations, 6401 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Social Security Administration (SSA) employees, student volunteers and other non-Federal workers, some employees of the State Disability Determination Services, some employees of the Health Care Financing Administration and its carriers and intermediaries, certain employees of the Department of Health and Human Services (HHS); and employees of other Federal government agencies who have been granted direct terminal access to SSA's data bases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Timekeeper number, name of employee, job title, Social Security number (SSN), personal identification numbers (PIN) and passwords for validation purposes, office code, branch code, division, department, facilities available and access profile information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 205(a) of the Social Security Act and 5 U.S.C. 552a(e)(10).

PURPOSE(S):

The PINFile is used to limit access to computer-based SSA information resources to specific individuals and to specific transactions. Its purpose is to minimize the risk of unauthorized access to SSA's files of personal data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Information may be disclosed to a congressional office in response to an inquiry from that office made at the request of the subject of a record.

2. Information may be disclosed to the Department of Justice, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or other party before such court or tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

3. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

Wage and other information which are subject to the disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under these routine uses unless disclosure is permitted by the IRC.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

SSA maintains records in the PINFile on magnetic disk as part of the data communications system. The disk file is written to tape daily for backup purposes.

RETRIEVABILITY:

SSA retrieves records individually from the PINFile by name, SSN, PIN, and, as members of a group, by office code, branch code, division, department, facilities and access profile.

SAFEGUARDS:

Steps to minimize the unauthorized use of the PINFile include: (1) Limiting access to data on file to SSA regional, local, component and systems security officers, and managers with security responsibilities and (2) monitoring additions, deletions, and changes to the PINFile through daily reports.

RETENTION AND DISPOSAL:

Disk files are permanent; the magnetic tape backup file is maintained for 7 operational days and then erased.

SYSTEM MANAGER(S) AND ADDRESS:

SSA Systems Security Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to him or her by contacting the system manager at the address shown above. An individual requesting notification must furnish a minimum of his/her name, SSN, date of birth and address in order to establish identity, plus any additional verification of identity requested. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and avoid delay.) An individual requesting notification of records in person need furnish only a document he/she would normally carry on his/her person (e.g., a credit card, driver's license, or voter registration card). These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These access procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

SSA obtains information in the PINFile from the individuals, their supervisors, and from SSA time and attendance files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 94–22106 Filed 9–7–94; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Exxon Valdez Oil Spill Public Advisory Group Extension of Nomination Solicitation.

SUMMARY: The Exxon Valdez Spill Trustee Council is extending the time period for soliciting nominations for the Public Advisory Group, especially for persons representing the following interest groups: aquaculture, commercial tourism, and subsistence. The Public Advisory Group advises the Trustee Council on decisions related to the planning, evaluation, and conduct of injury assessment and restoration activities using funds obtained for purposes of restoration as part of the civil settlement pursuant to the T/V Exxon Valdez Spill oil spill of 1989. Public Advisory Group members will be selected to serve a two-year term beginning after October 1994.

DATES: All nominations should be received on or before October 31, 1994.

ADDRESSES: Nominations should be sent to the Exxon Valdez Spill Trustee Council, 645 G Street, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Designated Federal Officer, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011 or L.J. Evans, Exxon Valdez Oil Spill Restoration Office, 645 G Street, Anchorage, Alaska, (907) 278–8012. A copy of the charter for the Public Advisory Group is available upon request.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of *United States of*

America v. *State of Alaska*, Civil Action No. A91–081 CV. The Public Advisory Group was created to advise the Trustee Council on matters relating to decisions on injury assessment, restoration activities or other use of natural resources damage recoveries obtained by the governments.

The Trustee Council consists of representatives of the State of Alaska Attorney General; Commissioner of the Alaska Department of Fish and Game; Commissioner of the Alaska Department of Environmental Conservation; the Secretary of the Interior; the Secretary of Agriculture; and the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. Appointment to the Public Advisory Group will be made by the Secretary of the Interior with unanimous approval of the Trustees.

The Public Advisory Group consists of 17 members representing the public at large (5 members) and the following special interests: aquaculture, commercial fishing, commercial tourism, forest products, environmental, conservation, local government, Native landowners, recreating users, sport hunting and fishing, subsistence, and science/academic. Two additional ex officio non-voting members are from the Alaska State House of Representatives and the Alaska State Senate.

Nominees need to submit the following information to the Trustee Council:

1. A biographical sketch (education, experience, address, telephone);
2. Information about the nominee's knowledge of the region, peoples or principal economic and social activities of the area affected by the T/V Exxon Valdez oil spill, or expertise in public lands and resource management;
3. Information about the nominee's relationship/involvement (if any) with the principal interest to be represented;
4. A statement explaining any unique contributions the nominee will make to the Public Advisory Group and why the nominee should be appointed to serve as a member;
5. Any additional relevant information that would assist the Trustee Council in making a recommendation; and
6. A disclosure statement of any potential conflict of interest. Public Advisory Group members and their alternates are chosen to represent a broad range of interests. It is possible that action could be taken by the Public Advisory Group when one or more of the members have a direct personal conflict of interest which would prejudice and call into question the entire public process. To avoid this eventuality and to enable the Trustee Council to choose appropriate individuals as members and/or alternates to members, it is necessary that each nominee provide the following information with their information packet. If the answer to any of these questions is yes, please provide a brief explanation of your answer. A yes will not necessarily preclude any nominee from being appointed to serve on the Public Advisory Group.

a. Do you, your spouse, children, any relative with whom you live or your employer have, or are you defending, a claim filed before any court or administrative tribunal based upon damages caused by the T/V Exxon Valdez oil spill?

b. Do you, your spouse, children, any relative with whom you live or your employer own any property or interest in property which has been, or is likely to be, proposed for acquisition by the Trustee Council?

c. Have you, your spouse, children, any relative with whom you live or your employer submitted, or likely will submit, a proposal for funding by the Trustee Council, or be a direct beneficiary of such a proposal?

d. Do you know of any other potential actions of the Trustee Council or the Public Advisory Group to have a direct bearing on the financial condition of yourself, your spouse, children, other relative with whom you live or your employer?

Dated: August 31, 1994.

Jonathan P. Deason,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 94–22129 Filed 9–7–94; 8:45 am]

BILLING CODE 4310–RG

Bureau of Land Management

[MT-064-4333-04]

Off-Road Vehicle Designation

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: Notice is hereby given that beginning September 1, 1994, the use of off-road vehicles (ORV) is limited on public lands south of Glasgow in Valley County, Montana. This will be in effect during the bird and big game hunting seasons as established by the Montana Department of Fish, Wildlife, and Parks in accordance with the authority and requirements of regulation 43 CFR 8364.1.

DATES: This designation will only be in effect between September 1, 1994 and November 30, 1994.

FOR FURTHER INFORMATION CONTACT: Michael R. Holbert, Valley Resource Area Manager, Bureau of Land Management (BLM), Route 1, Box 4775, Glasgow, MT 59230.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has entered into a Block Management Agreement (BMA) with Page-Whitman Ranches of south Valley County, Montana, and the Montana Department of Fish, Wildlife, and Parks for the 1994 hunting season. The BMA has been expanded to include approximately 80,000 acres of private, state, and federal land. Private lands will have some road restrictions. The finalized version of the Judith/Valley/Phillips Resource Management Plan outlines seasonal vehicle travel routes on federal land which is in effect for the 1994 hunting season.

Hunting within the described area will be subject to the following rules:

1. Vehicles must stay on numbered roads. If no sign is visible, that road should be considered closed. All open roads are designated on the Block Management Area map.
2. Off-road vehicle travel is prohibited. An exception to this rule will be allowed for the retrieval of downed big game animals only. You may be requested to return to the kill site by enforcement personnel. The most direct and least damaging route to your downed animal should be used.
3. Camping is allowed on all BLM land (14 day limit) and at private land camping areas located at the Cottonwoods, the Square Butte Corrals, and the Timber Creek Camp.
4. All gates should be left as found, unless signed as open or closed.
5. Littering is prohibited.

The Block Management area is described as all lands within the Square Creek, Desert Coulee, Taylor Coulee, Sheep Shed and Stone House pastures of the Carpenter Creek allotment. Legal description of the public lands within the block management area are as follows:

All or portions of the following sections in Valley County, Montana:

T. 25 N., R. 34 E., Sections 2, 3, 4, 9 through 15, 22 through 27, 34, 35, and 36.
T. 25 N., R. 35 E., Sections 18, 19, 25 through 36.
T. 25 N., R. 36 E., Sections 28 through 33.
T. 24 N., R. 36 E., Sections 4 through 8, 17, 18, 30 through 34.
T. 24 N., R. 35 E., Sections all.
T. 24 N., R. 34 E., Sections 1, 2, 11 through 15, 19 through 36.
T. 23 N., R. 34 E., Sections 1 through 5, and 10 through 14.
T. 23 N., R. 35 E., Sections 1 through 18.
T. 23 N., R. 36 E., Sections 2 through 11, and 14 through 18.

Dated: August 26, 1994.

David L. Mari,

District Manager.

[FR Doc: 94–22048 Filed 9–7–94; 8:45 am]

BILLING CODE 4310–DN–P

[UT–942–4212–13; UTU–71245; 4–00152]

Land Acquisition; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the acquisition of 2,286.02 acres of private land. This action also opens the reconveyed land to appropriation under the public land laws.

FOR FURTHER INFORMATION CONTACT: Michael L. Crocker, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4118.

SUPPLEMENTARY INFORMATION:

1. The United States has acquired the surface estate of 2,286.02 acres of private land pursuant to Section 205 and 307(c) of the Act of October 21, 1976 (90 Stat. 2755; 43 U.S.C. 1715). A description of the acquired land is as follows:

Salt Lake Meridian

T. 12 S., R. 24 E.,
Sec. 13, S½NE¼, SE¼NW¼, N½SE¼;
Sec. 34, NE¼SE¼;
Sec. 35, NW¼SW¼;
Sec. 36, All.
T. 12 S., R. 25 E.,
Sec. 18, SW¼NE¼, S½NW¼, SW¼;
Sec. 19, NW¼.
T. 13 S., 24 E.,
Sec. 3, N½SW¼;
Sec. 35, E½SW¼, SW¼SE¼.
T. 14 S., 24 E.,
Sec. 1, SW¼SW¼, SE¼SW¼;
Sec. 2, Lot 2, SW¼NE¼, N½SE¼, SE¼SE¼;
Sec. 12, SW¼NE¼, N½NW¼, SE¼NW¼, W½SE¼, SE¼SE¼;
Sec. 13, N½NE¼, SE¼NE¼.
T. 14 S., R. 25 E.,
Sec. 18, lots 2 and 5.

Containing 2,286.02 acres.

2. At 8:00 a.m., on October 11, 1994, the lands described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:00 a.m. on October 11, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The purpose of this acquisition was to acquire riparian lands and associated water rights.

Teresa L. Catlin,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–22047 Filed 9–7–94; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Notice of Intent to Prepare an Environmental Assessment (EA) for Proposed Protection of Additional Habitat for the Shiawassee National Wildlife Refuge in Saginaw County, Michigan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to prepare an EA for a proposal to protect additional habitat for the existing 9,042-acre Shiawassee National Wildlife Refuge (Refuge). The Refuge is located at the confluence of the Shiawassee, Cass and Tittabawassee Rivers, adjacent to the Saginaw metropolitan area in Saginaw County, in Michigan's Lower Peninsula.

The EA will evaluate four preliminary alternatives on the basis of their biological and socioeconomic impacts. Preparation of the EA is in response to issues presented at meetings with officials of the townships of Bridgeport, James, Saginaw, Spaulding, and Thomas, with officials of the City of Saginaw and Saginaw County, and with individual landowners in the area surrounding the existing Refuge.

This Notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain further suggestions and information from other agencies and the public on the scope of issues to be addressed in the EA. Comments and participation in this scoping process are welcomed.

DATES: Written comments should be received by October 11, 1994.

ADDRESSES: Written comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056; Attention: Stanley Jackowicz, RE-AP. Proposal documents are available for public inspection during normal business hours at the Shiawassee National Wildlife Refuge headquarters, 6975 Mower Road, Saginaw, Michigan 48601.

FOR FURTHER INFORMATION CONTACT: Doug Spencer, Refuge Manager at (517) 777–5930.

SUPPLEMENTARY INFORMATION: The Service proposes to protect approximately 7,635 acres of additional habitat in association with the existing Shiawassee National Wildlife Refuge (Refuge) located along the Saginaw River in the east-central portion of Michigan's Lower Peninsula. This additional protection is proposed to restore, protect and manage bottomland and upland habitat that would support the existing Refuge and tributary watersheds of the Saginaw River. Historically the area was predominantly lowland hardwood forest, upland forest, emergent marsh, and scattered areas of lakeplain prairie. The proposal is also meant to provide areas of lakeplain prairie and emergent marshes that are either lacking or under-represented on the existing Refuge. This would help to restore the habitat and wildlife diversity the area once supported. The proposal is also meant to protect the lower reaches of the Cass, Tittabawassee and Shiawassee River watersheds that feed and support the existing refuge and the Saginaw Bay of Lake Huron.

The purposes of additional habitat for the Shiawassee National Wildlife Refuge are to:

1. Protect and restore bottomland hardwood forest habitat.

2. Protect and restore floodplain wetlands.

3. Protect and maintain the biological diversity of the area by preserving the native habitats and associated migratory and resident wildlife.

4. Facilitate the conservation of resources in the watersheds that support the refuge.

5. Provide for recreational, environmental, and interpretative opportunities to the surrounding communities and the general public.

6. Improve fisheries through protection and restoration of wetlands.

7. Increase bank fishing opportunities near existing trails and roads.

8. Establish a visitor center or visitor contact station adjacent to Interstate 75 to orient the visiting public.

Primary alternatives to be considered in preparation of the EA are:

1. *No Action*—Rely on existing Federal, State, and local government laws, regulations, and ordinances to protect resources.

2. *Private Lands Agreements*—Rely on a program of technical outreach sponsored by the Service and Michigan Department of Natural Resources to assist Landowners in the restoration and enhancement of wildlife and fish habitats in the area. The area would encompass 7,635 acres along the Cass, Shiawassee and Tittabawassee Rivers.

3. *Acquisition of 7,635 acres by Service as an Addition to the Shiawassee National Wildlife Refuge*—Under this alternative, the Service would use acquisition of fee title, easements, and leases from willing sellers, subject to appropriated funds to add to the existing Shiawassee National Wildlife Refuge.

4. *Acquistion of 5,688 acres by Service as an Addition to the Shiawassee National Wildlife Refuge*—Under this alternative, the Service would use acquisition of fee title, easements, and leases from willing sellers along the lower reaches of the Cass, Shiawassee, and Tittabawassee Rivers, subject to appropriated funds to add to the existing Shiawassee National Wildlife Refuge.

At this time the Service does not have a preferred alternative. the major issues expected include Service acquisition policy, effects on the tax base, loss of cropland, maintenance of existing ditches and dikes, effects on adjacent cropland, loss of residential development, fire protection responsibilities, and maintenance of township roads.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations.

The Draft EA will be made available to the public on or before January 1, 1995. Public meetings will then be announced and held to solicit additional comments for preparing the Final EA.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 94–22049 Filed 9–7–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Meeting: Committee for the Preservation of the White House

In compliance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Committee for the Preservation of the White House. The meeting will be held at the Old Executive Office Building, Washington, DC at 1 p.m., Thursday, September 29, 1994. It is expected that the agenda will include policies, goals and long range plans. The meeting will be open, but subject to appointment and security clearance requirements, including clearance information by September 22, 1994.

Inquires may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m., weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: August 18, 1994.

James I. McDaniel,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 94–22184 Filed 9–7–94; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 27, 1994. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by September 23, 1994.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ARIZONA

Pima County

Hughes, Sam, Neighborhood Historic District, Roughly bounded by E. Speedway Blvd., N. Campbell Ave., E. 7th St. and N. Bentley Ave., Tucson, 94001164

CALIFORNIA

San Diego County

Ramona Town Hall, 729 Main St., Ramona, 94001161

Tuolumne County

Hotel Charlotte, 18736 Main St. (CA 120), Groveland, 94001162

IOWA

Page County

Goldenrod Schoolhouse, 1600 S. 16th St., Clarinda, 75000697

MARYLAND

Baltimore Independent City

Alberti, Brink & Co., Building (Cast Iron Architecture of Baltimore MPS), 322 W. Baltimore St., Baltimore (Independent City), 94001167

Goucher College Historic District, Old (Boundary Increase), Roughly bounded by W. 25th St., Guilford Ave., North Ave. and Howard St., Baltimore (Independent City), 94001163

Johnston Building (Cast Iron Architecture of Baltimore MPS), 26–30 S. Howard St., Baltimore (Independent City), 94001166

TEXAS

Harris County

Morgan's Point Historic District, 89–835 Bayridge Rd. and 300–322 Vinsonia, Morgan's Point, 94001160

Travis County

Mayfield-Gutsch Estate, 3505 W. 35th St., Austin, 94001159

WASHINGTON

King County

Mukai Cold Process Fruit Barrelling Plant, Address Restricted, Vashon vicinity, 94001165

WISCONSIN

Dane County

Skindrud, Eric and Jerome, Farm, 3070 Town Hall Rd., Springdale, 94001156

Grant County

Young, John, House, 323 S. Wisconsin Ave., Muscoda, 94001157

Milwaukee County

Wisconsin Consistory Building, 790 N. Van Buren St., Milwaukee, 94001158

[FR Doc. 94–22084 Filed 9–7–94; 8:45 am]

BILLING CODE 4310–70–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–719 (Preliminary)]

Carbon Steel Pipe Nipples From Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–719 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of carbon steel pipe nipples, provided for in subheading 7307.99.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 17, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: August 31, 1994.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), 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).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on August 31, 1994, by the U.S. Pipe Nipples Group, an *ad hoc* trade association consisting of five domestic producers of carbon steel pipe nipples.[1]

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

[1] Member firms are AAA Pipe & Nipple Co., Inc., Milwaukee, WI; Beck Manufacturing Inc., Waynesboro, PA; Grinnell Corp., Exeter, NH; Missouri Pipe Fittings Co., St. Louis, MO; and Seminole Tubular Products Co., Houston, TX.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on September 21, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202–205–3181) not later than September 19, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 26, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: September 1, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–22178 Filed 9–7–94; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 751–TA–16]

Ceiling Fans From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On August 26, 1994, the Commission received a letter from petitioner in the subject investigation (Encon Industries, Inc.) withdrawing its petition. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping review investigation concerning ceiling fans from the People's Republic of China (investigation No. 751–TA–16) is terminated.

EFFECTIVE DATE: August 31, 1994.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), 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: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: August 31, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–22179 Filed 9–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–367]

Investigation

In the Matter of Certain Facsimile Machines and Components Thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U,S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 1, 1994, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Ricoh Company, Ltd., 1–3–6, Nakamagome, Ohta-ku, Tokyo 143, Japan and Ricoh Corporation, 5 Dedrick Place, West Caldwell, New Jersey 07006. A supplement to the complaint was filed on August 22, 1994, and an amended complaint was filed on August 25, 1994. The complaint, as supplemented and amended, alleges violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain facsimile machines, by reason of alleged infringement of claims 1, 5 and 7–10 of U.S. Letters Patent 4,249,216 and claims 1, 2, 4, 8 and 10 of U.S. Letters Patent 4,494,149, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Kent R. Stevens, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 59 Fed. Reg. 39020, 39043 (Aug. 1, 1994).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on August 30, 1994, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of section 337(a)(1)(B) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain facsimile machines or components thereof, by reason of alleged infringement of claims 1, 5, 7, 8, 9, or 10 of U.S. Letters Patent 4,249,216 or claims 1, 2, 4, 8, or 10 of U.S. Letters Patent No. 4,494,149, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Ricoh Company, Ltd., 1–3–6, Nakamagome, Ohta-ku, Tokyo 143, Japan

Ricoh Corporation, 5 Dedrick Place, West Caldwell, New Jersey 07006

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics Co., Ltd., Samsung Main Building 250, Taepyung Ro. 2GA, Chung-ku, Seoul, Korea

Samsung Electronics America Inc., 105 Chalenger Road, Ridgefield Park, New Jersey 07660

(C) Kent R. Stevens, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–L, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 59 FR 39020, 39045 (Aug. 1, 1994). Pursuant to §§ 201.16(d) and 210.13(a) of the Commission's Rules, 19 CFR 201.16(d) and 59 FR 39020, 39045 (Aug. 1, 1994), such responses will be considered by the Commission if received no later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be

granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: September 2, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–22180 Filed 9–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 1205–4]

Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (telephone 202–205–2592) or Leo A. Webb, Attorney (O/TA&TA) (202–205–2599), U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND AND SCOPE OF INVESTIGATION: On September 1, 1994, the Commission instituted investigation No. 1205–4, Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988. Section 1205 directs the Commission to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and to recommend modifications to the HTS (1) when amendments to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System or HS) are recommended by the Customs Cooperation Council (CCC) for adoption, and (2) as other circumstances warrant. Section 1205(a)(2) further directs the Commission to recommend such modifications to the HTS, as the Commission considers necessary or appropriate, to promote the uniform application of the Convention and particularly the Annex thereto.

On July 5, 1994, the Commission received a letter from the Commissioner of Customs requesting that the Commission take action under section 1205(a)(2) with respect to the classification of petroleum jelly put up for retail sale. The letter notes that the Harmonized System Committee of the CCC has determined that such petroleum jelly is provided for in subheading 3304.99 of the HS. The letter further notes that the United States Customs Service presently classifies such petroleum jelly under subheading 2712.10 of the HS. However, in the interest of uniformity of application of the Harmonized System Convention, the Customs Service has requested that the Commission recommend such modifications of the HTS to the President as will permit the Customs Service to classify this product under the HTS in accordance with the CCC decision while maintaining the currently applied rate of duty.

Accordingly, the Commission is considering a recommendation to the President that the HTS be modified: (1) to create a new subheading subordinate to subheading 3304.99; and (2) to add a new Additional U.S. Note to Chapter 27. The new subheading in Chapter 33 would provide for petroleum jelly put up for retail sale at the same rate of duty (i.e., Free in columns 1 and 2) as is presently the case under HTS subheading 2712.10.00. Proposed new subheading 3304.99.10 would appear in the HTS as follows—

"3304	Beauty or make-up preparations. . .:.		
	Other:		
3304.99	Other:		
3304.99.10	Petroleum jelly put up for retail sale	Free	Free.
3304.99.50	Other	4.9% Free (A* E, IL, J, MX) 1.9% (CA).".	75%.

The new Additional U.S. Note to Chapter 27 would read as follows:

"5. Subheading 2712.10.00 does not include petroleum jelly, suitable for use for the care of the skin, put up in packings of a kind sold by retail for such use (subheading 3304.99.10).".

The intent of this proposal would be to permit the Customs Service to classify such petroleum jelly in a manner consistent with the decision of the Harmonized System Committee of the CCC while maintaining the currently applied rate of duty.

WRITTEN SUBMISSIONS: Interested parties, including other Federal agencies, are invited to submit written statements concerning the subject of this investigation. Each statement must be submitted by not later than October 19, 1994, in order to be considered by the Commission. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States 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 our TDD terminal on (202) 205–2648.

By order of the Commission.

Issued: September 2, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–22181 Filed 9–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–678 through 682 (Final)]

Stainless Steel Bar From Brazil, India, Italy, Japan, and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–678 through 682 (Final) under

section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, India, Italy, Japan, and Spain of stainless steel bar, provided for in subheadings 7222.10.00, 7222.20.00, and 7222.30.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commissioner's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 4, 1994.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), 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).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of stainless steel bar from Brazil, India, Italy, Japan, and Spain are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigations were requested in a petition filed on December 30, 1993, by Al Tech Specialty Steel Corp., Dunkirk, NY; Carpenter Technology Corp., Reading, PA; Republic Engineered Steels, Inc., Massillon, OH; Slater Steels Corp., Fort Wayne, IN; Talley Metals Technology, Inc., Hartsville, SC; and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the investigations and public service list.—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on December 1, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on December 15, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 6, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 8, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony *in camera*.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is December 8, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is December 22, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 22, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: August 29, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–22182 Filed 9–7–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The imported stainless steel bar covered by these investigations comprises articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled, or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Except as specified above, the term does not include stainless steel semifinished products, cut-to-length flat-rolled products (i.e., cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, or sections. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Notice of Appointment of Individuals to Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of Individuals to serve as members of Performance Review Boards.

EFFECTIVE: August 4, 1994.

FOR FURTHER INFORMATION CONTACT: Micheal J. Hillier, Director of Personnel, U.S. International Trade Commission (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB)

Chairman of PRB, Vice Chairman Janet A. Nuzum
Member, Commissioner David B. Rohr
Member, Commissioner Carol T. Crawford
Member, Commissioner Lynn M. Bragg
Member, Lorin L. Goodrich
Member, Lyn M. Schlitt
Member, Robert A. Rogowsky
Member, Lynn I. Levine
Member, Eugene A. Rosengarden
Member, Vern Simpson
Member, Peter Morici
Member, Lynn Featherstone

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Chairman.

Issued: August 26, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–22183 Filed 9–7–94; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for the Administration of a Design in Transportation National Awards Program

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to assist in implementing a national awards program for design in transportation. The recipient will: (1) organize an announcement event; (2) distribute the call for entry materials; (3) receive and catalog the entries; (4) help conduct the jury process; and (5) plan and implement an awards ceremony in Washington, DC. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–16 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 94–16 is scheduled for release approximately September 26, 1994 with proposals due on October 26, 1994.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, Room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 94–22044 Filed 9–7–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Continuation of the United States Antarctic Program (USAP) Activities From 1996 to 2005

AGENCY: National Science Foundation.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The National Science Foundation proposes to continue the activities of the United States Antarctic Program (USAP). These activities include: continuation of investigator-initiated, merit-reviewed antarctic science and education projects; protection of the health and safety of USAP participants and the antarctic environment; and implementation of environmental performance standards and planning and decision making procedures. Goals are to be established for the replacement of inefficient USAP buildings, equipment, and fuel storage and transfer facilities. In addition, the NSF will advocate increased partnerships with universities, federal agencies, industry, and others interested in antarctic science, education, and engineering technologies.

The Director of the Office of Polar Programs of the National Science Foundation intends to prepare an environmental impact statement, under the implementing regulations of the National Environmental Policy Act (NEPA), and a comprehensive environmental evaluation, within the procedures of the Protocol on Environmental Protection to the Antarctic Treaty, for the decision to continue USAP activities in Antarctica, increase partnerships, and establish goals for infrastructure replacement. This decision will guide alternative uses of federal resources upon which future agency action will be based during the decade following the publication of the record of decision.

DATES: Comments regarding this notice of intent will be of most use to the planning team if they are received before October 30, 1994.

The final environmental impact statement is expected to be available in August, 1995. The record of decision is expected to be available in October, 1995.

ADDRESSES: Written comments should be submitted to: Robert S. Cunningham, Office of Polar Programs, Room 755 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham, Peter Karasik, or Allison Cook at the Office of Polar Programs, National Science Foundation TEL: (703) 306–1031, FAX: (703) 306–0139, EMAIL: rcunning@nsf.gov

SUPPLEMENTARY INFORMATION:

History of the United States Involvement in Antarctica

The United States has been active in Antarctica since its discovery and exploration in the 1800's. Since the 1950's, the United States has played a crucial role in building the international cooperation necessary for establishing a peaceful, non-exploitative human presence on the Earth's last undeveloped continent. Through the Antarctic Treaty, which went into effect with 12 original member nations in 1961, the United States and 40 other nations have agreed to avoid militarization or conflict over territorial claims in the Antarctic Treaty Area, the area of the earth from the South Pole to 60 degrees south latitude. Treaty nations are dedicated to international cooperation, scientific study, and protection of Antarctica's distinctive environment.

Antarctica, a land mass 98 percent of which is ice and snow covered, is larger than the United States and Mexico combined and is the highest, coldest, windiest, and driest of all continents. Though it does contain about 70 percent of the earth's freshwater, that water is

locked in an ice sheet more than a mile thick across much of the continent.

The majestic scenery and distinctive climate, elevation, location, and natural history of Antarctica and its surrounding oceans entice air-and ship-borne tourists whose numbers have increased substantially in the last decade. Many of these unique attributes enhance scientific investigations and afford uncommon educational opportunities. Antarctica also provides unique challenges for the application of advanced engineering technologies applicable in remote, extreme environments.

The continent is an ideal laboratory for many upper atmosphere and space science studies and, because it has had very little human influence, is a benchmark for recording the effects of mankind on world climate and atmospheric chemistry. The ongoing studies of atmospheric ozone depletion and increase in carbon dioxide concentrations are critical, world-wide environmental concerns. At the edges of the continent and in the antarctic waters where sustained plant and animal life is possible, biological research provides scientists with opportunities to develop their skills and improve our knowledge of the polar environment and the effects of human beings on the Earth's natural processes. Researchers are studying the structure and function of polar ecosystems and the ways that organisms adapt to extreme conditions. In addition to being valuable in its own right, this research may yield results which will improve the management of living resources in this region.

The United States Antarctic Program (USAP)

Without interruption since 1956, Americans have conducted science and education programs in Antarctica. These scientists, administrators, and supporting personnel make up USAP: some 2,500 Americans. Antarctica has no native inhabitants or infrastructure. Three year-round research stations are maintained by USAP: McMurdo, Amundsen-Scott South Pole, and Palmer Stations. In addition, from October thought February, field research camps are established for glaciologists, earth scientists, biologists, and other scientists. For science and education programs at sea, the program has two ice-strengthened ships, the *Polar Duke* and the *Nathaniel B. Palmer.*

Large, ski-equipped LC–130 aircraft, operated by United States Navy Pilots for the National Science Foundation, provide logistical support within Antarctica. These durable aircraft and others transport research teams to most field locations and ferry personnel from staging areas in Christchurch, New Zealand.

McMurdo Station, the largest station in Antarctica and Antarctica's most southern port, is USAP's logistics hub and a center for scientific studies. Each January, a Coast Guard icebreaker breaks out the sea ice and a tanker and a cargo ship deliver a year's supply of fuel, building materials, food, and scientific research supplies. In 1994, the year's fuel supply was 28.4 million liters (7.5 million gallons) half of which was used for USAP aircraft. During the 1993/1994 austral summer, 6.1 million kilograms (13,500,000 pounds) of cargo were delivered by vessel and 1.4 million kilograms (3,050,000 pounds) were delivered by air to Antarctica. During the October through February austral summer field season, the population of scientists and support personnel at McMurdo Station is near 1,200. In February, the last transport plane of the season leaves a wintering population of about 230. Except for an airdrop at midwinter in late June and a few flights in August, scientists and support personnel are isolated until October.

The Amundsen-Scott South Pole Station, at the geographic south pole, is built on the slowly moving antarctic ice sheet. The station, supplied entirely by air from McMurdo Station 1,350 kilometers (840 miles) away, accommodates up to 125 people in the austral summer. About 25 people winter over during the eight months of isolation from mid-February through October. The station supports astronomy, upper atmosphere science, meteorology, glaciology, and earth sciences as well as human health and behavioral studies. Two hundred yards upwind of the main station in some of the cleanest air on earth, a clean air facility monitors world background levels of atmospheric carbon dioxide and trace manmade chemicals.

Palmer Station, on Anvers Island just west of the Antarctic Peninsula, is primarily a marine biology center. It also supports upper atmospheric sciences and other studies. Logistically separate from McMurdo Station and the Amundsen-Scott South Pole Station, Palmer enjoys year-round access by ship from South America, 1200 kilometers (750 miles) north. The station has two major buildings, two fuel storage tanks, several smaller structures, and a dock. Population ranges from 10 to 43.

The National Science Foundation has overall management responsibility for USAP and United States activities in Antarctica. However, several federal agencies have important roles in the United States presence in Antarctica. The Department of Defense assists in planning and provides logistical support to USAP. The Department of Transportation's United States Coast Guard provides icebreaker services and other assistance as required. The Department of State is responsible for the formulation of foreign policy and foreign policy direction relating to the development and implementation of an integrated United States program for Antarctica.

USAP Activities in Antarctica

USAP activities have steadily increased in size and complexity. In 1994, over 125 individual projects were supported by USAP. Support for scientists aboard research ships or within the antarctic continent has increased from approximately 22,500 scientist-days in 1983 to 30,400 scientist-days in 1993. The number of USAP-supported scientists and students in the United States has increased from approximately 450 in 1983 to about 800 in 1993. International cooperation in science and logistics support has also increased in the last decade. Demand for science and education programs in Antarctica is also expected to increase during the next decade.

In addition to supporting increasingly important science and education programs in Antarctica, a five-year safety, environment, and health program has enabled USAP to reduce the health and safety risks to participants and significantly improve environmental protection. USAP has made significant progress in the remediation of old waste disposal sites and in the removal of wastes from Antarctica. For example, 3,630,000 kilograms (8 million pounds) of wastes were removed from Antarctica in 1994 with 70 percent being managed in the United States through alternatives to disposal. Waste wood, the largest waste component and 40 percent of the total, was chipped and used as fuel. Approximately 30 percent of the wastes were recycled.

Because the science and education programs are increasing in size and complexity, improved equipment, more specialized facilities, additional electrical power, and improved logistical support are now required. USAP has met many of these emerging needs. The recently completed Crary Science and Engineering Center at McMurdo Station provides modern facilities for data analysis and particularly research on biological aspects of the local environment. In addition, improved telecommunications now enable some scientists to interpret antarctic data at home institutions rather than having to travel to

Antarctica or remain there for extended field visits. Many scientists now depend on electronic mail and similar technologies to communicate directly with home institutions and participating colleagues during their field visits to Antarctica.

Now, almost 40 years after USAP began, much of the infrastructure at each of the three year-round USAP Stations has served its intended life expectancy. USAP stations were originally built to serve the newly developing antarctic science and education programs of the 1950s and '60s. With few people or facilities in Antarctica, there was an expeditionary approach to infrastructure development. Energy efficiency and environmental protection were not high priorities. Today, much of the USAP infrastructure cannot meet modern practices without significant repair or substantial restrictions in use.

For example, much of the 34-million liter (nine-million gallon) fuel storage and transfer system at McMurdo Station is over 30 years old and has experienced localized mechanical failures causing leaks and spills. If modern engineering, environmental, and safety practices are to be met, much of the facility requires replacement. The Amundsen-Scott South Pole Station is beyond its 15- to 20-year design life and requires substantial reconstruction in order to support ongoing and future science and education programs. Palmer Station, though not in as critical condition or in as harsh an environment as the Amundsen-Scott South Pole Station, is in need of expansion, significant repair, and replacement of inefficient buildings and worn out equipment.

Issues and Possible Alternatives for USAP Activities

During development of the proposal, discussions were held with USAP participants, administrators, scientists, educators, and people from the United States and other nations interested in Antarctica. From these discussions and others, the following four categories of issues have emerged:

- USAP capacity to support ongoing and developing science and education projects in the next decade and beyond;
- The health and safety of USAP participants in Antarctica;
- Energy use and conservation of resources; and
- Control of the physical intrusion of people and the reduction of human effects on Antarctica's environment.

These issues are important considerations in meeting USAP's long-term goals and pose potential conflicts in the use of available resources. To address the issues and fulfill the purpose and need of the proposed action, four possible alternatives are suggested for further evaluation. In each of the following alternatives, except B, NSF would increase partnerships with others in the implementation of USAP:

- Alternative A—Use USAP facilities as long as they remain functional. This alternative would continue USAP with no major infrastructure repairs or renovations. Repairs to failing systems would be made as needed, but scheduled replacement of facilities would cease. Facilities that could not be repaired on site, would discontinue service and support to science and education projects;
- Alternative B—Maintain facilities at the current level of performance. This alternative maintains the "status quo" of USAP facilities for the next ten years. The improvement or replacement of facilities to prevent major structural failures, and risks to health and safety, would be conducted, on a modest, long-term implementation schedule. Upgrades of fuel storage, fuel distribution, and utility systems would also be scheduled to reduce the risk of system failure. A sanitary wastewater treatment system would be constructed at McMurdo Station. However, the Amundsen-Scott South Pole Station would not be reconstructed, requiring a significant reduction in science support capacity within 10 years and a possible closing of the station in the following decade;
- Alternative C—Complete moderate renovation of USAP facilities. This alternative includes renovations at each USAP station, including reconstruction of the Amundsen-Scott South Pole Station, renovation of Palmer Station, and a moderate renovation of McMurdo Station. The renovation at McMurdo Station would retain existing structures which are in good condition, demolish or extensively renovate inefficient and severely deteriorated structures, and add some new ones. A new science support center, central maintenance shop, central warehouse, and dormitories would replace inefficient buildings and consolidate functions. Approximately 37 buildings would be decommissioned during 10 years. Several of the original 1950's structures would be reutilized as a historic district within the station. Existing fuel tanks and related piping would be upgraded, replaced, or relocated to support the reconstruction of the Amundsen-Scott South Pole Station. A sanitary wastewater treatment system would also be constructed.

At Palmer Station, structures would be renovated and constructed with some functions consolidated. New housing, including kitchen and dining areas, would be built. Non-science related functions would be removed from the Biolab. Fuel storage, utilities, docking facilities, and waste storage would be improved. A sanitary wastewater treatment system would also be constructed; and

- Alternative D—Complete major renovation of USAP facilities. This alternative is similar to Alternative C and includes the reconstruction of Amundsen-Scott South Pole Station and consolidation and renovation of Palmer Station. Renovation and improvements at McMurdo Station would be greater than in Alternative C. The majority of the buildings and facilities at McMurdo Station would be replaced. McMurdo Station would have increased functional efficiency, reduced energy usage, and improved flexibility to support a variety of science and education projects in the next decade and beyond.

As in Alternative C at McMurdo Station, construction of a new science support center, central maintenance shop, and central warehouse and maintenance facility would replace inefficient buildings. The majority of community functions would be consolidated into a new single building. Approximately 40 buildings would be decommissioned. Building 9, an original at McMurdo Station, would be preserved as a historic site. A redesigned waste management facility would be incorporated into a new warehouse and maintenance facility. The fuel storage area would be reconstructed further from the sea than the current facility. A sanitary wastewater treatment system would be constructed.

The public is invited to comment on any aspect of the proposal and the possible alternatives described above. The comment period on the draft environmental impact statement (comprehensive environmental evaluation) will be a minimum of 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Dated: August 30, 1994.

Mr. John B. Talmadge,

Section Head, Polar Coordination and Information, Office of Polar Programs, National Science Foundation.

[FR Doc. 94–22085 Filed 9–7–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Co; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Power Plant, Unit Nos. 1 and 2 located in San Luis Obispo County, California.

The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to specify an alternate method of determining water and sediment content for new diesel fuel oil as specified in TS 3/4.8.1.1, "A.C. Sources—Operating." The specific TS changes proposed are as follows:

TS 4.8.1.1.3c.1(d) would be revised to allow new fuel oil to be tested using a "clear and bright" test or a quantitative test that verifies a water and sediment content less than or equal to 0.05 volume percent when tested in accordance with ASTM D1796–83.

DCPP currently uses undyed number 2 diesel fuel oil that contains intermediate levels of sulfur and aromatics. Recently, the local fuel supplier unexpectedly discontinued production of this fuel oil. This fuel may be available from other suppliers outside of the State of California, however, its availability cannot be assured. Based on current emergency diesel generator (EDG) testing schedules, it is expected that fuel oil will need to be added to the main fuel oil storage tanks by approximately October 1, 1994, to meet minimum storage requirements.

Environmental Protection Agency and Internal Revenue Service regulations require fuel not intended for use in motor vehicles to be dyed. The two reliable fuels that could be used at DCPP are: (1) dyed number 2 diesel fuel oil; or (2) undyed California Air Resources Board (CARB) number 2 diesel fuel oil intended for use in motor vehicles. The licensee is still evaluating the acceptability of using CARB fuel. The licensee's evaluation of the dyed fuel concludes it is acceptable for use in the EDGs. Consequently, the licensee desires to have the option of using dyed fuel.

TS 4.8.1.1.3c.1(d) currently requires that new diesel fuel oil have a "clear and bright appearance with proper color" when tested in accordance with ASTM D4176–82. The ASTM D4176–82 "clear and bright" test is a qualitative test for evaluating water and sediment content. TS 4.8.1.1.3c.1(d) is required to be changed to allow the use of dyed fuel. This proposed amendment would change this requirement to also allow the use of a quantitative measurement of water and sediment content in accordance with ASTM D1796–83.

Therefore, pursuant to 10 CFR 50.90 and 50.91(a)(6), the licensee requests that the license amendment be reviewed on an exigent basis to allow the use of dyed number 2 diesel fuel oil.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed alternate acceptance criteria and test methodology provide the same level of assurance that fuel oil with water or sediment in excess of the limits for number 2 diesel fuel oil will not be added to the EDG main fuel oil storage tanks.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change is administrative in nature and does not involve any physical alteration to any plant system or change the method by which any safety-related system performs its function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed alternate acceptance criteria and test methodology provide the same level of assurance that fuel oil with water or sediment in excess of the limits for number 2 diesel fuel oil will not be added to the EDG main fuel oil storage tanks.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written

comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 7, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law of fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 29, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 2nd day of September 1994.

For the Nuclear Regulatory Commission.

James W. Clifford,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–22088 Filed 9–7–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Number 40–1162]

Federal Register Notice of Amendment to Change Reclamation Milestone Dates in Source Material License SUA–56 Held by Western Nuclear, Inc.

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Amendment of Source Material License SUA–56 to change reclamation milestone dates.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has amended Western Nuclear Inc.'s (WNI) Source Material License SUA–56 to change the reclamation milestone dates. This amendment was requested by WNI by letter dated June 14, 1994 and its receipt by NRC was noticed in the **Federal Register** on July 28, 1994.

The license amendment modifies License Condition 75 to change the completion dates for several site reclamation milestones. The new dates, proposed by WNI and approved by NRC, extend completion of (1) placement of final radon barrier on portions of the disposal cells by from one to two years, (2) placement of erosion protection by from one to two and one-half years, and (3) completion of groundwater corrective action by two years. WNI attributes the delays to (1) continued settlement in tailings areas containing extensive slimes, (2) materials sequencing issues during construction that are designed to preserve the integrity of the final reclamation soil cover, (3) continued operation of the groundwater corrective action program, and (4) regulatory delays in prior approvals which affected the entire sequence of reclamation activities. Based on review of WNI's submittal, the NRC staff concludes that the delays are attributable to factors beyond the control of WNI, the proposed work is scheduled to be completed as expeditiously as practicable, and the added risk to the public health and safety is not significant.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

SUPPLEMENTARY INFORMATION: WNI's license, which amended License Condition 75, and the NRC staff's technical evaluation of the amendment request are being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Allan T. Mullins, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6693.

Dated at Rockville, Maryland, this 31st day of August 1994.

Daniel M. Gillen,

Acting Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–22087 Filed 9–7–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34615; File No. SR–Amex–94–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Exchange's Rules for the Emerging Company Marketplace

August 30, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 9, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and on August 26, 1994 filed Amendment No. 1 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend the rules of the Emerging Company Marketplace ("ECM") to clarify certain provisions regarding the listing process and the types of securities which are eligible to be listed on the ECM, and to memorialize in one central location certain established Exchange policies which were previously set forth in other documents issued by the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange established the ECM in March 1992 so that companies too small for its regular list could realize the benefits of the auction market. Since that time, the Exchange has gained significant experience with the ECM listing process. In light of that, the Exchange has determined that it would be appropriate to expand or clarify certain aspects of the original rules, in particular, those provisions which concern the listing process and the types of securities which are eligible for listing on the ECM.

Unlike listing on the regular list, where all listing decisions are made by the staff, listing on the ECM is a multi-step process which also requires the separate concurrence of the ECM Listing Committee (the "Committee"). The Committee applies its subjective expertise in evaluating the listing eligibility of ECM prospect companies. While no company which is rejected by the ECM Listing Committee may be listed, the final decision on listing eligibility is, in each case, made by the Exchange staff. This, of course, precludes the listing of any issuer which falls short of the ECM listing criteria subsequent to its approval by the Committee. The proposed new rules clarify the ECM Listing Committee's role in the ECM listing process.

Specifically, the amended ECM Guidelines provide that, in evaluating listing eligibility, the Exchange and the ECM Listing Committee will consider the specified numerical criteria, as well as such subjective, qualitative factors as may be relevant, including the nature of the applicant company's business, its commercial prospects and future outlook, the reputation of its management,[1] its historical record and pattern of growth, and its financial integrity. The amended Guidelines

[1] The Exchange routinely screens all officers, directors, principal shareholders, underwriters, consultants and other significant individuals associated with each prospect company through a variety of regulatory and commercial databases.

further note that these subjective criteria are applied on an individual basis, that different criteria may have more or less significance depending upon the business characteristics of the applicant, and that, as a general matter, the relative maturity of a company will also influence the factors considered in its evaluation.[2] For example, with a developmental stage company, greater weight will likely be given to its future prospects than to its historical performance. Although the Guidelines reference certain qualitative factors, the Guidelines, both present and as amended, state that those particular qualitative factors are not an exclusive list of what may be considered in evaluating applicants.

The qualitative factors are also applied to each applicant on a case-by-case basis. Which factors are of greatest significance will likely be a function of the nature of the company's business, the company's maturity, and the relative level of commercial acceptance of its products or services. Due to the high cost of business or product development, for example, young companies are often without positive cash flow or earnings, so that the prospects and future outlook of such companies must lie at the heart of their qualitative analysis. Whether the company is providing a service, developing a new product or technology, or exploiting new ones, and the company's plans to raise capital and expand through future contracts or otherwise would also likely be relevant to the analysis of the applicant. The absence of a strong historical record or pattern of growth should not, in and of itself, preclude listing on the ECM if the company satisfies the quantitative requirements and in the view of the Exchange staff and the ECM Listing Committee, has the potential to demonstrate future success.[3] On the other hand, with a more mature company, the Exchange would give added consideration to the company's historical record in evaluating its suitability for listing.

In addition to clarifying the ECM Listing Committee's role, the new rules also make clear that the Exchange may present companies to the Committee prior to the time that they satisfy each of the numerical listing criteria, although, as noted above, all companies must meet each of the numerical guidelines before trading commences. For example, it is not unusual for a company to satisfy virtually all of the numerical guidelines but have a shortfall in stockholders' equity which it plans to remedy through an imminent private placement. This issuer would want to know whether it would be eligible to list upon completion of the offering. Indeed, knowledge that it would be approved might be useful to the company in determining whether or how to secure financing. In these cases, there is no reason to defer presenting the company for the ECM Listing Committee's consideration until after the completion of the financing transaction. This is no different than what happens whenever an initial public offering ("IPO") is listed on any marketplace.

The new rules also note that while the ECM Listing Committee does not ordinarily attach conditions to its approval of a company, if it does do so the company may not commence trading on the ECM until such conditions are met, or until the company is reconsidered and approved by the ECM Listing Committee. The new rules also specify that if, prior to trading, a company which was approved by the Committee experiences a negative change affecting its business, the Exchange staff shall consult with the Chairman of the Committee who shall determine whether the change is sufficiently significant so that the company must be resubmitted to the full Committee for its review. Finally, if a company approved by the ECM Listing Committee has not commenced trading within two quarters, the Exchange will resubmit the company to the Committee for further review.

In addition, the ECM rules have been expanded to specifically reflect certain matters that were previously covered only in other Exchange rules or in the ECM listing agreement, namely that ECM listed companies are not eligible to take advantage of the state securities ("blue sky") exemptions which are available to Amex-listed companies, and that their listed securities are not automatically marginable.

Among the other changes are the following:

- a new section has been added to discuss the process of transferring to the regular list, and to confirm that Amex companies may not transfer "down" to the ECM;
- new sections have been added to provide specific guidelines for the listing of units, preferred stock and debt securities,[4] and to clarify that the listing of warrants is not subject to the price and market value guidelines for common stock; and
- a technical change is being made to clarify that "shareholders" includes record holders, as well as beneficial ("street" name) holders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[2] In fact, no two analysts view a company in exactly the same way, and the factors they utilize are not generally susceptible of precise definition.

[3] Inevitably some young companies considered for the ECM have "going concern" opinions from their independent auditors. The Exchange recognizes that such a qualified opinion is a cautionary flag which relates to the issuer's financial integrity. While a going concern opinion will not automatically preclude a listing, the Exchange staff and the ECM Listing Committee will consider carefully why such an opinion was given and how likely the qualifier is to be lifted in the near term.

[4] To date, no debt securities have been listed on the ECM.

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–14 and should be submitted by September 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–22039 Filed 9–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34619; File No. SR–BSE–94–6]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Technical Amendments to Chapter XV ("Specialists")

August 31, 1994.

On June 20, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Chapter XV of its rules regarding Dealer-Specialists. On June 23, 1994, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 34312 (July 5, 1994), 59 FR 35550 (July 12, 1994). No comments were received on the proposal. This order approves the proposed rule change as amended.

The BSE is making certain structural and technical changes to Chapter XV ("Dealer-Specialists"). Specifically, the Exchange is adopting paragraph numbering for Chapter XV, and removing outdated and repetitive language. For example, the Exchange is deleting the reference to the Business Conduct Committee which was changed to the Market Performance Committee. In addition, certain paragraphs have been relocated to other sections of Chapter XV, and clarifying language has been added to certain other sections.

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that the rule is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[4] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

The Commission believes that the structural and technical changes to Chapter XV, which among other things, adopts paragraph numbering for Chapter XV, deletes the reference to the Business Conduct Committee, and relocates various sections of Chapter XV should remove outdated and repetitive language, and help the public to locate or refer to the rules within Chapter XV.

The Commission also believes that the amendments to Chapter XV should benefit investors by helping to ensure that the rules relating to specialists are current and not outdated, while at the same time, maintaining the quality of the rule. For example, while the amendment deletes the term "Dealer" from the references to the term "Dealer-Specialists," and removes unnecessary language within Chapter XV, the substantive language to Chapter XV remains unchanged.

It is therefore ordered, pursuant to Section 19(b)(2)[6] that the proposed rule change (SR–BSE–94–6) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–22057 Filed 9–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34626; File No. SR–NYSE–94–18]

September 1, 1994.

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to its Allocation Policy and Procedures

I. Introduction

On May 26, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Allocation Policy and Procedures.

The proposed rule change was published for comment in Securities Exchange Act Release No. 34325 (July 7, 1994), 59 FR 35775 (July 13, 1994). No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NYSE Allocation Policy and Procedures ("Allocation Policy" or "Policy") governs the allocation of equity securities to NYSE specialist units.[3] The NYSE is amending its Allocation Policy to revise, among other things, the composition of the Allocation Committee ("Committee")[4]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* letter from Karen A. Aluise, Assistant Vice President, BSE, to Sandra Sciole, Special Counsel, SEC, dated June 22, 1994. Amendment No. 1 made certain clarifying changes to the proposal.

[4] 15 U.S.C. 78f (1988).

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a) (12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] The NYSE Allocation Policy applies to the allocation of equity securities under the following circumstances: (1) when a common stock is to be initially listed on the NYSE; (2) when a security is to be reallocated as a result of disciplinary or other proceedings under NYSE Rules 103A, 475 and 476 or (3) when a specialist unit voluntarily surrenders its registration in a security as a result of possible disciplinary or performance improvement action. *See* NYSE Allocation Policy and Procedures.

[4] The NYSE Allocation Committee has sole responsibility for the allocation of securities to specialist units under the allocation policy pursuant to Board-delegated authority, and is overseen by the Quality of Markets Committee of

Continued

and the Allocation Panel ("Panel"),[5] the quorum requirement for the Committee, and the allocation of merging companies.

The NYSE is revising the composition of the Allocation Committee, which consists of nine members, to include three broker Governors[6] (one of whom may be an independent/two-dollar broker),[7] four other Floor brokers from the Allocation Panel (one of whom must be an independent/two-dollar broker), and two allied members[8] from the Market Performance Committee or the Panel. For options allocations, only one Governor would sit on the Committee. Currently, only one Governor sits as a member of the Allocation Committee, and there is no requirement that one member of the Committee be an independent/two-dollar broker.

The Exchange is amending the quorum requirement for the Allocation Committee to require that at least two Floor Broker Governors be present out of the seven member quorum. For options allocations, a quorum would include one Governor. Currently, only one Governor is required for a quorum.

The amended Policy also allows Governors to serve as chairman of the Allocation Committee. It also requires all candidates for chairman to have prior experience on the Allocation Committee. Currently, Governors are not eligible to serve as chairman of the Committee.

The Exchange is further amending the Policy to state that all incoming Allocation Committee members are expected to observe as many Committee meetings as possible prior to beginning their terms as Committee members.

The Exchange is also revising the composition of the Allocation Panel. The revised panel will be composed of 48 persons, including 28 Floor brokers and eight allied members, plus the eight broker Governors and four allied members serving on the Exchange's Market Performance Committee. Currently, the four allied members of the Market Performance Committee do not serve on the Panel.

Selection to the Allocation Panel currently occurs through an annual appointment process which utilizes input from the membership. The Exchange is amending the Policy to require Panel members to be nominated by the Exchange membership.

To be eligible to serve on the Allocation Panel, the Exchange currently requires Floor brokers to have five years of trading Floor experience. The Policy also states that to the maximum extent possible, the Panel should consist of a core group of experienced, senior professionals, such as former Allocation Committee chairmen, senior Floor Officials, and current and former Floor Governors. In the case of allied members, the member organization is appointed to the Panel and it selects a representative to serve. The Exchange is amending the Policy to require that the allied members chosen to serve have at least five years of experience in trading listed equities and have a senior position on the trading desk. The Policy is also being amended to permit allied members to designate one alternate who meets the Panel qualifications, subject to approval by the Floor Directors.

The Exchange is amending the Policy to provide for a four month term of service on the Allocation Committee for all members, including Governors. The current terms are six months for non-Governor members and two months for Governors. The Exchange is also codifying the existing practice of permitting Panel members to serve a maximum of six consecutive one year terms and to stagger terms so that every two months four or five members would rotate from the Allocation Committee.

Finally, the Exchange is amending the Policy to codify its practice on the allocation of merging listed companies. The Policy is being amended to state that when two listed companies merge, the new entity will be assigned to the specialist in the company determined to be the surviving/dominant company. If no surviving/dominant company can be identified, the entity will be referred to the Allocation Committee for allocation. Currently, the Market Performance Committee, with the assistance of Exchange Counsel and the Marketing Division, makes the determination of which company is the surviving/dominant company.

The NYSE believes that the proposal is consistent with Section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The NYSE believes that the proposal is consistent with these objectives in that the amendments enable the Exchange to further enhance the process by which stocks are allocated to ensure fairness and equal opportunity in the allocation process.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) of the Act.[9] Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Further, the Commission finds that the rule change is consistent with section 11(b) of the Act[10] and Rule 11b–1 thereunder,[11] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets. For the reasons set forth below, the Commission believes that the amended Allocation Policy should enhance the Exchange's allocation process, encourage improved specialist performance and, thereby, protect investors and the public interest.

Specialists play a crucial role in providing stability, liquidity and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[12] To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain stock allocation procedures and policies that ensure that securities are allocated in an equitable and fair manner and that all specialists have a fair opportunity for allocations based on established criteria and procedures. The Commission fully supports and encourages the NYSE's continuing effort to develop meaningful and effective Allocation Policies, which in turn, should improve the allocation system. The Commission believes that

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the Board of Directors ("Board"). The Allocation Committee renders decisions based on the allocation criteria specified in the Allocation Policy.

[5] The Allocation Committee is drawn from the Allocation Panel.

[6] A Floor Governor is an individual, designated as such by the Chairman of the Exchange's Board of Directors, who is empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Director as prescribed by the rules of the Exchange's Board of Directors.

[7] The Exchange defines an "independent/two-dollar broker" as a member on the Exchange floor acting as a broker for other members.

[8] An allied member is a general partner, principal executive officer or employee who controls a member firm or member organization.

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] 15 U.S.C. 78k(b) (1988).

[11] 17 CFR 240.11b–1 (1994).

[12] Rule 11b–1, 17 CFR 240.11b–1 (1994); NYSE Rule 104.

amending the Allocation Policy to revise, among other things, the composition of the Allocation Committee and Allocation Panel, the quorum requirement for the Committee, and allocation of merging companies, should maximize the professionalism, expertise and objectivity of the Committee and Panel, which in turn, should provide the best possible match between specialist units and the securities to be allocated and, thereby, effect improved specialist performance.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–94–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–22125 Filed 9–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34620; File No. SR–PHLX–94–39]

Self-Regulatory Organizations; the Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the PHLX's Schedule of Fees and Charges Respecting Fees and Charges for the Transaction of Business on Its Option Floor

August 31, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 29, 1994, the Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the PHLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its Schedule of Fees and Charges respecting options transactions charges for the transaction of business on its options floor. Specifically, proprietary transactions of non-Options Clearing Corporation ("OCC") member firms ("non-clearing firm member") will be eligible for a rebate to reduce their option transaction charges for equity, sectors index, and value line options from the customer execution rate to the firm rate. This reduction will be $.09 or $.24/per contract (for equity options), $.10 or $.30/per contract (for sectors index options), and $.09 or $.29/per contract (for value line options), depending upon the market value of the contract given to OCC members.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the Exchange's Schedule of Fees and Charges for the transaction of business on its option floor, specifically the options transaction charge for equity, value line, and sectors index options. Effective at the opening of business on Monday, August 1, 1994, the PHLX adopted an amended options transaction charge schedule to allow non-clearing firm members conducting business for their proprietary account to receive the same "firm" rate given to OCC members. Due to the limitations of OCC's clearance and settlement date entry coding format, non-clearing firm members' proprietary transactions will continue to be invoiced by the PHLX at customer rates. The Exchange instead will provide the reduction to non-clearing firm members in the form of a rebate. To obtain the rebate, the non-clearing firm member is required to submit a PHLX rebate request form with supporting documentation within thirty days of the invoice date. The purpose of these amended charges is to promote and encourage additional market participation by non-clearing firm members in these products at the PHLX.

The PHLX believes that the proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and charges among the PHLX members and other persons using the PHLX facilities.[3]

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Rule 19b–4 under the Act in that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W.,

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[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Customer transactions are billed at two rates. A higher rate is charged for contracts that are over $1.00 in market value. The same "firm" rate is charged for all member proprietary transactions.

[3] 15 U.S.C. 78f(b)(4) (1988).

Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to file number SR–PHLX–94–39 and should be submitted by September 29, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–22126 Filed 9–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20518; File No. 812–8886]

AUSA Life Insurance Company, Inc., et al.

August 31, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: AUSA Life Insurance Company, Inc. ("AUSA"), and Diversified Investors Variable Funds of AUSA Life Insurance Company, Inc. (the "Diversified Account").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to (a) Section 17(b) of the 1940 Act granting an exemption from Section 17(a) of the 1940 Act, (b) Section 17(d) of the 1940 Act and Rule 17d–1 thereunder granting an exemption from those provisions, and (c) Section 11 of the 1940 Act approving the proposed offer of exchange.

SUMMARY OF APPLICATION: Applicants seek an order approving the transfer of assets from the Keynote Series Account of The Mutual Life Insurance Company of New York ("MONY Keynote") to the Diversified Account, and approving the offer of exchange of interests in MONY Keynote for interests in the Diversified Account through assumption reinsurance by AUSA of group variable annuities issued by The Mutual Life Insurance Company of New York ("MONY Keynote Contracts"), the purchase payments for which are allocated to MONY Keynote.

FILING DATES: The application was filed on February 10, 1994 and was amended on August 17, 1994 and August 29, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by September 26, 1994, and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests must state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 4 Manhattanville Road, Purchase, New York 10577.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 942–0670, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. AUSA is a stock life insurance company organized under the laws of the State of New York. AUSA is a wholly-owned subsidiary of First AUSA Life Insurance Company ("First AUSA"). First AUSA is a wholly-owned subsidiary of AEGON USA, Inc. ("AEGON"), a financial services holding company whose primary emphasis is on life and health insurance, annuities, and investment products. AEGON is a wholly-owned indirect subsidiary of AEGON nv, a Netherlands corporation, which is a publicly-traded international insurance group.

2. In 1993, AUSA formed the Diversified Account as a separate account under New York law. The Diversified Account is divided into ten subaccounts (the "Subaccounts"). Eight of the ten Subaccounts will invest in a corresponding series of the Diversified Investors Portfolios, while the remaining two Subaccounts will invest in the Calvert Socially Responsible Series of Acacia Capital Corporation (the "Calvert Socially Responsible Series") and in the International Portfolio of Scudder Variable Life Investment Fund, respectively. Pursuant to New York law, the income and capital gains or losses of the Diversified Account, whether realized or not, will be credited to or charged against the assets held in the Diversified Account, without regard to the income or capital gains or losses of any other separate account or of AUSA's general account. Nor will the assets of the Diversified Account be chargeable with liabilities arising out of any other business conducted by AUSA. However, all obligations arising out of any variable contract issued (or assumed) by AUSA and funded by the Diversified Account will be general corporate obligations of AUSA. A registration statement registering the Diversified Account as a unit investment trust under the 1940 Act and registering certain group variable annuity contracts (the "AUSA Diversified Contracts") issued by AUSA and the Diversified Account under the Securities Act of 1933 (the "1933 Act") has been filed with the Commission (file no. 33–73734).

3. The Mutual Life Insurance Company of New York ("Mutual of New York"), has registered MONY Keynote as a unit investment trust under the 1940 Act, and has registered interests in MONY Keynote under the 1933 Act. MONY Keynote is divided into subaccounts, which invest in the corresponding portfolios of the Diversified Investors Portfolios and in the Calvert Socially Responsible Series.

4. On December 31, 1993, Mutual of New York entered into an agreement (the "Assumption Reinsurance Agreement") with AEGON and AUSA pursuant to which AEGON acquired the group pension operations of Mutual of New York. In accordance with the Assumption Reinsurance Agreement, MONY Keynote Contracts will be transferred by assumption reinsurance to AUSA, and the assets held in MONY Keynote will be transferred to the Diversified Account, subject to receipt of any necessary state insurance department approvals, the consent (if required by a state insurance department) of the holder of a MONY Keynote Contract, and the issuance of the Order requested by Applicants.

5. The Assumption Reinsurance Agreement provides that holders of MONY Keynote Contracts may elect, during the period prescribed by the law of the state in which the holder of the MONY Keynote Contract resides, to permit their MONY Keynote Contract to be assumed by AUSA and "opt in," or elect not to do so and "opt out." Pursuant to the Assumption Reinsurance Agreement, this election will be described in a notice of election (the "Notice of Election"), which will be sent to holders of MONY Keynote Contracts. The Notice of Election will be accompanied by a prospectus for the Diversified Account which will describe the AUSA Diversified Contracts. The Notice of Election will be in a form

[4] 17 CFR 200.30–3(a)(12) (1993).

approved by the New York Insurance Department and, in certain cases, also approved by the insurance department of the state in which the holder resides. The Notice of Election will (a) State that the underlying assumption reinsurance transaction between MONY and AUSA has been approved by the New York Insurance Department, (b) describe the options available to the holder to either opt in or opt out of the assumption reinsurance transaction and (c) enclose an "Election Form" to be completed and returned. The Notice of Election will explain that the holder may opt out by so indicating on the Election Form or may opt in by either so indicating on the Election Form or, to the extent permitted under the insurance laws of the applicable state, by taking no positive action to opt out.

6. All holders who opt in, or are deemed to have opted in, will receive a Certificate of Assumption evidencing the assumption of obligations of Mutual of New York under the MONY Keynote Contracts by AUSA. The assumption will be effected by causing all assets invested in a particular subaccount of MONY Keynote to be transferred to the Diversified Subaccount which invests in the same series of the Diversified Investors Portfolios or the Calvert Socially Responsible Series, as applicable. On and after the effective date of the assumption of any MONY Keynote Contract, any future purchase payments for an assumed MONY Keynote Contract will be allocated to the Diversified Account and to the Diversified Subaccount which corresponds to the MONY Keynote subaccount(s) most recently selected by the holder of the MONY Keynote Contract. Under the terms of each MONY Keynote Contract which is assumed by AUSA, transfer instructions for existing investments and revised allocation instructions for future purchase payments may be transmitted to AUSA subsequent to the effective date of the assumption to permit allocations to Diversified Subaccounts for which there was no corresponding subaccount available under the MONY Keynote Contract.

7. In the event that a holder of a MONY Keynote Contract rejects the assumption offer and thus opts out, the Assumption Reinsurance Agreement provides that AUSA will indemnity reinsure, to the extent permissible under applicable insurance laws, such MONY Keynote Contracts. Applicants state that indemnity reinsurance will have no effect on the rights and obligations under the MONY Keynote Contracts as between Mutual of New York and the holder. In addition, indemnity reinsurance will be limited only to those very narrow obligations thereunder funded by the general account of the insurer (*i.e.*, those obligations of Mutual of New York under a MONY Keynote Contract funded by assets held in MONY Keynote will not be subject to indemnity reinsurance).

8. The terms of the MONY Keynote Contracts and of the AUSA Diversified Contracts will be the same whether a holder opts in or opts out, except that the insurance company responsible for providing the benefits under the contract will be AUSA for those holders who opt in, or are deemed to have opted in. The charges and fees under the AUSA Diversified Contracts with respect to amounts allocated for variable accumulation will be the same as under the MONY Keynote Contracts.

Applicants' Legal Analysis

1. Section 2(a)(3) of the 1940 Act defines "affiliated person" to include any person directly or indirectly under common control with such other person. Section 2(a)(9) of the 1940 Act defines control, as is relevant here, as the power to exercise controlling influence over the management or policies of a company. Section 17(a) of the 1940 Act prohibits any affiliated person or any affiliated person of such a person, acting as principal, from selling to or purchasing from a registered investment company, or any company controlled by such registered company, any security or other property. Section 17(b) of the 1940 Act provides, however, that the Commission, upon application, may exempt a proposed transaction from the provisions of Section 17(a) if evidence establishes that (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

2. In the event that a holder of a MONY Keynote Contract rejects the assumption offer and opts out, the Assumption Reinsurance Agreement provides that AUSA will indemnity reinsure such MONY Keynote Contracts. The indemnity reinsurance has the effect of rendering AUSA ultimately liable for the financial obligations of Mutual of New York under the MONY Keynote Contracts. In addition, the Assumption Reinsurance Agreement provides that the obligations of Mutual of New York under the MONY Keynote Contracts to administer those contracts will be performed by AUSA or by an affiliate of AUSA pursuant to an administrative services agreement. Although Mutual of New York remains the depositor of MONY Keynote, AUSA may be said to have the power to exercise controlling influence over the management and policies of MONY Keynote. As a practical matter, AUSA and the Diversified Account may exercise some influence or control over the management of MONY Keynote after the closing pursuant to the Assumption Reinsurance Agreement (the "Closing"). Applicants state therefore, that it is possible that the Diversified Account and MONY Keynote may, after the time of the Closing, be affiliated by virtue of being under the common control of AUSA. Accordingly, the proposed transfer of assets from MONY Keynote to the Diversified Account with respect to MONY Keynote Contractholders who opt in (or are deemed to have opted in) may be subject to Section 17(a) of the 1940 Act.

3. Applicants submit that the interests in MONY Keynote of holders of MONY Keynote Contracts will not be adversely affected by the transfer of assets and liabilities to the AUSA Diversified Account. The proposed transfer will not result in any dilution of such contractholders' interests, and will not result in any change in the assets underlying the value under the Contracts allocated for variable accumulation. Rather, the transfers will benefit such contractholders because they will look at AUSA as depositor of the Diversified Account. Applicants state that AUSA has a somewhat higher rating than Mutual of New York from the major rating organizations, and AUSA's credit is backed by AEGON. This benefit will be provided at no cost to contractholders, as all of the costs of the proposed transaction will be paid by Mutual of New York and AUSA. Accordingly, Applicants submit that the proposed transfer of the assets and liabilities of MONY Keynote to the AUSA Diversified Account is reasonable and fair, does not involve overreaching, is consistent with the policy of each registered investment company concerned, and is consistent with the general purposes of the 1940 Act.

4. Section 17(d) and Rule 17d–1 thereunder generally prohibit joint transactions or arrangements that involve both an investment company and an affiliate of the investment company. Because Mutual of New York has entered into the Assumption Reinsurance Agreement with AUSA

under which the assets of MONY Keynote will be transferred to the AUSA Diversified Account, the assumption reinsurance transaction may be deemed to be a joint transaction between AUSA, MONY Keynote, and the Diversified Account. Applicants state that Section 17(d) and Rule 17d–1 were intended to prohibit conflicts of interest. The Applicants submit that the proposed transaction does not create any conflicts of interest among MONY Keynote, the Diversified Account, and AUSA. The Diversified Account was specifically created for purposes of effecting the proposed transaction. Applicants state that this is not a transaction that is amenable to self-dealing by the affiliate of an investment company to the detriment of the investment company, and therefore it significantly differs from the type of "joint transactions" contemplated by the drafters of Section 17(d) and of Rule 17d–1. Under the terms of the Assumption Reinsurance Agreement, any transfer of assets between MONY Keynote and the Diversified Account will be at the direction of the holder of a MONY Keynote Contract (who will have received the disclosures discussed above), thereby eliminating the abuses of self dealing. Accordingly, Applicants assert that the transaction is consistent with the provisions, policies, and purposes of the 1940 Act, and respectfully request that the Commission grant an order approving the transaction.

5. Section 11(a) of the 1940 Act makes it unlawful for a registered open-end investment company or a principal underwriter for such a company to make an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged. Section 11(c) makes this prohibition applicable, irrespective of the basis of the exchange, to any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company. Under the terms of the Assumption Reinsurance Agreement, holders of MONY Keynote Contracts will be offered the opportunity to have AUSA assume the liabilities of those contracts. In effect, this offer amounts to an offer to exchange a group variable annuity contract, the depositor of which is Mutual of New York, for a group variable annuity contract, the depositor of which is AUSA. Applicants state that they cannot rely on the exemption set out in Rule 11a–2 under the 1940 Act to effect this exchange offer. Thus, Applicants' proposed exchange, although it will be effected at net asset value, must be approved by the Commission.

6. Applicants state that Section 11(a) was specifically designed to prevent the practices of "switching" and "reloading," whereby the holders of securities were induced to exchange their certificates for new certificates on which a new load would be payable. Because no charge will be assessed in connection with the assumption reinsurance of the MONY Keynote Contracts by AUSA, and because there are no front-end or surrender charges under either the MONY Keynote Contracts or the AUSA Diversified Contracts, Applicants state that the principal abuses at which Section 11(a) is directed will not be present. As discussed above, there will be no interruption in the underlying funds serving as investment media for the contracts before and after the transfer. In addition, AUSA believes, based on its review of existing federal income tax laws and regulations and advice of counsel, that the proposed assumption reinsurance transaction, including the proposed "opt in/opt out" rights described previously, will result in no taxable income or other adverse tax consequences to holders of MONY Keynote Contracts of AUSA Diversified Contracts.

7. Applicants assert that if MONY Keynote and the Diversified Account were affiliated in the manner contemplated by Rule 11a–2 under the 1940 Act, they could effect the exchange in reliance on that rule, notwithstanding the feature of the exchange offer under which MONY Keynote contractholders who fail to respond to the Notice of Election will be deemed to have opted in.

Applicants' Conclusion

Applicants submit that the exemptions requested herein satisfy the standards of Section 17(b) of the 1940 Act, that the terms of the proposed joint transaction meet the standards for granting an exemption under Rule 17d–1 under the 1940 Act, and that the terms of the exchange offer satisfy the standards of Section 11. Applicants therefore request that the Commission issue an order granting the requested exemptions from Sections 17(a), 17(d), and Rule 17d–1, and approving the proposed exchange offer under Section 11.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–22054 Filed 9–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20520; File No. 811–3431]

Sentinel Cash Management Fund, Inc.; Application for Deregistration

August 31, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Sentinel Cash Management Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on June 16, 1994, and amended on August 31, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 26, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, National Life Drive, Montpelier, Vermont 05604.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or C. David Messman, Branch Chief, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Maryland corporation that is registered under the

Act as an open-end diversified management investment company. Applicant also is a "money market fund," as defined in rule 2a–7 under the Act. On June 19, 1981, applicant filed a notification of registration under section 8(a) of the Act on Form N–8A. On the same date, applicant filed a registration statement under the Securities Act of 1933 and section 8(b) of the Act to register 10,000,000,000 shares of common stock, par value $.0001 per share. The registration statement became effective on October 15, 1981, and applicant's initial public offering commenced immediately thereafter.

2. At a meeting held on August 13–14, 1992, applicant's board of directors approved an agreement and plan of reorganization (the "Agreement") between Sentinel Group Funds, Inc. (the "Company"), on behalf of Sentinel U.S. Treasury Money Market Fund ("Sentinel Treasury"), and applicant. The Agreement and the transactions contemplated thereby are collectively referred to as the "Reorgnization." The Agreement provided for the transfer of substantially all of the assets and liabilities of applicant in exchange for shares of Sentinel Treasury.

3. Applicant stated in proxy materials filed in connection with the Reorganization that Sentinel Treasury is a no-load open-end investment company that invests exclusively in short-term marketable securities that are direct obligations of the U.S. Treasury. The purpose of the Reorganization was to provide shareholders with a money market fund whose portfolio is limited to the highest quality investments and whose operating expense ratio is potentially lower than applicant's.

4. Applicant and the Company are "affiliated persons" of each other, as that term is defined in the Act, solely by reason of having common directors, officers, and investment advisers. Applicant and the Company relied on rule 17a–8 under the Act in order to exempt the Reorganization from the affiliated transaction prohibition of section 17(a) of the Act. To avail itself of the rule 17a–8 exemption, each of the boards of directors of applicant and the Company, including a majority of disinterested directors of each of applicant and the Company, determined that the Reorganization was in the best interest of the shareholders and that the interests of existing shareholders would not be diluted as a result of the Reorganization.

5. On behalf of applicant, the Company filed a registration statement on Form N–14 on November 25, 1992, and amended it on December 30, 1992. The registration statement contained the proxy materials soliciting the approval of the Reorganization by applicant's shareholders. On or about January 5, 1993, proxy materials were mailed to applicant's shareholders. Applicant's shareholders voted to approve the Agreement at a special meeting held on February 23, 1992.

6. As of February 26, 1993, applicant had 47,609,856 shares outstanding, having an aggregate net asset value of $47,609,856, and a per share net asset value of $1.00. On March 1, 1993, pursuant to the Agreement, applicant transferred assets and liabilities to the Company in exchange for shares of Sentinel Treasury. The aggregate net asset value of Sentinel Treasury's shares received was equal to the net asset value of applicant's shares held. Applicant then distributed the Sentinel Treasury's shares it received *pro rata* to its shareholders, in complete liquidation of applicant.

7. No brokerage commissions were paid in connection with the Reorganization. The expenses for effecting the Reorganization were borne by the Company, up to $200,000. Expenses in excess of $200,000 were borne by Provident Mutual Life Insurance Company of Philadelphia and/or National Life Insurance Company. Such expenses include preparation of the Agreement, the registration statement, filing fees of the SEC and state securities commissions, and audit fees. Expenses connected with the deregistration, dissolution, and liquidation of applicant will be borne by Sentinel Administrative Service Corporation. Such expenses include preparing and filing Form N–8F with the SEC to deregister applicant, preparing and filing dissolution documents with the State of Maryland, legal fees, audit fees, and expenses incurred with ongoing compliance under the Act.

8. At the time of the amended and restated application, applicant had no assets, no liabilities, and no shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

9. On March 1, 1993, applicant filed Articles of Transfer with Maryland's Department of Assessments and Taxation, and on that date received a Certificate of Transfer from that office. Applicant intends to file Articles of Dissolution with that office as soon as practicable following its deregistration.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–22055 Filed 9–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20519; International Series Release No. 707; 812–9124]

State Street Bank and Trust Company; Notice of Application

August 31, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: State Street Bank and Trust Company.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: Applicant seeks an order to permit certain registered investment companies (other than investment companies registered under section 7(d)) ("Investment Companies") to maintain their foreign securities and other assets in Switzerland in the custody of Lombard Odier & Cie ("Lombard Odier").

FILING DATE: The application was filed on July 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 26, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 225 Franklin Street, 29th Floor, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a wholly-owned subsidiary of State Street Boston Corporation, a publicly held bank holding company. Applicant is organized as a bank and trust company under Massachusetts law and is a member of the Federal Reserve System.

2. Lombard Odier, a private bank in Switzerland organized as a partnership, is authorized under the Swiss Banking Act to carry out all banking activities. Lombard Odier concentrates on services related to asset management for institutional and private clients worldwide, including investment advisory services, investment research, securities brokerage and trading, custody, underwriting, foreign exchange and money market dealing, tax and corporate services, and personal financial planning. As part of its global approach to managing client assets, Lombard Odier has provided custody services for over a century, and, as of December 31, 1993, was custodian to more than 10,000 clients and held over 37 billion Swiss francs of assets in securities, currency, and precious metals held in over 30 countries.

3. Applicant seeks an order under section 6(c) exempting applicant, Lombard Odier, and Investment Companies and their custodians from section 17(f). The order would let applicant, as custodian or sub-custodian of cash, cash equivalents, and "foreign securities," as defined in rule 17f–5 (collectively, "Securities"), and Investment Companies and their custodians, to deposit, or cause or permit the deposit of, Securities with Lombard Odier in Switzerland. If the relief is granted, applicant intends to use Lombard Odier as a sub-custodian in Switzerland.

Applicant's Legal Analysis

1. Section 17(f) requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including banks meeting the qualifications set forth in section 26(a)(1) for custodians of the assets of registered investment management companies. As defined in section 2(a)(5), "bank" includes (a) a banking institution organized under the laws of the United States, (b) a member bank of the Federal Reserve System, and (c) any other banking institution or trust company doing business under the laws of any state or of the United States, (i) a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks, (ii) which is supervised and examined by state or federal authorities having supervision over banks, and (iii) which is not operated for the purpose of evading the Act. Applicant is a bank under section 2(a)(5) and meets the qualifications set forth in section 26(a)(1) for custodians of the assets of registered investment management companies.

2. Under section 17(f), the only foreign entities that may serve as custodians for registered management investment companies are the overseas branches of U.S. banks. Rule 17f–5 expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5(c)(2)(i) defines the term "eligible foreign custodian" to include a banking institution or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof, and that has shareholder's equity in excess of U.S. $200,000,000.

3. Applicant asserts that Lombard Odier satisfies all of the requirements of rule 17–5 except the shareholder's equity requirement. As a partnership, Lombard Odier technically does not have shareholders' equity. Absent exemptive relief, Lombard Odier may not serve as a custodian for Investment Company assets.

4. Applicant asserts that Lombard Odier is well qualified to act as sub-custodian for Investment Companies assets. Moreover, applicant believes that each Investment Company and its shareholders would be adequately protected against loss under the agreement described in condition 1 below, because applicant would be responsible for the performance of custody services by Lombard Odier to the same extent as though applicant itself were providing such services. Thus, under the agreement, the use of Lombard Odier as sub-custodian of Securities would not result in any reduction in the level of protection afforded the assets of the Investment Companies.

5. Section 6(c) in relevant part permits the SEC to exempt any person, security, or transaction, or class or classes thereof, from any provision of the Act, or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that its request satisfies this standard.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. Securities will be deposited in Switzerland with Lombard Odier only in accordance with an agreement among (a) the Investment Company or a custodian of Securities of the Investment Company for which applicant acts as sub-custodian, (b) applicant, and (c) Lombard Odier, pursuant to the terms of which applicant would act as the custodian or sub-custodian, as the case may be, of Securities of the Investment Company and Lombard Odier would be delegated such duties and obligations of applicant thereunder as would be necessary to permit Lombard Odier to hold in custody the Securities of the Investment Company in Switzerland. The agreement will further provide that applicant will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by Lombard Odier of its responsibilities under the agreement to the same extent as if applicant had been required to provide custody services under such agreement.

2. All provisions of rule 17f–5, other than the shareholders' equity requirement, will be complied with in connection with the deposit of Securities in Switzerland with Lombard Odier.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–22056 Filed 9–7–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0358]

Seacoast Capital Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On July 1, 1994, a notice was published in the **Federal Register** (59 FR 34008) stating that an application had been filed by Seacoast Capital Partners, L.P., 55 Ferncroft Road, Danvers, Massachusetts 01923, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1994)) for a license to operate as a small business investment company. Interested parties were given

until close of business August 1, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01–0358 on August 22, 1994, to Seacoast Capital Partners, L.P. to operate as a small business investment company.

The Licensee will be wholly owned by Seacoast Capital Corporation (99%) and Seacoast Capital Corporation II (1%), which is owned by Signal Corporation, a wholly-owned subsidiary of Itel Corporation. Itel is a $1.6 billion public company. The limited partnership will have at least $5 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 30, 1994.

Darryl K. Hairston,

Acting Associate Administrator for Investment.

[FR Doc. 94–22097 Filed 9–7–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of East Asian and Pacific Affairs

[Public Notice 2070]

Discretionary Grant Programs; Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1995 Applications

AGENCY: Department of State.

SUMMARY: The purpose of this application notice is to inform potential applicant organizations and individuals of fiscal and programmatic information and the closing date for the transmittal of applications for awards in Fiscal Year 1995 under the program administered by the Department of State.

FOR FURTHER INFORMATION CONTACT: Alphonse F. La Porta, Director, Office of Cambodian Genocide Investigations, Bureau of East Asian and Pacific Affairs, Department of State, Room 5206 Main State, 2201 C Street, NW., Washington, DC 20520. Telephone: (202) 647–0808; Fax: (202) 647–3069.

SUPPLEMENTARY INFORMATION: The Department of State invites applications from organizations and individuals with interest and expertise in conducting research, training and cataloguing primary source documentation concerning the genocidal acts and other crimes against humanity committed by the Khmer Rouge in Cambodia between April 17, 1975 and January 7, 1979. The grants, to be administered by the Office of Cambodian Genocide Investigations of the Bureau of East Asian and Pacific Affairs, will be awarded through an open national competition among qualified applicant organizations and individuals.

Authority for this program is contained in The Cambodian Genocide Justice Act, Sections 571–574 of the Foreign Relations Authorization Act (FRAA) for fiscal years 1994 and 1995. Section 573(b) provides the purpose of the Office of Cambodian Genocide Investigations:

". . . to support, through organizations and individuals whom the Secretary of State may contract to carry out the operations of the Office, as appropriate, efforts to bring to justice members of the Khmer Rouge for their crimes against humanity committed in Cambodia between April 17, 1975 and January 7, 1979, including—

(1) to investigate crimes against humanity committed by national Khmer Rouge leaders during that period;

(2) to provide the people of Cambodia with access to documents, records, and other evidence held by the Office as a result of such investigations;

(3) to submit the relevant data to a national or international penal tribunal convened formally to hear and judge genocidal acts committed by the Khmer Rouge; and

(4) to develop a U.S. proposal for the establishment of an international criminal tribunal for the prosecution of those accused of genocide in Cambodia."

The grant program is formally called the Cambodian Genocide Justice Grant Program.

Organization of Notice: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides fiscal data and administrative arrangements concerning the program.

Part I

Closing Date for Transmittal of Applications

An application for a grant award must be post-marked or hand-delivered by the close of business on October 31, 1994.

Applications Delivered by Mail

An application sent by mail must be addressed to Alphonse F. La Porta, Director, Office of Cambodian Genocide Investigations, Bureau of East Asian and Pacific Affairs, Department of State, Room 5206, Main State building, Washington, DC 20520.

In the event of disputes regarding the receipt of mail, an applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice or receipt from a commercial center or delivery service.

(4) Any other proof of mailing acceptable to the Department of State.

Applications Delivered by Hand

An application that is delivered by hand must be taken to Alphonse F. La Porta, Director, Office of Cambodian Genocide Investigations, Bureau of East Asian and Pacific Affairs in Room 5206, Main State building, 2201 C Street, NW., Washington, DC 20520; telephone (202) 647–0808.

Applications are accepted between the hours of 9 a.m. and 5 p.m. (EDT) daily, except Saturdays, Sundays and Federal holidays.

An application that is hand-delivered will not be accepted after 5:00 p.m. on the closing date.

Part II

Program Information

In furtherance of the objectives of The Cambodian Genocide Justice Act, applications for funding are being sought from qualified organizations and individuals to conduct the following activities:

1. Documentation Survey and Index

Primary source documentation relating to the genocidal acts and other crimes against humanity of the Khmer Rouge during the period specified by the legislation, as provided above, is located in Cambodia, neighboring countries, the United States and other countries where victims fleeing the Khmer Rouge regime and researchers, legal experts and experts of many nationalities reside. An effort is to be undertaken to identify document and evidentiary holdings, pertinent to the development of legal cases against the perpetrators of the acts of violence committed by the Khmer Rouge, which may be found in Cambodia, the United States and third countries. Such documentation may be in public or private hands; priority will be given to identifying the nature, location and extent of such documentation, and secondarily to the collection documents and research materials.

The purpose is to create a computer-based, IBM-compatible index of primary source materials, open to legal experts, scholars and governmental officials of all countries, in the United States and to replicate this documentation archive in Cambodia in cooperation with a qualified indigenous organization. Linkages with other existing document archives should be shown, as well as (a) requirements for access to and citation of such documentary evidence, (b) any restrictions on the publication or use in a judicial proceeding of such information, and (c) other factors relating to the veracity, reliability and completeness of such documentation.

To the extent that this archival survey can be advanced with funding authorized under this program, it would be desirable to develop an index of Khmer Rouge figures associated with specific genocidal acts and other crimes against humanity, together with relevant biographic information. A geographic index of violent incidents, Khmer Rouge command elements, and other events would also be useful.

For planning, monitoring and funding purposes, this project is to be divided into two phases, as follows:

Phase I—1994–95

- Initial surveys of documentary holdings in Cambodia and the United States.
- Establishment of a computer-based indexing system and data bank, first in the United States and later in Cambodia, including equipment acquisition and software development.
- Training of project specialists and information processing personnel in data acquisition, indexing and searching.
- Establishment of project management and monitoring systems.

Phase II—1995

- Enlargement of the documentation survey in Cambodia, the United States and third countries.
- Making publicly available, through publication or other means, initial documentary indexes and reports.
- Cross-indexing with other documentary holdings and archives in Cambodia, the United States and elsewhere.
- Establishment and operation of user systems for research, legal, public and official inquiries.

Phase II activities of this project will be funded in Fiscal Year 1995, but it is anticipated that the above-mentioned activities will proceed into Calendar Year 1996 and beyond.

Applying organizations and individuals should have demonstrated capability in developing, managing and operating computer-based systems of the type described above, together with an ability to establish a documentation center in Cambodia. Preference in awards will be given to those organizations and individuals who can apply existing resources and technical systems to this project and to seek funding from sources outside the United States Government.

2. Research and Training

A primary purpose of The Cambodian Genocide Justice Act is to stimulate activities within Cambodia relating to the investigation, research and preparation of legal cases against Khmer Rouge figures associated with genocidal acts and other crimes against humanity. Among the purposes of this project are to (a) propose areas for new research by Cambodian scholars and legal researchers, (b) initiate a series of regional historiographies, to be undertaken by Cambodian researchers, which would review all available primary and secondary documentation relating to the genocidal acts and other crimes against humanity, and (c) identify new repositories of primary source information to be used in developing legal cases against Khmer Rouge figures.

Regarding training, there is a perceived need to train Cambodian human rights workers, legal researchers, and officials in the legal system in investigative techniques, evidentiary standards, forensic science and the preparation of legal cases meeting accepted international standards. Training and familiarization in these areas is considered necessary to facilitate the development of triable cases against the Khmer Rouge. Such training may be conducted through existing or new programs or organizations in Cambodia, as appropriate.

For planning, monitoring and funding purposes, this project is to be divided into two phases, as follows:

Phase I—1994–95

- Identifying topics and areas of additional research in Cambodia regarding the crimes and atrocities committed by the Khmer Rouge during the period specified in The Cambodia Genocide Justice Act.
- Initiating a series of historiographic studies to review primary and secondary sources, documentation and evidentiary material on a region-by-region basis.
- Developing a pilot curriculum for the training and familiarization of Cambodian nationals in legal investigative techniques, evidentiary standards, forensic science and legal case preparation.
- Developing Cambodian-language materials to facilitate the above training and familiarization programs.
- Establishment of project management, sub-grantee selection, monitoring and evaluation systems.

Phase II—1995

- Sponsoring additional research in Cambodia as identified in phase I.
- Implementing a training program for government and non-government personnel in investigative techniques and other aspects of legal case preparation in conjunction with existing legal and/or human rights training programs or as a new program, as appropriate.
- Undertaking familiarization training in investigative techniques and legal standards for human rights workers, government officials and others in connection with existing programs in Cambodia.

Phase II activities of this project will be funded in Fiscal Year 1995, but it is anticipated that these activities will proceed into Calendar Year 1996 and beyond.

It is anticipated that research and training activities to the maximum extent possible will involve Cambodian nationals at all levels of effort. It may be possible in this regard to stimulate existing Cambodia-based organizations to undertake these activities or to add new programs to research and training programs already being conducted in Cambodia.

Preference in the award of funding will be given to an organization or individual capable of managing programs in Cambodia and demonstrated competence in allied fields, for example, human rights education, legal training and social science research.

Part III

Available Funds

Awards are contingent on the availability of funding. Project funding may be available at the level of approximately $500,000. The estimated funding availability for Phases I and II of both projects is as follows:

1. Documentation Survey and Index

Phase I—$150,000
Phase II—$100,000

2. Research and Training

Phase I—$100,000
Phase II—$150,000

Cost-sharing is encouraged whenever feasible in both projects. Applications

should indicate where collateral funding will be sought and where costs may be shared with existing programs, whether of the applicant or another institution.

Awards will be made by the Department of State on or about November 15, 1994. Awards will be based on an internal evaluation of grant proposals by a steering group convened by the director of the Office of Cambodian Genocide Investigations, with recommendations being made to the Assistant Secretary for East Asian and Pacific Affairs. Factors to be weighed in evaluating project proposals include institutional or individual experience in the specified fields of endeavor, staff professional qualifications and skills, available support systems, subject knowledge, program design, cost-sharing, and budget.

Monitoring and Evaluation

Applications should include bench mark or indicative dates (month/year) for the achievement of significant progress, completion of the phases and specific goals as identified in the grant proposal. Provision for an end-of-project evaluation through a peer procedure or outside evaluation should also be included. Where these elements are not present or acceptable, such requirements will be stipulated in the grant award.

Applications

Applications must be prepaid, covered by Standard Form 424, and submitted in 6 (six) copies in the form of a statement, the narrative part of which should not exceed 5 (five) single-spaced pages. This must be accompanied by a one-page executive summary, a budget, and vitae of key professional project management staff. Proposers may append other information they consider useful, although bulky submissions are discouraged and run the risk of not being reviewed fully.

Certification as to equal opportunity policies and practices must be included in the application. Applicants should also include certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Public Law 100–690), in accordance with Appendix C of 22 CFR 137, subpart F; and (2) Section 319 of the Department of Interior and Related Agencies Appropriations Act (Public Law 101–121), in accordance with Appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Budget

Applicants should familiarize themselves with OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education Uniform Administrative Requirements," and OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions." The following information should be provided:

1. An indicative program budget, showing estimated direct expenses by program element, indirect costs, and the total amount requested. Indirect or overhead costs, whether on an itemized or percentage basis, should be clearly shown.
2. The applicant's cost-sharing proposal, if applicable, containing possible sources and amounts. Alternatively, plans to seek supplemental funding, the sources and amounts should be explained.

Payments will be made to grant recipients by the Department of State through the Automated Clearing House Electronic Funds Transfer (ACH/EFT) System.

Dated: August 30, 1994.

Alphonse F. La Porta,

Director, Office of Cambodian Genocide Investigations.

[FR Doc. 94–22051 Filed 9–7–94; 8:45 am]

BILLING CODE 4710–30–M

[Public Notice 2069]

Shipping Coordinating Committee Subcommittee on Standards of Training and Watchkeeping; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 AM on Tuesday, September 27, 1994 in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW, Washington DC 20593–0001. The purpose of the meeting is to review the actions taken by the twenty-sixth session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) concerning the comprehensive review of the International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). Preparations for future sessions of STW in London, will also be discussed.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MVP–4), Room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: August 29, 1994.

Stephen Miller,

Acting Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 94–22045 Filed 9–7–94; 8:45 am]

BILLING CODE 4710–7–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 94–17]

Highway Work Zone Safety Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice describes an initiative being considered by the FHWA for inclusion in the National Highway Work Zone Safety Program (NHWZSP). The purpose of the program is to enhance safety at highway construction, maintenance, and utility sites by improving the quality and effectiveness of traffic operations, safety appurtenances, traffic control devices, and traffic maintenance bidding practices. The FHWA requests comments on this proposed program.

DATES: Comments must be received on or before November 7, 1994.

ADDRESSES: Submit written, signed comments concerning this program to FHWA docket No. 94–17, Federal Highway Administration, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Harry W. Taylor, Safety Technology & Information Management Division, 202–366–2175 or Mr. Joseph Solomey, Office of Chief Counsel, HCC–20, 202–366–1374, Federal Highway Administration, 400 Seventh Street, SW., Washington D.C. 20590.

SUPPLEMENTARY INFORMATION: Most highway work zones occur due to road and structural improvements, maintenance activities, or utility work performed by contractors, public employees or by various utility companies at the request or approval of a government agency. As such, these State and local governments have primary responsibility for planning and

controlling work zones to ensure the safe and convenient travel of the general public as well as the safety of the workers.

The FHWA views its role as providing leadership, guidance and oversight to improve work zone safety of Federal-aid projects. The FHWA has exercised its leadership and guidance through the years by updating its regulations; maintaining procedures, technology and safety information bases; initiating revisions to the National Manual on Uniform Traffic Control Devices (MUTCD) relative to work zone operations; developing national training courses for improving the design and operations of work zones; conducting related research; holding national work zone safety conferences; and issuing technology transfer syntheses to assist in the rapid transfer of work zone technology and procedures. As required by Section 1051 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 (Public Law 102–240, December 18, 1991, 105 Stat 1914, 2001), the FHWA has completed its initial draft of a National Highway Work Zone Safety Program. By publishing the initial draft listed below, the FHWA is requesting public comment prior to implementation of the final program.

Highway Work Zone Safety Program

A. Introduction

Section 1051 of ISTEA requires the Secretary of Transportation to "* * * develop and implement a work zone safety program which will improve work zone safety at highway construction sites by enhancing the quality and effectiveness of traffic control devices, safety appurtenances, traffic control plans, and bidding practices for traffic control devices and services."

Section 1051 is the result of Congressional concern for the continuing number of fatalities and injuries that annually occur in work zones and its desire to improve the situation nationally. In response to that concern, the FHWA has developed this program based upon FHWA experience, National Transportation Safety Board findings, annual work zone safety reports and other relevant information such as research reports, and technical articles. The following discussion is intended to cover the key components of the program in sufficient detail to permit government, industry, and the public to comment on the appropriate scope and content of the work zone safety program.

B. Objective and Scope

The objective of the National Highway Work Zone Safety Program (NHWZSP) is to enhance safety at highway work sites. The program is applicable to all public highways and streets, but will emphasize activities pertinent to the National Highway System. The intent is to have a continuing program with biannual reviews and updating where necessary.

C. Work Zone Program

The program has been divided into four components, (standardization, compliance, evaluation, and innovation) to provide a broad based, cooperative work zone safety initiative. Included under each component are current, planned or recommended activities that will aid in its implementation. In addition, an individual activity can often support other components than the component it is listed under.

1. Standardization—Update Existing and Initiate New Standards Related to Work Zone Safety

Standardization and uniformity are essential to communicating needs and requirements to implementing agencies and industries, assuring adequate safety for the traveling public and workers, and promoting better understanding and compliance by all concerned. To achieve this end, FHWA will undertake the following actions:

a. Update 23 CFR Subpart J, "Traffic Safety in Highway and Street Work Zones." Review the current work zone problems and update the guidance to reflect current needs and emphasis including reinforcement of guidance on bidding practices, work zone clear zones, work zone crash data collection and analysis, and work zone speed limits.

b. Develop retroreflectivity guidance for work zone signs and pavement markings. Include this guidance in the Manual on Uniform Traffic Control Devices, Part VI, "Standards and Guides for Traffic Control for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations," when it is next updated. Develop a training program to implement the new guidance. A copy of Part VI of the MUTCD is available in docket number 94–17 for review.

c. Establish the crashworthiness of work zone safety appurtenances by implementing a crash testing program for evaluation and any needed redesign of generic appurtenances. The crash test program will adopt the procedures included in the National Cooperative Highway Research Report (NCHRP) 350, "Recommended Procedures for the Safety Performance Evaluation of Highway Features" and develop any clarification or additional guidance that may be needed. (NCHRP Report 350 may be obtained from the Transportation Research Board, National Research Council, 2101 Constitution Avenue, NW., Washington, D.C. 20418.)

2. Ensure Compliance

Experience in work zone operations leads to the belief that simply ensuring compliance with existing standards and guidelines at all times would substantially improve the safety and operation of work zones. The causes of noncompliance include the failure of the implementation of work zone traffic control plans to keep pace with the changing construction activities, as well as the gradual deterioration of devices over time. To address these issues, the FHWA will:

a. Identify and promote the use of procedures and specifications which help achieve or maintain an acceptable level of quality for traffic control plan setups, including traffic control devices and safety appurtenances used in highway work zones. For example, develop inspection methods that identify devices which have been improperly installed or inadequately maintained for immediate correction and which will increase contractor's accountability.

b. Promote the development and implementation of public awareness and education programs designed to alert and affect behavior of the drivers, including drivers of heavy vehicles, pedestrians, new drivers, older drivers and bicyclists who traverse highway work zones.

c. Provide highway agencies with guidance and criteria on certification programs for flaggers and work site safety supervisors.

d. Develop a document on "Good Practices for the Safety Management System" which will include management of work zones.

3. Improve Evaluation of Work Zones

Evaluation is a necessary tool for diagnosis of failures and identification of successes in work zone operations. Through evaluation, it is possible to discern opportunities for new countermeasures and to measure the benefit of current ones. Activities in this area will include:

a. The FHWA in cooperation with the National Highway Traffic Safety Administration (NHTSA) will develop guidelines for the collection and

reporting of data on deaths and injuries occurring in highway work sites.

b. The FHWA will provide an annual report to the Secretary on efforts being made by the States in reducing deaths and injuries occurring at highway work sites and the effectiveness of such efforts.

c. The FHWA will annually review a sampling of active highway construction, maintenance, and utility projects. The review will include a detailed analysis of traffic control plans and their revisions, the validity and condition of the traffic control devices (both day and night), and appropriate management and enforcement activities.

d. The FHWA will assist State highway agencies in evaluating their programs and procedures for collecting and analyzing work zone accident and incident data.

4. Implement Innovative Technologies and Procedures

Innovation can help improve safety and traffic flow in critical situations. This innovation is not only in the development of new products and procedures, but also involves the more effective use of existing ones by providing training. The FHWA will:

a. Demonstrate, evaluate, and complete (where necessary) the development of the Strategic Highway Research Program (SHRP) Work Zone Safety Products, such as: the flashing stop/slow paddle, intrusion alarms, direction indicator barricades for lane closures, portable crash cushion trailers, and opposing traffic lane dividers. All of the products are designed to make the work zone safer.

b. Encourage the increased use of innovative protective devices for work zones of short-term and intermediate-term stationary duration, such as Truck Mounted Attenuators (TMA), by providing state-of-the-practice reports and training aids to the field.

c. Conduct research on condition-responsive work zone traffic control systems and operations applicable to longer-term construction areas. As an example, the "Vehicle Queue Backup Warning System", should be designed to warn motorists and workers of situations which could produce hazards such as a traffic stoppage.

d. Develop for State and local government use, a comprehensive work zone safety training program, which will encompass courses ranging from an understanding and application of basic concepts to procedures for developing complex work zone strategies. The work zone training program developed through the FHWA's National Highway Institute (NHI) will include the following courses:

(1) Design and Operation of Work Zone Traffic Control,
(2) Inspection of Construction Zone Hardware,
(3) Developing Traffic Control Plans and Strategies,
(4) Transportation Alternatives During Highway Reconstruction, and
(5) Work Zone Safety for Maintenance Operations on Rural Highways.

e. Encourage the trial use of the Community/Corridor Traffic Safety Program (C/CTSP) concept on large complex highway construction projects or a series of projects along a single route. The C/CTSP is a comprehensive multi-disciplinary approach to solving safety problems, looking not only at highway problems, but also possible problems with the driver or the vehicle.

f. Encourage the use of techniques identified in the 1992 report to Congress entitled, "Traffic/Congestion Management During Highway Construction" to minimize disruptions to traffic during construction of highway projects.

D. Work Zone Program Implementation

The FHWA will co-sponsor a National Work Zone Conference (late 1994) with the American Association of State Highway and Transportation Officials (AASHTO), the American Road and Transportation Builders Association (ARTBA), and the American Traffic Safety Services Association (ATSSA). Other organizations cooperating in the planning of the conference and which will have representatives attending are the Institute of Transportation Engineers (ITE); the American Society of Civil Engineers; the International Bridge, Tunnel, and Turnpike Association (IBTTA); International Association of Chiefs of Police; National Association of County Engineers; and the Highway User Federation for Safety and Mobility. The intent of the conference is to:

a. Discuss the FHWA work zone safety program content and receive input for further modification,

b. identify the latest technology, procedures, and effective programs that can contribute to improving the safety of work zones,

c. develop renewed emphasis and interest for work zone safety activities.

The FHWA Division Administrator will work in partnership with the State highway and other appropriate agencies to develop and implement a Statewide highway work zone safety program based on the four program components.

Authority: 23 U.S.C. 315; 49 CFR 1.48; Sec. 1051 of Pub. L. 102–240, 105 Stat. 1914, 2001.)

Issued on: August 31, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–22094 Filed 9–7–94; 8:45 am]

BILLING CODE 4910–22–P

Federal Highway Administration

Environmental Impact Statement: Centre County, PA

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Centre County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Kevin M. Mahoney, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone (717) 782–3411 or James Bathurst, Design Services Engineer, Pennsylvania Department of Transportation, 1920–30 Daisy Street, Clearfield, Pennsylvania 16830, Telephone (814) 765–0437.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency and the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement on a proposal to accommodate interstate bound truck traffic between the end of the 4-lane U.S. 322, 1.61 kilometers (approximately 1 mile) south of Potters Mills to the terminal of the Traffic Route 26 Bypass of Bellefonte at its intersection with Traffic Route 64 northeast of Pleasant Gap. This project is located in the vicinity of State College, Centre County, Pennsylvania.

Alternatives will be investigated in both the Route 144 and Route 322 Corridors. The Route 144 alternatives will include bypasses of Centre Hall, Pleasant Gap and Potters Mills with transportation systems management alternatives between the bypasses. The length of the project is approximately 14.5 kilometers (9 miles). The Route 322 alternatives will include upgrading of the existing Route 322 Corridor and alternatives on new location from its southern termini near Potters Mills to the Mount Nittany Expressway (Route 322). The length of this project is 16.12 kilometers (approximately 10 miles). Traffic would follow the existing route 322 and 26 Corridors to its northern termini at the Bellefonte Bypass. A no-build alternative will also be

investigated. For each of the alternatives under study, the following areas will be investigated: traffic, preliminary design and cost, air quality, noise, energy, water quality and aquatic biota, groundwater, and hydrogeology, vegetation and wildlife, floodplains and flood hazard areas, endangered species, hazardous waste facilities, wetlands, soils and erosion, farmlands, visual quality, socio-economics and land use, construction impacts, and archaeological and historic resources. Section 4(f) Evaluations will be performed as necessary in conjunction with the project.

Public involvement and interagency coordination will be maintained throughout the development of the Environmental Impact Statement. A Plan of Study and an invitation to scoping meetings will be distributed to interested agencies. A public hearing will be held if required to obtain formal public input on the findings of the environmental and engineering studies.

To ensure that the full range of issues related to the proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the Environmental Impact Statement should be directed to the FHWA or PennDOT at the addresses listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, regarding State and local review of Federal and Federally assisted programs and projects apply to this program)

Dated: August 29, 1994.

George L. Hannon,

Assistant Division Administrator.

[FR Doc. 94–22050 Filed 9–7–94; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Notice of Pre-Application Forum for Next Generation High-Speed Rail Program: Demonstration of High Speed Positive Train Control System (HSPTC)

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Notice.

SUMMARY: Under this Notice, the FRA encourages interested parties to attend a public, pre-application forum relating to grant(s) anticipated to be awarded as a result of the Next Generation High-Speed Rail Program, Demonstration of High Speed Positive Train Control System (HSPTC) ("Program") to demonstrate advanced train control technology that can contribute to more effective train control systems for emerging high-speed passenger rail corridors in the United States. Thereafter, pending availability of appropriations, eligible applicants may submit applications for funding to demonstrate an advanced positive train control system for high-speed passenger rail service on a mixed passenger and freight corridor.

Prospective applicants who are unable to attend the pre-application forum should obtain current information with respect to the Program from the FRA contact, as no further public notice will be made with respect to the Program.

PURPOSE: The objective of this Program is to demonstrate the improved safety and cost-effectiveness of technology advancement in train control systems for high-speed rail passenger service. This effort is a key element in the Department of Transportation's overall program to progress high-speed rail in the United States by improving, adapting, and demonstrating potentially more cost-effective technologies which have wide application in U.S. corridors, particularly on existing infrastructure. An Intelligent Vehicle Highway System (IVHS)—based grade crossing warning system demonstration may be incorporated as an element of the overall demonstration program.

AUTHORITY: The authority for the Program can be found in Section 1036(c)(1)(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (49 U.S.C. 309(b)) and, pending passage, the Department of Transportation and Related Agencies Appropriations Act for fiscal year 1995 (beginning October 1, 1994), which is anticipated to provide funds for the Program. The Secretary's responsibilities under this program will be administered by the Federal Railroad Administration (FRA).

DEADLINE FOR SUBMISSION OF APPLICATIONS: Pending the availability of appropriations for the Program, it is anticipated that the deadline for submissions of applications will be the close of business, Wednesday, November 30, 1994. The actual deadline for the submission of applications will be noted in the application package, which will be made available either at the pre-application forum or shortly thereafter.

ADDRESS FOR SUBMISSION OF APPLICATIONS: Applicants will be requested to submit an original and six (6) copies to Federal Railroad Administration, Attention: Robert L. Carpenter, Office of Procurement Services (RAD–30), Federal Railroad Administration, 400 Seventh Street, SW., Room 8222, Washington, DC 20590.

FUNDING: The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1995, now progressing through the Congress, is expected to provide FRA with the ability to award grants for the adaptation and corridor testing of signal and train control systems. FRA will focus the funding associated with this notice on the demonstration of a positive train control system for high-speed rail (HSPTC) which significantly advances train control technology. Grade crossing protection technologies which are also under development as part of the Federal Highway Administration (FHWA) Intelligent Vehicle Highway System (IVHS) Program may also be interlinked and incorporated in the train control systems to be demonstrated. Hazard sensor technologies adapted from defense applications for railroad application may also be interlinked and demonstrated. It is anticipated that available appropriations for the Program will support one or two demonstrations. Additional funding for this or related work may be available in subsequent fiscal years.

SCHEDULE FOR DEMONSTRATION PROGRAM: Subject to the availability of appropriations for the Program, FRA anticipates funding one or two demonstration projects, on one or two eligible corridors for high-speed rail service. FRA anticipates a two-year program to accomplish a fully-operational demonstration segment, with major funding anticipated to be first available in fiscal year 1995. It is anticipated that evaluation of the demonstration operation will continue for up to two years beyond the initial funding year. FRA anticipates that the eligible participant(s) will, where necessary, contract with developers and manufacturers of railroad control systems and with operating and owning entities for the eligible corridor(s) to accomplish demonstration programs.

PRE-APPLICATION FORUM: FRA plans to hold a pre-application forum for the benefit of potential state, railroad, supplier teams, and other interested parties to discuss the application process, including requirements for the participation of the essential parties. This forum is currently set for Thursday, October 6, 1994, at 9:30 AM in Room 8334 of the Department of Transportation Headquarters Building,

400 Seventh Street, SW., Washington, DC. Interested parties should confirm the date, time, and location prior to attending.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Robert J. McCown, Acting Director, Technology Development Programs, Office of Railroad Development (RDV–30), Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Phone: (202) 366–0462; Fax: (202) 366–7150.

BACKGROUND INFORMATION: In congested travel corridors, there is substantial interest in high-speed ground transportation as a key element of a balanced, intermodal transportation system. For example, several states are conducting studies of the feasibility of initiating high-speed rail passenger service on existing rail facilities. Sophisticated train control systems are required for the safe operation of high-speed rail passenger service. The major capital investment required for the installation of these systems has been a deterrent to operation at higher speeds.

Under 49 CFR 236.0, railroads must have a signal system in use on any track where freight trains operate at speeds of 50 mph or more, or where passenger trains operate at speeds of 60 mph or more. An automatic cab signal, automatic train control, or automatic train stop system is required for operation of trains at speeds of 80 mph or more. Two types of train control systems have generally been used on railroads: (1) intermittent train stop, and (2) continuous cab signals. Each system has been and is being used, with or without the ability to automatically apply train brakes in the event of an engineman failing to comply, or to comply soon enough, with the indications of the signal system. Both types of systems have traditionally been used with wayside signals.

Recent trends in the United States and Canada have focused on the ability of modern technology in radio-based digital communications to transfer operating information from the wayside to the moving train, and the use of computers to aid in and control train dispatching. Over the last ten years, the Association of American Railroads (AAR) and the Railway Association of Canada (RAC) aggressively pursued development of a particular approach to improve train control using microprocessor control and digital radio communications in their Advanced Train Control System development program (AAR ATCS).

The AAR ATCS provided not only train control functions but also business-related functions, such as reporting the work being conducted by a crew and the health of various locomotive onboard systems. The AAR ATCS program was intended to improve both the safety and the productivity of the national freight railroad network; it was *not* intended to accomplish high operating speeds. The AAR recently refocussed its efforts on a new initiative termed Positive Train Separation (PTS), and is no longer formally pursuing many of the goals originally set out for the AAR ATCS program.

The capital cost of eliminating highway-rail grade crossings and making them safer is a deterrent to high-speed rail service. Advanced grade crossing safety systems which will protect highway and rail users are a high priority for technological advancement. In this area, FRA is cooperating with the Federal Highway Administration (FHWA) in projects separate from the HSPTC initiative to begin preliminary field evaluations of IVHS-based "Vehicle Proximity Alerting Systems" (VPAS), which will alert a driver of a priority highway vehicle to the proximity of trains approaching equipped grade crossings. It may be appropriate to integrate such technologies with advanced train control systems to enhance the safety of both rail and highway users of highway/rail grade crossings.

ELIGIBLE PARTICIPANTS: Any United States private business, state government, local government, organization of state or local government, or any combination of such entities is eligible to apply for funding under the Program, except that any business owned in whole or in part by the Federal Government is not eligible. Although businesses owned in whole or in part by the Federal Government are not eligible for funding under the Program, they may contract with eligible participants.

Pursuant to section 1036(c) of ISTEA (49 U.S.C. 309(b)(2)(D)), any proposed demonstration to be incorporated into a project or a system located in a State that prohibits under state law the expenditure of any non-Federal public funds or revenues on the construction or operation of that project or system is not eligible for funding under this Program.

ELIGIBLE TECHNOLOGY DEMONSTRATIONS: Eligible projects must demonstrate a significant advancement in train control technology for high-speed rail passenger service. The proposed demonstration technology must be incorporated as a component, subsystem, or system in a revenue service high-speed ground transportation project or system under construction or in operation at the time application is made. Qualifying high-speed ground transportation systems include:

1. Amtrak's Northeast Corridor between Washington, DC and Boston, MA;

2. The Empire Corridor in the State of New York (operated by Amtrak);

3. Any system which has been awarded a franchise by a State agency to develop an intercity high-speed ground transportation system or to demonstrate in revenue service an innovative high-speed ground transportation system capable of providing intercity service, and which has in place all approvals, permits, and financing necessary to commence construction; and

4. Any high-speed rail corridor designated by the Secretary of Transportation pursuant to section 1010 of ISTEA, namely:

a. Washington, DC—Richmond, VA—Raleigh, NC—Charlotte, NC;
b. Miami, FL—Orlando—Tampa, FL;
c. Chicago, IL (hub)—Detroit, MI; Milwaukee, WI, and St. Louis, MO;
d. San Diego, CA—Los Angeles—Bakersfield—Bay Area and Sacramento, CA:
e. Eugene, OR—Portland—Seattle, WA—Vancouver, BC.

For state applicants, if the proposed demonstration territory is in more than one state a single state agency should apply on behalf of all of the participating states.

APPLICATION REQUIREMENTS: The following points describe minimum content which will be required of applications. The application package which will be made available at the Pre-Application Forum (described above) may contain additional required forms and specify the submission of additional information. At a minimum, each application shall:

1. Describe the proposed train control system enhancements in detail, including elements to be installed on the equipped railroad vehicles, on any other vehicles which will be equipped (such as maintenance vehicles), on the wayside, and at dispatching/control locations; how communications would be accomplished between various elements; and how operations would be controlled, indicating how the proposed system would be an advancement in train control technology for high-speed rail passenger service.

2. Describe the track segment(s) on which the proposed demonstration system would be installed and the existing signal and train control system(s) on them.

3. Describe the traffic types (including ownership of trains), volumes, and speeds presently involved in operation on the demonstration track segment(s); the planned high-speed rail service volumes and speeds, and the estimated potential corridor service volumes and speeds.

4. Specify the quantities and ownerships of operating vehicles which will be equipped to accomplish the demonstration.

5. Show how the demonstration system initially will operate in relation to existing signal and/or train control systems.

6. Show the migration path to full implementation of the advanced functions, which the demonstration system is proposed to ultimately achieve.

7. Show the total cost and time for accomplishing each task for implementing the initial demonstration and for accomplishing the proposed migration path, including estimates broken out at a minimum into system design and layout, equipment production and/or acquisition, installation, and operating and maintenance schedules and costs.

8. Specify what organizations will supply and install key components of the demonstration system and provide letters of commitment supporting the proposed activities, schedules, and cost sharing (if any).

9. Specify the sources and extent of non-Federal support which will be contributed to the project, and whether such support will be in the form of funding or other in-kind contributions.

10. In order to accomplish the goals of the Program and to give convincing proof that the advanced control system performs with acceptable safety margins, discuss the safety assurance process used in developing the train control system; revenue service application and/or testing and validation activities already completed for the proposed innovative system elements; the planned preliminary testing to be performed prior to implementation on the corridor; and the systematic operational recording, monitoring, analysis, and reporting procedures to be followed during the demonstration.

11. Discuss plans for training and familiarization of operating and maintenance personnel for the demonstration system.

12. Discuss the potential for integrating the proposed system with advanced grade crossing safety systems, such as the IVHS-based prototype Vehicle Proximity Alerting System (VPAS), which will be tested under joint FRA/FHWA sponsorship in the near future.

13. Provide evidence of concurrence in the proposed demonstration activity by: (1) the state agency which has responsibility for developing high speed service in the qualifying corridor; (2) the owner of the railroad property on which the demonstration train control system will be installed, (3) the entity which has responsibility for maintaining the property, and (4) the entity or entities responsible for operating trains on the property and/or on whose vehicles demonstration equipment will be installed, if different from the applicant.

14. Provide an analytical discussion showing that the proposed scope of the demonstration will be adequate to accomplish the goals of the demonstration program, addressing at a minimum the potential sources of train control system difficulty described in the section below entitled "Demonstration Territory Characteristics."

15. Include an affirmative statement that each State in which the demonstration is proposed does not prohibit under state law the expenditure of any non-Federal public funds or revenues on the construction or operation of the high-speed ground transportation system on which the proposed demonstration will take place.

TRAIN CONTROL SYSTEM OPERATING CHARACTERISTICS: The demonstration system should advance train control technology by providing enhanced positive train separation, enforcement of limits of authority and authorized speeds, safer operation, greater adaptability to higher operating speeds with closer headways, and/or reduced costs or complexity of installation. A communications-based system using digital radio may be a necessity to accomplish these objectives.

It is anticipated that the demonstration territory will already be equipped with an existing signal and/or train control system which will continue in use, overlaid by the demonstration system, at least initially. During the installation and checkout phase of the demonstration, it is anticipated that the existing signal and/or train control system will continue to govern operations until confidence is established in the proper operation of the advanced features of the new system.

At a minimum, any system proposed for this demonstration must meet FRA regulatory requirements to permit speeds of 80 mph or greater, including closed-circuit fail-safe design principles as stated in 49 CFR Part 236. Because existing FRA Track Safety Standards in 49 CFR Part 213 permit operation only up to 110 mph, operation of trains and over track at over 110 mph requires permission from the FRA. Any such permission may include specific conditions, including types and capabilities of required automatic train control functions to assure safety of the operation and to account for the total numbers and types of trains operating in the high-speed territory. It is FRA policy that *all* trains in a territory must be equipped with automatic train control if any train in the territory relies on such a system to enable high-speed operation.

For territory where train speeds will exceed 125 mph, FRA will require fully automatic, vital train control functions, including civil speed enforcement, temporary speed enforcement, positive stop, and enforcement to protect on-track maintenance forces for all trains. At present, the Amtrak Northeast Corridor line, between New Haven, CT, and Boston, MA, is the only line segment in the United States where such operations are proposed. (An advanced train control system is already under development for this segment under the Northeast Corridor Improvement Program.)

A major goal for the demonstration system is that it be capable of failsafe and positive train separation and control for operations of at least 125 mph in high density, mixed traffic. To the extent that the scope of the proposed demonstration does not reach this goal in the near term, the technology shall be shown to be capable of economical modification to reach this goal with low technical risk. Capability of the demonstration system for operation at speeds in excess of 125 mph is desirable.

The demonstration project shall include systematic recording and monitoring to document the operation of the demonstration train control system, and analysis and reporting of the resulting data, to give convincing proof that the advanced system performs in the demonstration environment with acceptable safety margins. The theoretical performance limits, and any performance characteristics of the demonstration system which would preclude it from assuming proposed control functions, or from operating in more demanding service environments, should also be identified and reported. Where desirable goals of the system cannot be proven with operational data at an overlay level, the prospective applicant shall present simulation alternatives to operational testing. The simulation

alternatives shall be specified in the application.

The demonstration system must provide the following minimum safety-related functions:

1. Information provided to engineman: The demonstration system shall continuously provide the engineman of each operating train with the following information:

a. positive indication of present train location and geographic point to which operation is authorized by the HSPTC system;

b. positive indication of signal block condition for sufficient distance to allow reduction of speed and/or safe stopping distance prior to start of next block which requires such action, and to allow resuming higher speed at any point on the track if a change in conditions so warrants;

c. (1) actual train speed and (2) maximum operating speed authorized by the train control system, which shall not exceed the lowest of the following speeds: safe speed permitted by track design; the railroad carrier's civil authorized speed for that train including any permanent or temporary timetable or bulletin slow order conditions.

d. warning indication, augmented with audio alerting indication in advance of when a reduction in speed is anticipated and then when it is required; and

e. alarm indication and audio alert in the event of broken rail, misaligned switch, wayside detector alarm, or other protected condition.

2. Automatic train control: The demonstration system shall provide positive train separation in a fail-safe closed-circuit manner. The system shall be designed to provide automatic enforcement of authorized operating limits and authorized speeds, which shall not exceed safe track speeds as described in paragraph 1.c. above. The system shall provide a level of visual and audio alerting prior to the occurrence of events which require that the engineman take action to protect the safety of the train, such as reducing speed or stopping. The system shall employ a more noticeable level of visual and audio alerts immediately prior to taking automatic action to protect the safety of the train. The system shall provide a means of automatically controlling trains to prevent any train from entering a zone of known hazard which has been identified to the train control system manually or automatically; for example if an engineman manually signals an emergency condition on his train or if a wayside detection system senses and reports that track operating conditions are unsafe.

3. Routing safety: The demonstration system shall ensure that trains are safely stopped prior to entering a misaligned switch and prior to passing an improperly displayed signal, that all switches are locked prior to train movement over them, and that conflicting signal indications are not displayed.

4. Positive train location: The demonstration system must determine and retain the location of all trains, track cars, other on-track equipment, and authorized work limits for maintenance crews in the equipped territory. Safeguards shall be taken to avoid "disappearance" of part of the train, if the train parts enroute.

It is an FRA objective to foster an inter-operable system of train control in the United States, not only to assure that all rail traffic receives the benefit of any wayside equipment installed, but also to assure that train control systems can be procured at minimum cost to railroads and other operators of high-speed rail service. Accordingly, open system architecture and inter-operability with standardized systems now being deployed by freight railroads is a desirable feature.

DEMONSTRATION TERRITORY CHARACTERISTICS: The proposed demonstration scope should validate the proposed system as being fit to be used in an entire corridor. Factors to be considered should include, but not be limited to:

1. Length of single/multiple trackage necessary in the demonstration corridor to achieve meaningful results.

2. Numbers of equipped and unequipped locomotives/train consists that are proposed to be fitted within the demonstration section in order to verify:

a. following moves and positive train separation characteristics among equipped trains and among an equipped/unequipped mix of trains (if unequipped trains will be permitted under any circumstances); and

b. ability of the system to track the location and direction of equipped and unequipped trains within the system.

3. Number of track switches and diverging route characteristics of the demonstration segment to show safety of movement through controlled points and safe routing.

4. Characteristics of weather in the selected area to test the effect of severe weather.

5. Inclusion of physical characteristics that may hinder data transmission, such as tunnels.

6. Inclusion of highway/rail crossings.

7. Potential sources of electromagnetic interference within the proposed section, in order to be able to test the immunity of the system to EMI.

SELECTION CRITERIA: The following will be considered to be positive selection factors in evaluating applications under the Program:

1. The extent to which advancements in train control technology for high-speed rail will be demonstrated by the proposed system while providing adequate operational safety. Areas of desired advancement include safety, reliability, efficiency, maintainability, capital costs and/or operating costs of the corridor operation, as a whole, as well as of the train control system itself.

2. The ability of the HSPTC system to be readily and economically expanded to respond to increased speed, volume, and complexity of traffic.

3. The extent to which an open architecture approach is employed and the ability of the demonstration system to provide inter-operability with train control systems deployed or planned for installation on freight railroads and in other corridors.

4. The ability of the proposed corridor infrastructure and operating equipment to sustain high-speed operations during the period of the demonstration. Parameters to be considered include: track curvature, grades, mode of construction; present and likely future track maintenance condition; age and operating capabilities of the existing signal and/or train control system; numbers of rail-highway grade crossings and present types of protection, and degree to which the right-of-way is subject to casual access by the public.

5. The ability of an existing signal and/or train control system to sustain high-speed operations during the checkout phase of the demonstration, without relying on the new system.

6. Demonstration of advanced train control for high-speed operation in high density, highly complex traffic operations, at some location in the demonstration corridor. It is recognized that practical limits on the total numbers of equipped vehicles and the available scope for wayside and central control equipment may reasonably limit the initial demonstration to areas with lesser traffic densities and/or lesser complexity of operations. The plan for the demonstration should clearly indicate the system's ability to handle conditions of high complexity and traffic density, and the proposed demonstration may be phased to demonstrate these capabilities only in later phases.

7. The extent of non-Federal contributions to the project, since

Federal demonstration funds are limited, and the demonstration system is expected to remain in operation to benefit future revenue service.

Dated: September 6, 1994.

Jolene M. Molitoris,

Administrator.

[FR Doc. 94–22128 Filed 9–7–94; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 31, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Comptroller of the Currency (OCC)

OMB Number: 1557–0190

Form Number: None

Type of Review: Extension

Title: (MA)-Real Estate Lending and Appraisals (12 CFR 34)

Description: These information collections are required by statute to regulate real estate lending and holding by national banks. The information is required by statute and is used by the OCC to insure bank compliance and insure safe and sound bank operation. National banks are the affected public.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Recordkeepers: 3,600

Estimated Burden Hours Per Recordkeeper: 74 hours, 30 minutes

Frequency of Response: Other

Estimated Total Recordkeeping Burden: 268,200 hours

Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–22107 Filed 9–7–94; 8:45 am]

BILLING CODE 4810–33–P

Public Information Collection Requirements Submitted to OMB for Review

August 31, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: Authorization to utilize the form described below is required within 7 days as the approval of ATF Form 7, "Application for License, is contingent upon receipt of this form. Therefore, the Department of Treasury is requesting review and approval by the Office of Management (OMB) by September 7, 1994. In accordance with 5 CFR 1320.18, ATF Form 5300.36, and its instructions, are included with this for review. All public comments must be received by close of business September 6, 1994.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: New

Form Number: ATF Form 5300.36

Type of Review: New collection

Title: Notification of Intent to Apply for a Federal Firearms License

Description: This form is used to notify the Chief Law Enforcement Officer that an application has been made to obtain a Federal firearms license within a specific jurisdiction.

Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees

Estimated Number of Respondents: 70,000

Estimated Burden Hours Per Respondent: 6 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 7,000 hour

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

DEPARTMENT OF THE TREASURY

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

NOTIFICATION OF INTENT TO APPLY FOR A FEDERAL FIREARMS LICENSE

Prepare in triplicate. All entries must be in ink. Before completing, please see notices and instructions on the reverse of this form.

SECTION A—NAME AND ADDRESS OF CHIEF LAW ENFORCEMENT OFFICER

TO: _____

(Chief Law Enforcement Officer)

_____

(Street Address)

_____

(City, State, Zip)

SECTION B—APPLICANT INFORMATION

I _____

(full name)

_____

(No., Street, City, County, State, Zip Code)

hereby provide notification that I intend to apply for a Federal firearms license by filing an ATF Form 7, Application For License, with the Chief, Firearms and Explosives Licensing Center, Bureau of Alcohol, Tobacco and Firearms.

Signature _____

Dates _____

Instructions for ATF Form 5300.36

Section 923(d)(1)(F), Title 18, U.S.C., requires any person intending to apply for a Federal Firearms License (FFL) to notify the person's chief law enforcement officer of such intent.

Instructions to the Applicant

1. You may use Form 5300.36 supplied by ATF or use photocopies of such forms. If photocopies are used, the photocopies must include the instructions.

2. Each person intending to apply for a license must prepare and submit ATF Form 5300.36 to the CLEO of the locality in which the premises sought to be licensed are located. The CLEO is the Chief of Police, the Sheriff, or an equivalent officer, or the designee of such individual.

3. All forms must be prepared in ink, signed, dated, executed in triplicate, and distributed as follows:

a) The original should be sent or delivered to your CLEO.

b) The second copy should be attached to the original ATF Form 7 sent to the Chief, Firearms and Explosives Licensing Center.

c) The third copy should be retained by the applicant as proof of notification.

4. **Note:** An application for an FFL received by the Firearms and Explosives Licensing Center without ATF Form 5300.36 is subject to denial or may delay the processing of the application.

Instructions to the Chief Law Enforcement Officer

1. This form provides notification of a person's intent to apply for a Federal firearms license.

2. Should you have information that may disqualify the person from obtaining a Federal firearms license, please contact the Firearms and Explosives Licensing Center at 1–800–366–5423 or (404) 679–5040. You may also contact the Licensing Center for a copy of the person's license application form or if you have any further questions.

Paperwork Reduction Act Notice

The information required by this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to notify the Chief Law Enforcement Officer of the applicant's intent to obtain a Federal firearms license. The notice to be given on this form is required by 18 U.S.C. 923(d)(1)(F).

The estimated average burden associated with this collection is 6 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Reports Manager Officer, Information Program Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, and the Office of Management and Budget, Paperwork Reduction Project (_____) Washington, DC 20503.

[FR Doc. 94–22108 Filed 9–7–94; 8:45 am]
BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

August 29, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New
Form Number: IRS Form 8844
Type of Review: New collection
Title: Empowerment Zone Employment Credit
Description: Employers who hire employees who live and work in one of the 9 designated empowerment zones can receive a tax credit for the first 15,000 of wages paid to each employee. The credit is applicable from the date of designation through the year 2004.
Respondents: Individuals or households, Farms, Business or other for-Profit; Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 30,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hr., 39 min.
Learning about the law or the form—1 hr., 47 min.
Preparing and sending the form to the IRS—1 hr., 59 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 342,900 hours
OMB Number: 1545–0710
Form Number: IRS Form 5500, 5500–C/R, Schedule B (Form 5500), Schedule F (Form 5500), Schedule E (Form 5500), Schedule P (Form 5500)
Type of Review: Revision
Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules
Description: Forms listed in items are annual information returns filed by employee benefit plans. The IRS uses this to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 901,400
Estimated Burden Hours Per Respondent/Recordkeeper:

	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Form 5500 (initial filers)	87 hours, 46 minutes	9 hours, 32 minutes	14 hours, 11 minutes	48 minutes.
Form 5500 (all other filers)	82 hours, 16 minutes	9 hours, 32 minutes	14 hours, 6 minutes	48 minutes.
Schedule A (Form 5500)	17 hours, 28 minutes	28 minutes	1 hour, 42 minutes	16 minutes.
Schedule B (Form 5500)	34 hours, 41 minutes	2 hours, 47 minutes	3 hours, 28 minutes	
Schedule C (Form 5500)	5 hours, 16 minutes	18 minutes	23 minutes	
Schedule E (Form 5500) (Nonleveraged ESOP).	1 hour, 12 minutes	12 minutes	13 minutes	
Schedule E (Form 5500) (Leveraged ESOP) Loans.	10 hours, 2 minutes	1 hour, 41 minutes	1 hour, 56 minutes	
Schedule F (Form 5500)	2 hours, 52 minutes	24 minutes	28 minutes	
Schedule G (Form 5500)	15 hours, 4 minutes	6 minutes	21 minutes	
Schedule P (Form 5500)	1 hour, 55 minutes	30 minutes	33 minutes	
Schedule SSA (Form 5500)	6 hours, 42 minutes	12 minutes	19 minutes	

Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 33,823,500 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W. Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–7340 Office of Management and Budget Room 10226, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–22109 Filed 9–7–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

September 1, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0241
Form Number: IRS Form 6177
Type of Review: Extension
Title: General Assistance Program Determination
Description: Internal Revenue Code (IRC) section 51 gives employers a jobs credit for hiring certain general assistance (welfare) program recipients. IRC section 51(d)(6)(B) requires that the state or local general assistance program be certified as a qualified program. The information on Form 6177 is used to determine if a program is qualified.
Respondents: State or local governments
Estimated Number of Respondents: 1,500
Estimated Burden Hours Per Respondent: 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 250 hours

OMB Number: 1545–0956
Form Number: IRS Form 5500–EZ
Type of Review: Revision
Title: Annual Return of One-Participant (Owners and Their Spouses) Pension Benefit Plan
Description: Form 5500–EZ is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 50,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hr., 29 min.
Learning about the law or the form—1 hr., 4 min.
Preparing the form—2 hr., 14 min.
Copying, assembling and sending the form to the IRS—16 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 752,000 hours

OMB Number: 1545–1034
Form Number: IRS Form 8582–CR
Type of Review: Revision
Title: Passive Activity Credit Limitations
Description: Under section 469, credits from passive credits from passive activities, to the extent they do not exceed the tax attributable to net passive income are not allowed. Form 8582–CR issued to figure the passive activity credit allowed and the amount of credit to be reported on the tax return. Worksheets 1, 2, 3, and 4 of Form 8582–CR and worksheets 5 through 9 are used to allocate the credits allowed to the individual activities.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 900,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 5 min.
Learning about the law or the form—4 hr., 9 min.
Preparing the form—3 hr., 6 min.
Copying, assembling and sending the form to the IRS—2 hr., 11 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 5,402,700 hours

OMB Number: 1545–1035
Form Number: IRS Form 8611
Type of Review: Extension
Title: Recapture of Low-Income Housing Credit
Description: Internal Revenue Code (IRC) section 42 permits owners of residential rentals projects providing low-income housing to claim a credit against their income tax. If the property is disposed of or it fails to meet certain requirements over a 15-year compliance period and a bond is not posted, the owner must recapture on Form 8611 part of the credit(s) taken in prior years.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 1,200
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hr., 59 min.
Learning about the law or the form—1 hr., 5 min.
Preparing and sending the form to the IRS—1 hr., 14 min.
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 9,972 hours

OMB Number: 1545–1110
Form Number: IRS Form 940–EZ
Type of Review: Revision
Title: Employer's Annual Federal Unemployment (FUTA) Tax Return
Description: Form 940–EZ is a simplified form that most employers with uncomplicated tax situations (e.g., only pay unemployment contributions to one state and paying them on time) can use to pay their FUTA tax. Most small businesses and household employers use the form.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 4,089,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—6 hr., 23 min.
Learning about the law or the form—7 min.
Preparing and sending the form to the IRS—34 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 26,882,133 hours

OMB Number: 1545–1282
Form Number: IRS Form 8830
Type of Review: Extension
Title: Enhanced Oil Recovery Credit
Description: The enhanced oil recovery (EOR) credit is 15% of qualified costs paid or incurred during the year. The purpose is to get more oil from the wells. The IRS uses the information on the form of ensure that the credit is correctly computed.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 10,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hr., 16 min.
Learning about the law or the form—47 min.
Preparing and sending the form to the IRS—55 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 71,700 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–22110 Filed 9–7–94; 8:45 am]

BILLING CODE 4830–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of the Individual Quota Amounts for Certain Imported Sugars, Syrups, and Molasses for "Other Specified Countries and Areas"

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the individual quota amounts for each foreign country and area in the category of "Other specified countries and areas" for imports of certain sugars, syrups, and molasses for the period August 1, 1994, through September 30, 1995, will be 8,468 metric tons, raw value. On August 8, 1994, the Secretary of Agriculture announced the total amount and quota period for the tariff-rate quota for these sugars, syrups and molasses at 1,322,978 metric tons (1,458,333 short tons), raw value, for the period August 1, 1994, through September 30, 1995.

EFFECTIVE DATE: September 9, 1994.

ADDRESSES: Inquiries may be mailed or delivered to Tom Hushek, Senior Economist, Office of Agricultural Affairs (Room 423A), or to Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, Office of the General Counsel (Room 223); Office of the United States Trade Representative, 600 Seventeenth Street, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Tom Hushek, Office of Agricultural Affairs, 202–395–5006, or Daniel Brinza, Office of the General Counsel, 202–395–7305.

SUPPLEMENTARY INFORMATION: Section 2011.303 of 15 CFR provides for the allocation of individual quota amounts to each foreign country and area in the category of "Other specified countries and areas" specified pursuant to Additional U.S. Note 3(b) of the Harmonized Tariff Schedule of the United States. The individual quota amount is specified in 15 CFR 2011.303(b), and has normally been 7,258 metric tons, raw value for a 12-month quota period (October 1–September 30).

However, the USTR is authorized under 15 CFR 2011.303(c)(2) to modify this individual tariff-rate quota amount to ensure an orderly transition in the circumstance of a change from an annual quota period (October 1–September 30) to another quota period. Notice of any such modification is to be published in the **Federal Register.**

Notice

On August 8, 1994, the Secretary of Agriculture determined and announced by press release that 1,322,978 metric tons, raw value of the aforementioned sugars, syrups and molasses may be entered, or withdrawn from warehouse for consumption, during the period of August 1, 1994 through September 30, 1995.

This is a change from an annual tariff-rate quota period (October 1–September 30) to another quota period. Accordingly, in order to ensure an orderly transition, I have determined that, for the period August 1, 1994 through September 30, 1995, the individual quota amount for each of the foreign countries and areas in the category of "Other specified countries and areas" is 8,468 metric tons, raw value.

Signed at Washington, DC, on September 1, 1994.

Michael Kantor,

United States Trade Representative.

[FR Doc. 94–22111 Filed 9–7–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 173
Thursday, September 8, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, September 6, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the Corporation's supervisory activities.

Recommendation regarding an administrative enforcement proceeding.

Application of Bank of Hawaii, Honolulu, Hawaii, for consent to acquire through its subsidiary, Bank of Hawaii International, Inc., fifty-one (51) percent of the outstanding capital stock of National Bank of Solomon Islands Limited, located in the Republic of the Solomon Islands.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Acting Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: September 6, 1994.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,

Acting Assistant Executive Secretary.

[FR Doc. 94–22348 Filed 9–6–94; 2:07 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 13, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, September 14, 1994 at 10:00 a.m.

PLACE: 1999 E Street, N.W., Washington, D.C. (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinions:

AOR 1994–28

The Honorable Eni F.H. Faleomavaega

AOR 1994–29

Robert Barra of Levy for Congress Committee

Regulations—Public Financing of Primary and General Elections Candidates: Notice of Proposed Rulemaking.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 94–22377 Filed 9–6–94; 3:31 pm]

BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 12, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 2, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–22225 Filed 9–6–94; 8:45 am]

BILLING CODE 6210–01–P

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Tuesday, September 13, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; and (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific item: Proposals regarding actuarial assumptions in the Federal Reserve System benefit plans.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 2, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–22226 Filed 9–6–94; 8:45 am]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 59, No. 173
Thursday, September 8, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[M118-01-5767, M121-01-6241; AMS-FRL-5014-8]]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: State of Michigan

Correction

In proposed rule document 94-17556 beginning on page 37190 in the issue of Thursday, July 21, 1994 make the following corrections:

1. On page 37198, in the first column, the first two full paragraphs should be removed and in the second column, the first ten lines should be removed beginning with "factors" and ending with "TSD."

2. On page 37199, in the first column, in the first line, after "period." insert missing text as set forth below:

"6, 1994 Stage II is no longer a requirement (section 202 (a)(6) of the Act). However, if the State chooses to include this program as a contingency measure, enabling legislation would suffice. Michigan has chosen to retain Stage II as a contingency measure in the maintenance plan. Finally, the State submitted to USEPA a section 182 (f) NO_x exemption petition based on 1991-1993 ambient air quality data that demonstrates that the area is attaining the ozone NAAQS. The USEPA is currently taking action on this submittal. Since the Detroit-Ann Arbor area has demonstrated that it can maintain the standard without the implementation of these programs, USEPA proposes that the maintenance plan be approved with these elements as contingency measures. In addition, based on the maintenance demonstration, the USEPA plans to propose approval of the basic I/M enabling legislation (based on the June 28, 1994 proposed I/M Redesignation Rule), and the Stage I rule and 182 (f) NO_x exemption petition in a separate FR action.

C. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Detroit-Ann Arbor area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 455

[Docket No. 94N-0184]

Antibiotics Drugs; Rifabutin and Rifabutin Capsules

Correction

In rule document 94-19484 beginning on page 40805, in the issue of Wednesday, August 10, 1994, make the following corrections:

§ 455.88 [Corrected]

1. On page 40807, in the second column, in § 455.88 (a)(1), in the fifth line, after the number "*21S,*" insert "*22E, 24Z*)-".

2. On the same page, in the same column, in § 455.88 (a)(1), in the sixth line, "(*9S, 12E, 14S, 15R, 16S, 17R, 18R, 19R, 20S, 21S*" should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 874 and 878

[Docket No. 94M-0260]

Medical Devices; Proposed Exemptions From Premarket Notification for Certain Classified Devices

Correction

In proposed rule document 94-17705 beginning on page 37378, in the issue of Thursday, July 21, 1994, make the following corrections:

1. On page 37380, in the third column, in the table entitled "TABLE 8.--DENTAL DEVICES--Continued", under the heading "Device", in the sixth line, "burr" should read "bur".

§ 874.5220 [Corrected]

2. On page 37386, in the second column, underneath section heading § 874.5220, insert

"* * * * *".

PART 878—[CORRECTED]

3. On the same page, in the third column, in the authority citation, in the fourth line, "3601" should read "360l".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34603; File No. SR–MSRB–94–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

August 25, 1994.

Correction

In notice document 93-21473 beginning on page 45049 in the issue of August 31, 1994 the date in the heading is corrected to read as set forth above.

BILLING CODE 1505-01-D

federal register

Thursday
September 8, 1994

Part II

Department of Health and Human Services

Public Health Service
Health Care and Financing Administration

42 CFR Parts 121, 405, 482 and 485
Organ Procurement and Transplantation Network; Proposed Rule
Medicare and Medicaid Programs; Organ Procurement Organizations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 121

RIN: 0905–AD26

Organ Procurement and Transplantation Network

AGENCY: Public Health Service, DHHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth the Secretary's proposal for rules governing the operation of the Organ Procurement and Transplantation Network (OPTN). The proposed rules establish requirements and procedures for membership in the OPTN, for listing transplant candidates on a nationwide computer network, for allocating organs, and for maintaining records and reporting by member Organ Procurement Organizations (OPOs) and transplant hospitals.

DATES: To be considered, comments must be received by December 7, 1994. In addition, as indicated in Section G of this Preamble, the Department has decided to initiate the process of obtaining public comment on the organ allocation policies of the OPTN. These comments should also be received by December 7, 1994. Subject to consideration of the comments submitted, the Department intends to publish final regulations.

ADDRESSES: Comments should be submitted to Ms. Judith B. Braslow, Director, Division of Organ Transplantation, room 7–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Judith B. Braslow (301) 443–7577.

SUPPLEMENTARY INFORMATION:

I. Background

The OPTN was established under section 372(b)(2) of the PHS Act, as enacted by the National Organ Transplant Act of 1984 (Pub. L. 98–507), and amended by Pub. L. 100–607 and Pub. L. 101–616. Section 372 requires the Secretary to provide by contract for the establishment and operation of the OPTN to:

(A) establish in one location or through regional centers—

(i) a national list of individuals who need organs, and

(ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included on the list, especially individuals whose immune system makes it difficult for them to receive organs,

(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,

(C) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included on the list,

(D) assist organ procurement organizations in the nationwide distribution of organs equitably among transplant patients,

(E) adopt and use standards of quality for the acquisition and transportation of donated organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immunodeficiency syndrome,

(F) prepare and distribute, on a regionalized basis (and, to the extent practicable, among regions on a national basis), samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatibility of such individuals with organ donors,

(G) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

(H) provide information to physicians and other health professionals regarding organ donation,

(I) collect, analyze, and publish data concerning organ donations and transplants,

(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation,

(K) work actively to increase the supply of donated organs, and

(L) submit to the Secretary an annual report containing information on the comparative costs and patient outcomes at each transplant center affiliated with the OPTN.

The House Report (H.R. Rep. No. 575, 98th Congress, 1st Session, 1983) which accompanied Public Law 98–507 stated that the Committee intended that the OPTN be a strong, active national network for matching donated organs and for making available to OPOs a variety of services and resources to assist and enhance their operation.

Until the enactment of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), membership in the OPTN was voluntary. Section 9318 of Public Law 99–509 added a new section 1138 to the Social Security Act. Section 1138(a)(1)(B) requires Medicare and Medicaid participating hospitals that perform organ transplants to be members of and abide by the rules and requirements of the OPTN. Section 1138(b)(1)(D) requires that for organ procurement costs attributable to payments to an OPO to be paid by Medicare or Medicaid, the OPO must be a member of and abide by the rules and requirements of the OPTN. Although not required by Federal law, other entities (for example, histocompatibility laboratories) may be members of the OPTN.

Section 102(c) of the Balanced Budget and Emergency Deficit Control and Reaffirmation Act of 1987 (Pub. L. 100–119) delayed the effective date of section 1138(a) of the Social Security Act concerning hospitals from October 1, 1987, to November 21, 1987, and section 4009(g) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) further delayed the effective date of section 1138(b) of the Act concerning OPOs to April 1, 1988.

The Organ Transplant Amendments of 1988 (Title IV of Pub. L. 100–607) amended section 372 of the Public Health Service Act to require that the OPTN establish membership criteria and subject its policies to public review and comment.

On March 1, 1988 (53 FR 6526), the Department (HHS) published final rules that included the requirement that hospitals participating in Medicare and Medicaid which perform transplants and designated OPOs be members of and abide by the rules and requirements of the OPTN (42 CFR 485.305 and 482.12(c)(5)(ii)) in order to qualify for Medicare or Medicaid payments.

There has been much discussion between HHS and the United Network for Organ Sharing (UNOS), the contractor operating the OPTN, concerning the policies that should constitute a rule or requirement of the Network and what procedures will be used to determine whether an entity is a member of the OPTN and, more specifically, the process by which the Secretary will approve or disapprove actions of the OPTN and announce these decisions to the public. On December 18, 1989, the Department published a general notice in the **Federal Register** (54 FR 51802) announcing its policy regarding this matter. The notice stated as follows:

In order to be a rule or requirement of the OPTN, and therefore mandatory or binding on hospitals and OPOs participating in Medicare or Medicaid, the Secretary must have given formal approval to the rule or requirement. Approved rules and requirements will be issued in accordance with the Administrative Procedure Act (APA) (5

U.S.C. 501 *et seq.*). If an OPTN rule or requirement would constitute a "rule" within the meaning of the APA and is not exempt from the publication requirement, it will be published in the **Federal Register**. No hospital will be considered out of compliance with section 1138(a)(1)(B) of the Act or the regulations at 42 CFR 482.12(c)(5)(ii), and no OPO will be considered to be out of compliance with section 1138(b)(1)(D) of the Act or regulations at 42 CFR 485.305 unless the Secretary has given the OPTN formal notice approving the decision to exclude the entity from the OPTN and has also notified the entity in writing.

II. Purpose of the Proposed Rules

In keeping with the policy announced by the Department on December 18, 1989, we are proposing regulations which set a framework for the operation of the OPTN. The proposed rules provide for Federal oversight of the processes by which the OPTN allocates organs for transplantation. They focus the Federal role on ensuring that those processes are fair and equitable, and provide for public participation. Under the proposed regulations, the OPTN has responsibility for developing policies governing organ transplantation, and the day-to-day operation of the OPTN.

Matters which are covered under existing Federal and State statutes and rules are not included in the proposed rules. For example, Medicare transplant hospitals must already comply with Federal statutory requirements or rules establishing Medicare hospital conditions of participation (42 CFR Part 482), governing end stage renal disease (ESRD) facilities (42 CFR Part 405, Subpart U), and Medicare coverage of heart transplantation (52 FR 10935) and adult liver transplantation (56 FR 15006). The Department has extensive rules regarding blood (21 CFR Parts 606, 610, and 640). The Department has also published final rules governing virtually all laboratories operating in interstate commerce. As discussed below, existing civil rights regulations govern all of these facilities. Any experimental work regarding transplantation is subject to HHS rules protecting the human subjects of research (45 CFR Part 46). Rules establishing conditions for coverage for OPOs are set forth in 42 CFR Part 485, Subpart B. However, we request comment on the desirability of adding policies to the body of HHS regulations governing transplantation. Such proposals would be most helpful if they refer specifically to proposed provisions to be added, provide a specific rationale for the suggested addition, and provide empirical evidence in support of any proposed addition. We prefer evidence that the policy is not merely desirable, but so essential as to justify suspending a transplant program's access to organs for transplantation if not followed.

Set forth below are regulations proposed as rules and requirements of the OPTN which, if adopted in final form by the Secretary, will regulate the Organ Procurement and Transplantation Network.

III. Description of the Proposed Rules

In addition to focussing on ensuring public participation in the process by which organ allocation and other policies are developed, the proposed rules create an enforceable standard which OPTN member transplant programs must meet to qualify to receive organs for transplantation. Where the proposed rules call for review, evaluation, or appeal actions by the Secretary, decisionmaking will be carried out by the Health Resources and Services Administration (HRSA), PHS, to whom authorities under Section 372 of the PHS Act have previously been delegated. As appropriate, HRSA will consult with interested agencies in carrying out these responsibilities.

A. Applicability

The proposed rules apply to the operation of the Organ Procurement and Transplantation Network. In addition, the proposed rules set forth those requirements of the OPTN with which its member OPOs and transplant hospitals must comply as a condition of participation in Medicare and Medicaid (42 CFR 482.12(c)(5)(ii) and 485.305). The rules do not separately refer to civil rights requirements. However, participating transplant hospitals and OPOs are already subject to applicable Federal civil rights requirements and sanctions. Thus, for example, Title VI of the Civil Rights Act of 1964 (race and national origin discrimination) and Section 504 of the Rehabilitation Act of 1973 (disability discrimination) apply to any program or activity receiving Federal financial assistance. Other civil rights laws also apply to recipients of Federal financial assistance. For example, the Age Discrimination Act of 1975 prohibits age discrimination by recipients of Federal assistance; Title IX of the Education Amendments of 1972 prohibits sex discrimination in education programs receiving Federal assistance.

B. Membership

The proposed rules support broad-based membership. In accordance with section 372 of the Public Health Service Act, the proposed rules allow organizations, institutions, and individuals to become members of the OPTN.

Under proposed § 121.3(c)(1), OPOs designated by HHS under section 1138(b) of the Social Security Act are required to be admitted as members of the OPTN. Similarly, under proposed § 121.3(c)(2), all hospitals which are subject to section 1138 of the Social Security Act because they perform transplants will be admitted as members of the OPTN. OPOs will be required to abide by the rules and requirements of the OPTN in order to be reimbursed under Medicare or Medicaid for organs which they procure. Similarly, transplant hospitals subject to section 1138 must abide by the rules and requirements of the OPTN as a condition of their continued participation in Medicare and Medicaid. Failure to abide by these rules may subject them to termination from Medicare and Medicaid, unless they no longer provide transplantation services.

With reference to membership of newly designated OPOs, the Department anticipates no administrative conflict between these proposed rules and the requirement for designation by HHS under section 1138(b) of the Social Security Act which calls for membership in the OPTN. Since the purpose of this requirement of section 1138(b) is to ensure that OPOs are required to follow OPTN rules, OPOs designated by HHS are automatically made members of the OPTN.

The proposed rules require that other institutions, organizations, and individuals that wish to become members demonstrate an ongoing interest in the field of organ transplantation. The Department encourages participation of transplant recipients and donor families in the deliberations of the OPTN, and it is our intent that membership be broadly based to invite such participation. Under proposed § 121.3(d), the OPTN will review and make decisions on applications for membership. Applicants rejected for membership may appeal to the Secretary. The Department solicits public reaction to the idea of expanding the membership base of the OPTN, and to suggestions on how this can be accomplished.

Proposed § 121.3(a) provides for the establishment of a Board of Directors to develop general policies, procedures, and issuances; medical criteria and related policies for the fair and equitable allocation of human donor organs; policies consistent with recommendations of the Centers for Disease Control and Prevention to

prevent the spread of infectious diseases; and standards for the training and experience of transplant surgeons and physicians. See the discussion at H. below. The proposed rules also require the OPTN to provide to the Secretary copies of any policies, procedures, and issuances as they are adopted, and to make them available to the public upon request. The Secretary will periodically publish lists of these documents in the **Federal Register.**

To ensure appropriate representation, the proposed rules require that the Board include: two members each from, and elected by, the association representing transplant coordinators, the association representing organ procurement organizations, and the association representing histocompatibility experts; at least two representatives each, elected by the OPTN membership, from the following categories: transplant surgeons, transplant physicians, representatives of transplant hospitals, voluntary health organizations, patient advocacy groups and the general public; and one representative elected by the members from each region of the OPTN. At present, the OPTN has, at its discretion, established 11 regions. Therefore, if the current regional structure were in place under the proposed rules, the Board of Directors would have eleven regional representatives.

Board members would serve two-year terms, and would be required to elect an Executive Committee from the membership of the Board, and to establish other committees whose chairpersons shall be selected to ensure continuity in leadership. In addition, the proposed rules require that not more than 50 percent of the Board of Directors and the Executive Committee be surgeons and physicians directly involved in organ procurement and transplantation. Proposed § 121.3(a) also requires that the Board have a diverse membership, including minority and gender representation reflecting the diversity of the population of organ donors and recipients served by the OPTN. The Department requests comment on the composition of the Board of Directors and the method by which the Board and Executive Committee are elected. In addition, the Department seeks comment on the best way to ensure ethnic and racial diversity.

C. Listing Requirements

The proposed rules implement the statutory requirement for a national system to match donor organs and individual transplant candidates, and contain a number of specific requirements with respect to the listing of transplant candidates. Proposed § 121.4(a)(2) requires that transplant hospitals list all transplant candidates on the national list as soon as they are determined to be candidates for transplantation. Moreover, the transplant program with which the listed transplant candidate is associated must, according to proposed § 121.4(a)(1), be approved for allocation of organs in accordance with proposed § 121.8. See the discussion at H. below. There were 27,147 new patients listed in 1993 compared with 20,764 in 1990.

Proposed § 121.4(a)(3) authorizes the OPTN to collect registration fees for each transplant candidate listed by a transplant hospital on the national list. The amount of the fee may be determined by the OPTN subject to review by the Secretary. Payment for patient registration fees is received from transplant hospitals on behalf of their patients. The fees, which are generally reimbursed by third-party and other payors, principally Medicare or Medicaid, are necessary to support OPTN transplant candidate registration and donor/recipient matching activities beyond the direct Federal funding available for the OPTN contract.

Proposed § 121.4(b) requires members that procure organs to provide to the OPTN timely information on each organ procured. The Department has included this requirement to convey the importance of keeping the computer match program up-to-date. See the discussion at E. below. In 1993, there were 14,701 organs donated and transplanted from 4,860 cadaveric donors, an average of three organs per donor.

It should also be pointed out that nothing in the proposed rules prohibits patients from being listed by more than one transplant hospital. Three percent of waiting list patients are listed at two or more centers. The proposed rules are consistent with the current voluntary policy which permits transplant candidates to appear on more than one local list. See the discussion at G. below. The public is invited to comment on this policy.

An issue related to patient listing concerns the apparent disparity in kidney transplantation between blacks and whites. There has been significant research exploring this question. The most recent study, sponsored by the Department of Health and Human Services and conducted by the RAND/UCLA Center for Policy Research in Health Care Financing, examined a number of issues related to access, including cadaveric kidney procurement, distribution, and allocation of organs by OPOs. The study team used data from seven large OPOs, the OPTN, and the ESRD program of the Health Care Financing Administration.

That work (Joel D. Kallich, et al., "Access to Cadaveric Kidney Transplantation." RAND, 1993, pp. 59–61) concludes:

> "* * * that blacks experience problems getting on kidney transplant waiting lists maintained by transplant centers across the country. Once on a list, however, the difference in waiting times to transplant between blacks and whites appears to be the result of biologic differences between the races.
>
> "Lower rates of access to the waiting lists are not entirely explained by currently available data on medical condition of the ESRD patient (age, hospitalizations, and cause of renal failure) or regional differences. Medical variables account for some differences, but not all of the racial disparity in access to transplant waiting lists."
>
> "In our examination of the hazards ratio of getting on a waiting list once an individual has entered Medicare's ESRD program, we found disparities in access to the UNOS waiting list. Again, available medical/biologic variables do not explain much of the difference between the races."
>
> "We do not have any evidence that the differences between the races that we found is due to conscious or unconscious bias on the part of health care professionals. Moreover, it is not surprising that we have found that blacks are having access problems in regard to kidney transplantation. Blacks in America have a history of suffering worse health care outcomes and having greater problems in gaining access to the health care system than white Americans * * *. Yet kidney transplantation causes special concern about issues of fairness, because of federal entitlement to medical care services for all persons with ESRD, * * *"

The Department, too, believes that federal entitlement to ESRD-related medical services necessitates careful exploration of the observed disparity between blacks and whites in access to the kidney transplantation waiting list, especially those which may be without medical or biological foundation. Consequently, the Department invites comment and is especially interested in data which may illuminate and assist further in examination of the movement of ESRD patients to the waiting lists for kidney transplantation.

D. Organ Procurement

Proposed § 121.5 is intended to establish minimum requirements to improve the outcome of transplantation and minimize the potential for wastage of organs. These proposed requirements apply only to cadaveric organs and not to organs (such as kidneys and liver lobes) from living donors.

Proposed § 121.5(a) requires that OPTN members that procure organs

screen donors, in accordance with OPTN policies, to determine any contraindications for donor acceptance. Under policies now voluntarily followed by OPTN members, screening is done for HIV–1, HIV–2, HTLV I/II, hepatitis B, the presence of metastasizing malignancies, including tumors of the liver, sepsis, or evidence that the donor received human pituitary derived growth hormone or *dura mater* products. The latter are included because of the potential for transmitting Creutzfeldt-Jakob Disease (CJD).

Proposed § 121.5(b), in keeping with sections 371(b) and 372(b) of the PHS Act, specifies that members are prohibited from procuring organs from donors known to have Human Immunodeficiency Virus (HIV–1 or HIV–2).

Screening potential donors for HIV infection has been conducted since 1985, when tests for HIV antibody became available. Although this screening has markedly reduced the potential for transmission of HIV through organ donation, the possibility—however remote—still exists because antibodies may not be detected until three to six months after infection. Following a recent finding of HIV infection among recipients of organs and tissue from a donor who tested negative for HIV infection, the Centers for Disease Control and Prevention is developing recommendations on HIV testing of transplant recipients. Proposed § 121.3(a)(6)(i)(C) requires the OPTN Board of Directors to develop policies consistent with recommendations of the Centers for Disease Control and Prevention related to the control of infectious diseases, particularly HIV.

Under proposed § 121.5(c), transplant hospitals may establish donor acceptance criteria. If they do so, the proposed rules require the hospitals to provide the criteria to OPOs with which they have agreements and to the OPTN. Donor acceptance criteria enable the OPO and the OPTN to make speedy determinations about where to offer an organ. For example, if a transplant hospital specifies the age range of donors from which it would accept organs for transplant, the OPTN's computer match program would automatically exclude patients at that transplant hospital from the list of potential recipients of an organ whose donor exceeded that age range. Thus, the potential for delay and organ wastage would be minimized.

NUMBER AND PERCENT OF DONORS 55 TO 64 AND 65 AND OVER—1991, 1992, 1993

	1991		1992		1993	
	No.	Percent	No.	Percent	No.	Percent
55 to 64	377	8.3	449	9.9	497	10.3
65 and over	127	2.8	175	3.9	211	4.4

E. Identification of Organ Recipient

Proposed § 121.6 establishes the regulatory framework within which operate the various cadaveric organ allocation schemes developed under proposed § 121.7. See the discussion at F. below.

Under proposed § 121.6(b), an OPTN member which procures an organ is required to run the computer match program to identify and rank potential recipients of the organ. Ranking would be determined in accordance with the allocation policies developed by the OPTN under proposed § 121.7.

Proposed § 121.6(a) also provides that organs which do not meet a transplant hospital's donor acceptance criteria will not be offered to transplant candidates of that hospital. Thus, a transplant candidate will not appear on a listing of potential recipients for a donor organ which does not meet the acceptance criteria of the candidate's hospital.

Under proposed § 121.6(b), organs must be offered to potential recipients in rank order, and only to potential recipients listed with transplant hospitals having transplant programs of the same type as the organ procured and which meet the requirements of proposed § 121.8. For all organ offers, proposed § 121.6(b)(4) requires transplant hospitals to accept or reject the offer within a time limit established by the OPTN, provided sufficient information is given to enable a decision to be made. The time limit, which is presently one hour, is established to assure prompt consideration of an offer and the ability to make an offer to subsequently ranked candidates before the organ becomes too old to be transplanted.

Under proposed § 121.6(c), the OPTN member that procures a donated organ is responsible for arranging for its transportation to the transplant hospital, and for ensuring that it is accompanied by appropriate documentation and is packaged properly. The Department has not included in these proposed rules detailed requirements for documentation and packaging, because such standards have been well-established in medical practice and are included in the OPTN policies. The Department believes that it is unnecessary to codify them into Federal rules. In addition, information about state-of-the-art practice is available from the OPTN. We expect that OPTN members will continue to follow accepted medical practices.

In the event that a transplant hospital decides not to use the organ it receives for the potential recipient for whom it was offered, proposed § 121.6(d) requires the transplant hospital to offer the organ to another potential recipient in accordance with proposed § 121.6(b).

Proposed § 121.6(e) in effect suspends the allocation requirements of proposed § 121.6 when circumstances arise which would otherwise cause an organ to be wasted. It requires that an OPO or transplant hospital report to the OPTN, within time limits established by the OPTN, any situation in which it did not follow these requirements, and the precise circumstances surrounding the failure to follow the allocation requirements. The Department believes that this provision provides OPOs and transplant hospitals with the regulatory flexibility needed to ensure that organ wastage is minimized.

F. Allocation of Organs

Proposed § 121.7 provides that the OPTN Board of Directors shall develop policies for allocating organs for transplantation. It requires that such policies be patient-based and take into account established medical criteria for transplantation, the length of time potential recipients have been on the national list, and potential recipients whose immune system makes it difficult for them to receive organs, while minimizing wastage of the scarce supply of human organs for transplantation and improving the outcomes of transplantation. These proposed rules do not apply to organs from living donors, either related or unrelated, and proposed § 121.7(d) explicitly permits

the allocation of cadaveric organs to individual recipients named by those authorized to make the donation.

Proposed § 121.7(b) requires that the Board of Directors provide opportunity for the membership of the OPTN to comment on proposed policies. Concurrently, the Secretary would publish the proposed policies or a notice about the proposed policies in the **Federal Register** to give the public an opportunity to comment. Further, the proposed rule provides that the Secretary shall review final allocation policies and provide comments and/or objections. The OPTN must consider the Secretary's comments before the policies are finalized. If the Secretary objects to a policy, the OPTN may be directed to revise the policy consistent with the Secretary's direction. OPTN members, individuals and entities objecting to final policies may appeal to the Secretary within 30 days of their adoption.

The Department recognizes that the present organ allocation policies, which will be the subject of these public comment procedures, raise difficult issues. For example, efforts to promote service to the sickest patients first versus those likely to survive the longest may conflict. Similarly, some policies intended to maximize transplant outcomes and based on sound scientific data may have adverse implications for one ethnic group in particular, or for residents of particular geographic areas. The Department is committed to a full public debate on these and related issues that arise in the context of organ allocation policies. As set forth below, the Department is circulating the present OPTN policies for the purpose of public debate, but wishes to make clear that publication of the policies does not indicate agreement or disagreement with them in their present form. The process is being initiated to allow the earliest possible adoption of final allocation policies, and the Department reserves its judgment on the wisdom of the present OPTN policies until the public comments can be considered.

Under the existing organ procurement and transplantation system, members have followed organ-specific allocation policies developed by UNOS. For the purposes of this rulemaking, the Department considers these policies to be proposed policies and intends for the public to have an opportunity to comment on them. However, to avoid disruption in the allocation of organs, the Department expects the OPTN to continue to utilize, and OPOs and transplant hospitals to follow, these policies during the review and comment process.

So that this proposed rule may be considered in the context of these allocation policies, following is general information about them.

G. Existing Organ Allocation Policies

The organ allocation policies now being followed by transplant hospitals and OPOs were developed by UNOS through special committees established by the OPTN. In their proposed form, these policies were circulated to a wide variety of groups and individuals interested in the field of transplantation, and their comments were considered before the policies were finalized. Taken together, these policies comprise a national system of organ allocation which has been in operation, albeit frequently modified, since establishment of the OPTN in 1984. Following is a table which shows, by organ, the number of transplants performed in 1990 and 1993 the number of people on the waiting list at the end of that year, and the 2 year graft survival by organ for transplants performed between October 1, 1987 and December 31, 1991.

Organ	No. of transplants		No. of patients on wait list[1] as of December 31,		2 year graft survival for transplants between 10/1/87 and 12/31/91
	1990	1993	1990	1993	
Kidney	9,886	10,265	17,883	25,069	72.8%
Liver	2,682	3,442	1,237	2,982	62.3%
Heart	2,107	2,299	1,788	2,833	76.2%
Pancreas	537	773	473	1,110	65.2%
Lung	202	664	308	1,255	53.1%
Heart-lung	52	60	225	203	47.7%

[1] Because of multiple listing, the number of patients on the wait list is higher than the actual number of individual patients waiting for a transplant. However, the number on the wait list is smaller than the total number of patients likely to benefit from transplantation because many do not get listed due to inability to pay, fear of surgery, etc.

The allocation policies call for matching donated cadaveric organs with potential transplant recipients registered on a national, computerized list of transplant candidates. Matching organs to potential recipients is based on medical criteria such as blood type, histocompatibility, sensitivity of the patient to transplantation (panel reactive antibody), and degree of urgency. Other criteria taken into account are time on the waiting list and geography. Generally, donated organs are allocated first to medically qualified candidates locally, then regionally, and then nationally. The policy effective in July 1993 defines local as the OPO service area in most cases. Potential recipients are identified by generating local and regional lists of names from the national list of transplant candidates. Following is a table showing the range of median waiting times among OPOs by region.

RANGE OF MEDIAN WAITING TIMES BY DAYS AMONG OPOS IN REGION

[1992]

Region	Kidney	Liver	Heart	Pancreas
1	505–725	91–375	168–265	[2]
2	397–772	108–209	68–540	[2]
3	125–826	20–78	72–265	[2]
4	223–523	70–105	55–325	[2]
5	130–786	18–197	130–355	[2]
6	94–533	[1] 56	56–182	[2]
7	448–695	31–256	226–641	[2]
8	271–539	26–121	92–381	[2]

RANGE OF MEDIAN WAITING TIMES BY DAYS AMONG OPOS IN REGION—Continued

[1992]

Region	Kidney	Liver	Heart	Pancreas
9	213–698	279–443	255–268	(2)
10	185–348	33–194	89–591	(2)
11	151–723	30–276	111–767	(2)
United States	94–826	18–443	55–767	(2)

[1] Two OPOs in Region 6 that contain liver transplant centers; both with waiting times of 56 days.
[2] Insufficient data because of small number of cases.

Potential recipients of hearts, heart-lung-combinations, and lungs are ranked according to medical urgency, time on the national list, and logistics. For kidneys, livers, and pancreata, potential recipients are ranked, using a point system, according to point values for the criteria established in each organ allocation policy, To calculate the number of points for time, for example, if there are 75 potential recipients in blood group O on the list for kidneys, the person with the longest time would have a number of points equal to 75 divided by 75, times 1; or 1 point. If a potential recipient had a position number of 60 on the list of 75 potential recipients in blood group O, that person would have a number of points equal to 60 divided by 75, times 1; or 0.8 points. The policy also awards 0.5 additional points for each year above one year on the list. The kidney allocation policy also establishes point values for the quality of antigen match emphasizing the lack of mismatches, and degree of panel reactive antibody. It also specifies that potential recipients five years old or younger receive an additional two points, and that potential recipients who are six through ten years old receive an additional one point. Additional points are awarded to children because they generally do not do well on dialysis, the alternative to kidney transplantation.

The current policies also permit variances to the point system and the establishment of alternative local units for distributing organs, subject to the approval of the OPTN. For example, they permit interregional and intraregional groups to develop organ sharing arrangements, allow transplant hospitals and OPOs to assign different point values to the organ allocation criteria, and permit OPOs to institute alternative arrangements to distribute hearts and heart-lung combinations within the boundaries of the OPO. Other existing policies require an OPO receiving a six antigen matched kidney to "pay back" a kidney to the OPTN and, in the case of simultaneous kidney-pancreas transplantation, require only one of the kidneys procured to be offered for a six antigen matched recipient. The Department requests comment on the use of variances and alternative local units by the OPTN and whether they should be permitted to continue.

The Department recognizes that there is significant public interest in the present organ allocation policies of the OPTN. In order to expedite the process of the public comment on those policies, the Department has decided to initiate the process described in the proposed rule set forth below. Accordingly, anyone interested in commenting on the present allocation policies may obtain a copy by writing to the United Network for Organ Sharing, 1100 Boulders Parkway, suite 500, Post Office Box 13770, Richmond VA 23225–8770.

The Department asks that anyone who wishes to comment on the present organ allocation policies submit written comments to Ms. Judith B. Braslow, Director, Division of Organ Transplantation, room 7–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, by December 7, 1994. In addition, a copy should be submitted at the same time to the United Network for Organ Sharing.

Depending on the public comments submitted in response to this proposed rule, the Department may revise the process of comment on the allocation policies. However, in anticipation that the final rule will be substantially the same in this regard as the proposed rule, the Department felt it wise to expedite the comment process by announcing the availability of the present organ allocation policies simultaneously with the publication of this proposed rule. The final analysis of comments on the present allocation policies will, of course, await the publication of the final rule.

In addition, the Department requests comment specifically on moving toward single regional listings of potential recipients drawn from the national list for the purpose of allocating organs, and whether the use of regional listings is feasible and would lead to a fairer and more equitable allocation system.

In seeking comments on an allocation system, the Department stresses that it is not committed to those policies presently in place. The public is invited to propose any alternative methods for allocating organs, including systems which may differ markedly from the current allocation schemes. Among the features which may be considered are a framework which is national in scope and at the same time patient focused; consideration of equitable distribution of organs; the extent to which the allocation system will foster improvements in graft and patient survival; and the extent to which a patient may select among transplant programs once having been placed on the transplantation waiting list. The Department, of course, is committed to disclosure to patients and physicians of data on transplant program performance and any available cost information pertinent to transplant programs regardless of the allocation policies in place.

The Department will use the comprehensive transplantation data system in reviewing the data presented and the questions raised by commentors on the allocation policies. The data shown below is an illustration of the information available on organ allocation. Transplant program performance and volume information is also available.

ALLOCATION OF ORGANS—1991, 1992, 1993

[Percentage]

	Kidneys	Hearts	Livers
1991:			
Transplanted locally	70.6	65.9	48.5
Shared within region	11.2	17.2	30.1
Shared outside region	18.2	16.4	20.3
1992:			
Transplanted locally	73.6	70.9	55.6

ALLOCATION OF ORGANS—1991, 1992, 1993—Continued

[Percentage]

	Kidneys	Hearts	Livers
Shared within region	9.8	15.0	28.3
Shared outside region	16.5	14.5	15.6
1993:			
Transplanted locally	74.7	70.6	56.8
Shared within region	9.2	14.7	27.7
Shared outside region	15.7	14.0	14.6

HEART AND LIVER ONE-YEAR GRAFT SURVIVAL RATE BY PATIENT DESCRIPTION AT TIME OF TRANSPLANT

[Percentage]

Patient description	Heart	Liver
Working/attending school full time	93.6	79.1
Working/attending school part time	84.4	75.2
Homebound/failing to thrive	83.5	74.4
Hospitalized	81.0	68.1
In intensive care	82.4	64.0
On life support	72.8	47.5

H. Designated Transplant Program Requirements

The Department believes that, in enacting the National Organ Transplantation Act, the Congress intended that establishment of the OPTN would ensure that human organ transplantation is conducted in facilities properly equipped and staffed to carry out these complex procedures.

NUMBER OF OPTN APPROVED CENTERS, 1993

Kidney	Liver	Pancreas	Heart	Heart-lung	Lung
246	109	112	164	89	76

The Department also believes that, although its regulations should be minimal with as much flexibility as possible, it has a statutory responsibility to ensure that the rule maintain, and indeed promote, high quality care. For example, the Department's rules published on April 12, 1991, to include coverage of liver transplants under Medicare are explicit in stating that a goal of the criteria for facilities to qualify for reimbursement is to maintain the quality of services. (56 FR 15009).

These proposed rules complement the criteria established for coverage of organ transplantation under Medicare. The Medicare requirements place emphasis on the facilities in which transplantation is performed; that is, criteria are established for facility experience in terms of numbers of transplants performed and survival rates. Thus, for example, as of November 1993 only 33 of the existing 109 liver transplant programs in the United States qualify for Medicare reimbursement; 49 of the liver transplant programs applied. Complementing the Medicare criteria, the proposed OPTN transplant program requirements provide that transplant programs which meet the Medicare requirements are automatically qualified to receive organs for transplantation. For those which do not, the proposed rules set out service and support requirements which are similar to those required under Medicare. However, because new transplant programs do not yet have the transplant experience and survival rates that are needed for Medicare reimbursement, the proposed OPTN rules include requirements to be established by the OPTN Board of Directors for the education and training of transplant surgeons and physicians, thus ensuring the quality of care in transplant programs which are not yet approved for Medicare reimbursement.

In developing this proposed rule, the Department considered allowing all Medicare participating hospitals which performed transplants (regardless of their qualification for Medicare reimbursement for transplantation) to be eligible to receive organs for transplantation without having to meet additional criteria. The Department rejected this alternative for the same reason it rejected a similar alternative regarding Medicare coverage of heart and liver transplants; that it would permit uncontrolled proliferation of transplant facilities, raising all the concomitant questions about the quality of services, given the limited availability of donor organs and experienced teams. (56 FR 15018). Under this option to impose no facility standards on hospitals beyond those already required of them through their participation in Medicare and Medicaid, all transplant hospitals which have a provider agreement under Medicare or which participate in Medicaid would automatically be approved (assuming that they met the remainder of the regulation's requirements) to receive organs through the OPTN. The assumption underlying this option is that Federal regulation in this area should focus only on a national system for matching organs and for allocating them equitably, rather than on standards for conducting transplantation. It also takes the position that, although there is a theoretical argument that equitable allocation could be harmed if transplantation itself were not regulated to prevent organ wastage, such Federal regulation must be premised on the existence of evidence that significant numbers of organs are unnecessarily wasted because of the lack of Federally mandated standards. We invite comment on this option, and specifically request that commenters provide evidence in support of their position.

Another alternative was to add volume and quality minimums (e.g., 75 percent success rate on more than 20 procedures a year) which would exclude hospitals which perform at lower levels. For example, a mere showing that the average success rate of hospitals meeting a certain volume level or other standard is several percentage points higher than the average success rate of other hospitals would not, in our view, be a sufficient basis for denying other hospitals access to organs. Both the absolute difference and the standard error of such estimates would have to allow a high level of certainty that a particular standard would reduce wastage of many organs and would not exclude meritorious hospitals that handle sicker than average patients. Furthermore, no such standard should be adopted if its effect were to exclude hospitals from newly entering the field of transplantation.

We are reviewing hospital-specific data collected through the Scientific Registry, a repository of data on transplant recipients that is operated under contract with the Department, and may identify patterns which

support establishing such a standard. One factor that patients consider in selecting a transplant center is the annual number of transplants performed there. The data show that for kidney transplantation, the risk of graft failure within one year after transplant is about the same across centers regardless of the number of transplants performed. Liver transplants at centers doing fewer than 6 transplants were 2.8 times more likely to fail within the first year than were transplants at centers doing 32–66 transplants. Heart transplants at centers doing fewer than 9 transplants were 3.5 times more likely to fail within the first year than were transplants at centers performing 26 to 45 transplants. The best results for pancreas transplants appeared to be at centers that performed more than 10 transplants. We will consider suggestions, and will consider proposing a standard if it is supportable scientifically and sound from a regulatory standpoint. Any commenters proposing such standards should provide empirical data, if possible, on the extent of the problem and on likely improvement.

Another approach was to base the OPTN regulatory criteria on the standards for Medicare coverage (i.e., eligibility for reimbursement) of heart and adult liver transplants, or to require compliance with the many Medicare and Medicaid regulatory provisions directed at or affecting transplantation (e.g., the social services or laboratory requirements in the end stage renal disease supplier conditions of coverage—42 CFR Part 405, Subpart U). The Department believes that this approach would create a number of problems, including the creation of unnecessary, duplicative standards and the potential for conflicts in enforcement where the standards are slightly different. Nevertheless, we invite comment on this approach and any variations.

Commenters advocating any approach to regulating transplantation should specify the precise benefits expected and their likely empirical magnitude, address whether these benefits will be significant in furthering the purposes of the organ transplantation provisions of the Public Health Service and Social Security Acts, and discuss whether other alternatives inside or outside the scope of this proposed regulation (e.g., efforts to increase organ retrieval or increased reliance on antigen matching in allocation priorities) might better achieve these benefits.

The "User's Guide" accompanying the *1991 Report of Center-Specific Graft and Patient Survival Rates* notes a number of factors patients should take into consideration in selecting a transplant center. Some of the most important factors are:

- The graft and patient survival rates of the particular program.
- The experience, training and education of the transplant team and the medical and nursing care available throughout the process from candidate evaluation through transplantation and follow-up.
- The cost of the transplant procedure, physician services, hospitalization and medications.
- The location of the transplant program and how close it is to the patient's home and how easily the patient can reach it.
- The friends and family available to the patient for assistance before, during and after the transplant.
- The support facilities of the transplant center.

We are soliciting comments on how the current OPTN policies or other alternative allocation systems would maximize a patient's ability to choose among transplant centers using the above factors.

In addition, the Department is concerned about the regulation of organ transplantation in light of health care reform with respect to issues of equity, access, and cost. The Department solicits comments on the effect of alternative allocation policies on these issues.

I. Review, Evaluation, and Appeals

To determine compliance with the rules and requirements of the OPTN, under proposed § 121.9(a) the Secretary or her/his designee may conduct reviews and evaluate the activities of member OPOs and transplant hospitals. Proposed § 121.9(b) requires the OPTN to develop plans and procedures, subject to approval by the Secretary, for reviewing membership applications from OPOs and transplant hospitals, and for conducting ongoing reviews and evaluations of member OPOs and transplant hospitals. The purpose of these reviews and evaluations is to monitor compliance with the regulations and to conduct such studies as the Secretary deems necessary. The Secretary may, under proposed § 121.9(c), suspend a transplant program's eligibility to receive organs for transplantation if, upon consideration of recommendations based on reviews or evaluations by the OPTN, the Secretary determines that the entity has failed to comply with these regulations. Moreover, the Secretary may decide that, by virtue of section 1138, an OPO is no longer eligible for reimbursement under Medicare and Medicaid.

Proposed § 121.10(a) provides that any individual or entity may appeal any policy, procedure, or issuance of the OPTN to the Secretary. The Secretary will solicit the comments of the OPTN on the appeal and when warranted will take appropriate action to resolve it. The Secretary intends that such appeals will be filed only when the enforcement of the policies at issue implicates an important public policy or where there is a potential for some penalty to be imposed either by the OPTN or the Secretary. Proposed § 121.10(b) provides that the Secretary may object to any policy, procedure, or issuance of the OPTN, and that the OPTN may be directed to revise the item consistent with the Secretary's direction.

J. Record Maintenance and Reporting

The record maintenance and reporting requirements of the proposed rules are limited to the OPTN itself, and to OPOs and transplant hospitals which are members of the OPTN. The Department's policy is to assure that transplantation data collected on its behalf are readily available for scientific and evaluative analysis, and that the OPTN provides the data to the public, subject to Privacy Act restrictions.

Under proposed § 121.11(a), records are to be maintained and made available consistent with applicable limitations based on personal privacy.

Proposed § 121.11(a)(1) requires the OPTN to operate an automated system for managing information about organ transplant candidates, recipients, and donors, including a computerized waiting list, in accordance with the listing requirements of proposed § 121.4. The OPTN shall maintain patient records in association with the list. Proposed § 121.11(a)(2) requires OPOs and transplant hospitals to maintain and make available to the Secretary and Comptroller General, or their designees, records on patients and donors for which they are responsible.

Under the reporting requirements of proposed § 121.11(b)(2), OPOs and transplant hospitals which are members of the OPTN must provide to the OPTN information about transplantation candidates, recipients, and donors for which they are responsible. Such information includes patient and donor identification, medical data necessary for operating the computer match system, and post-transplant information about graft survival.

The OPTN is required by proposed § 121.11(b)(1) to report to the Secretary at least annually the information that the Department believes is needed to

assess the effectiveness of the Nation's organ donation, procurement, and transplantation system. This provision also requires the OPTN to report data on transplant candidates and recipients to the Scientific Registry.

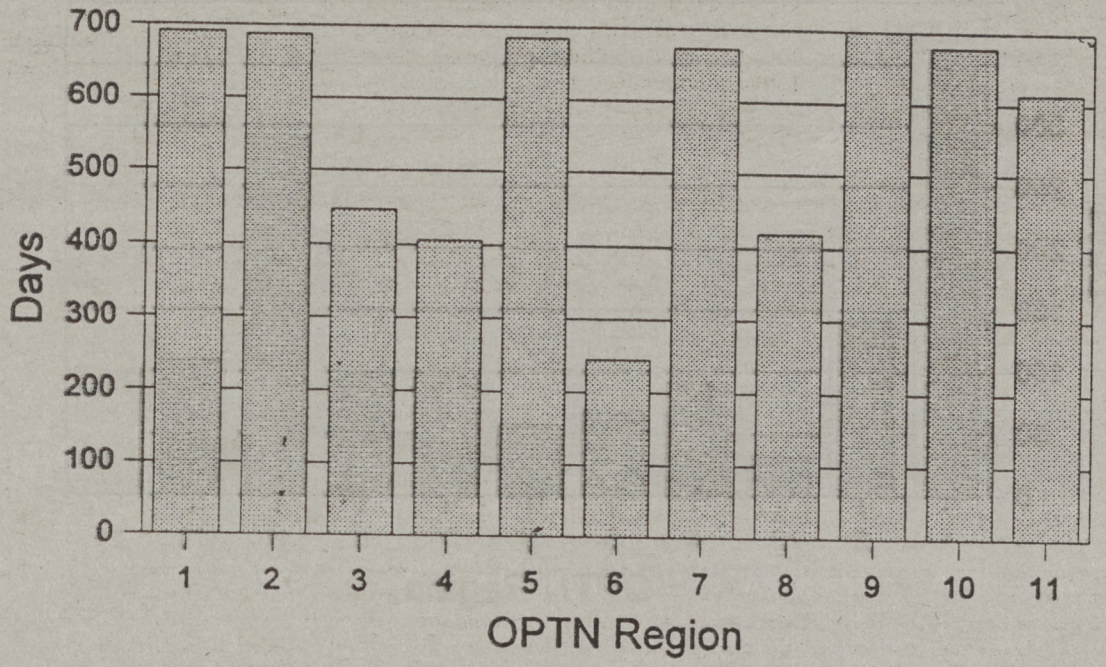
IV. Data Availability

Throughout this Preamble the Department has presented data to augment the description of the organ transplantation system. Commentors have been asked to support their comments with pertinent data where appropriate. In particular, we request that comments on the system for organ allocation (see sections F and G) be supported by information which clearly demonstrates advantages derived from the alternative methods proposed. The Department expects to use data as well in evaluating the potential effects of proposed changes in organ allocation There is considerable information in the literature about the clinical issues in transplantation, specifically those factors which affect survival of the transplanted organs and their recipients. Examples of the kinds of data which may be useful in performing these analyses are displayed below:

BILLING CODE 4160–15–M

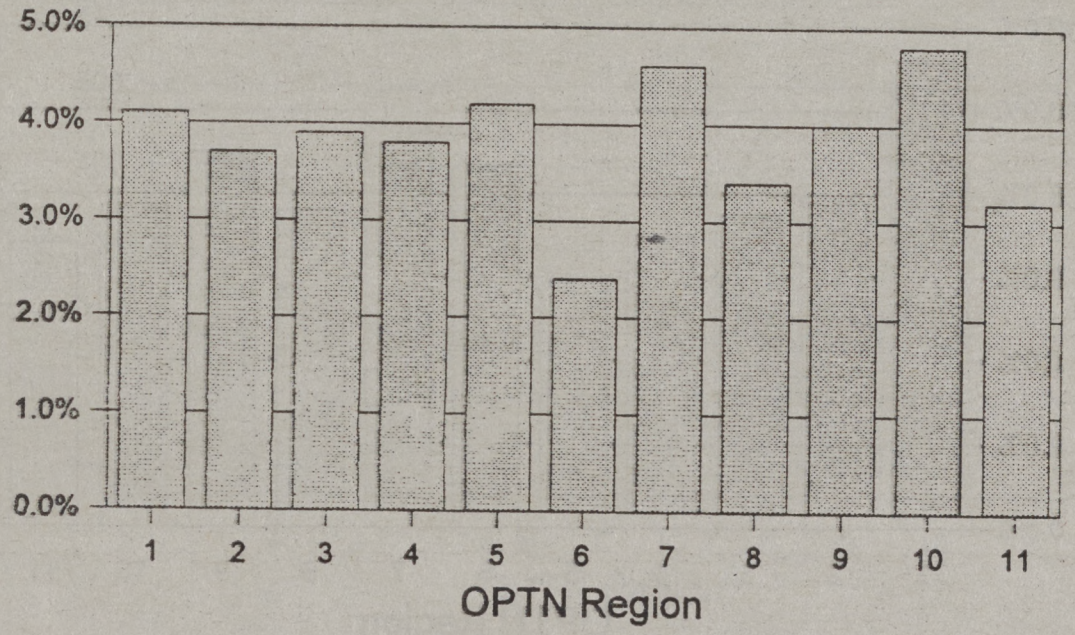
Median Waiting Times for Kidneys

1992



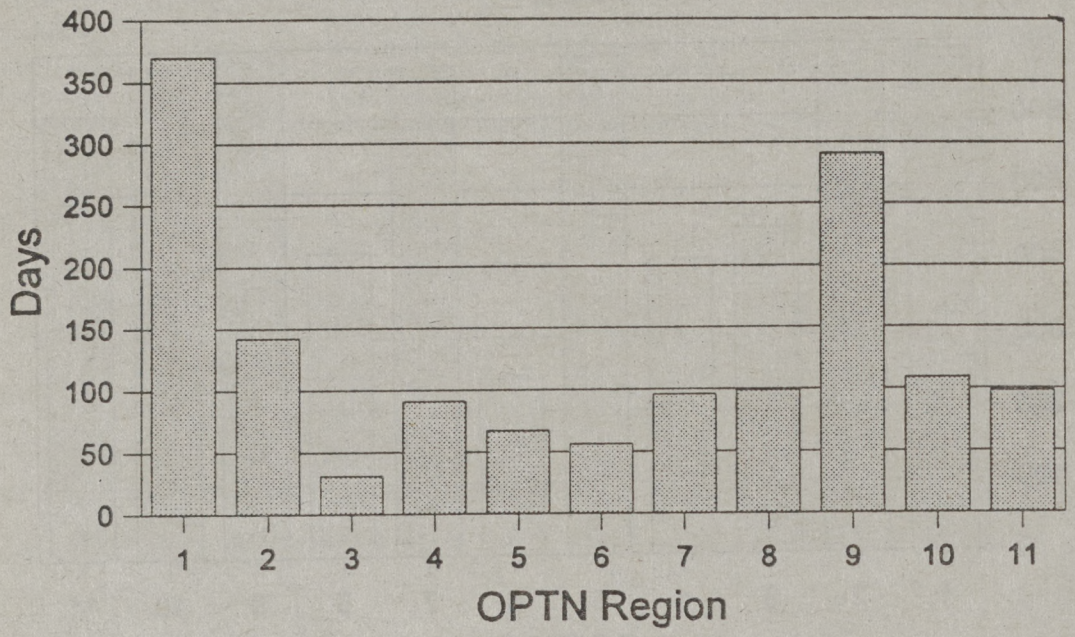
Wait List Mortality Rates for Kidneys

1993



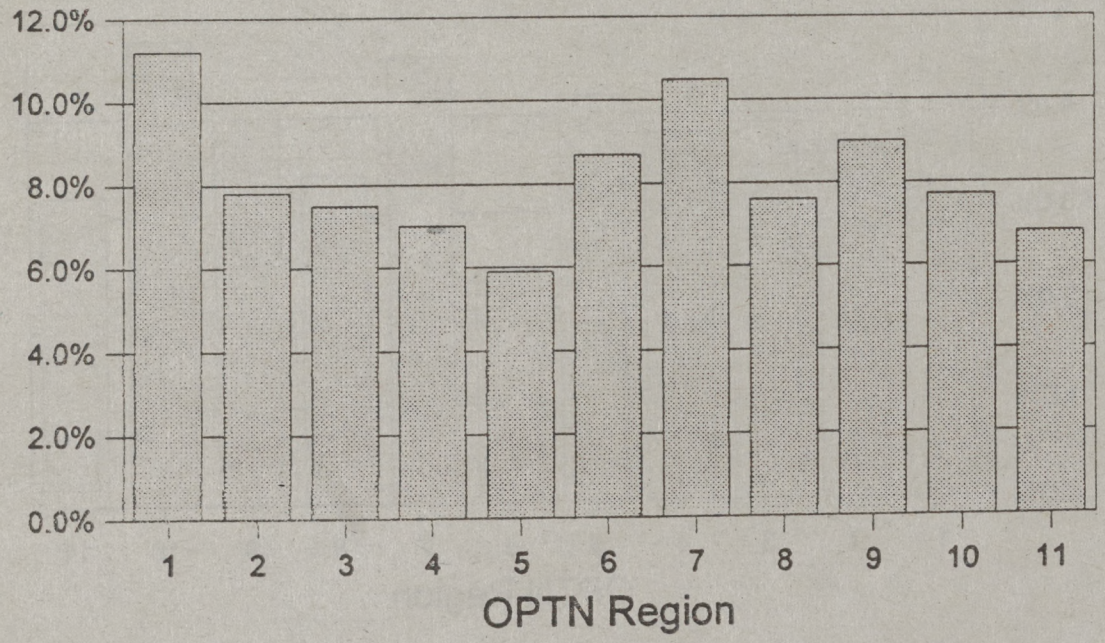
Median Waiting Times for Livers

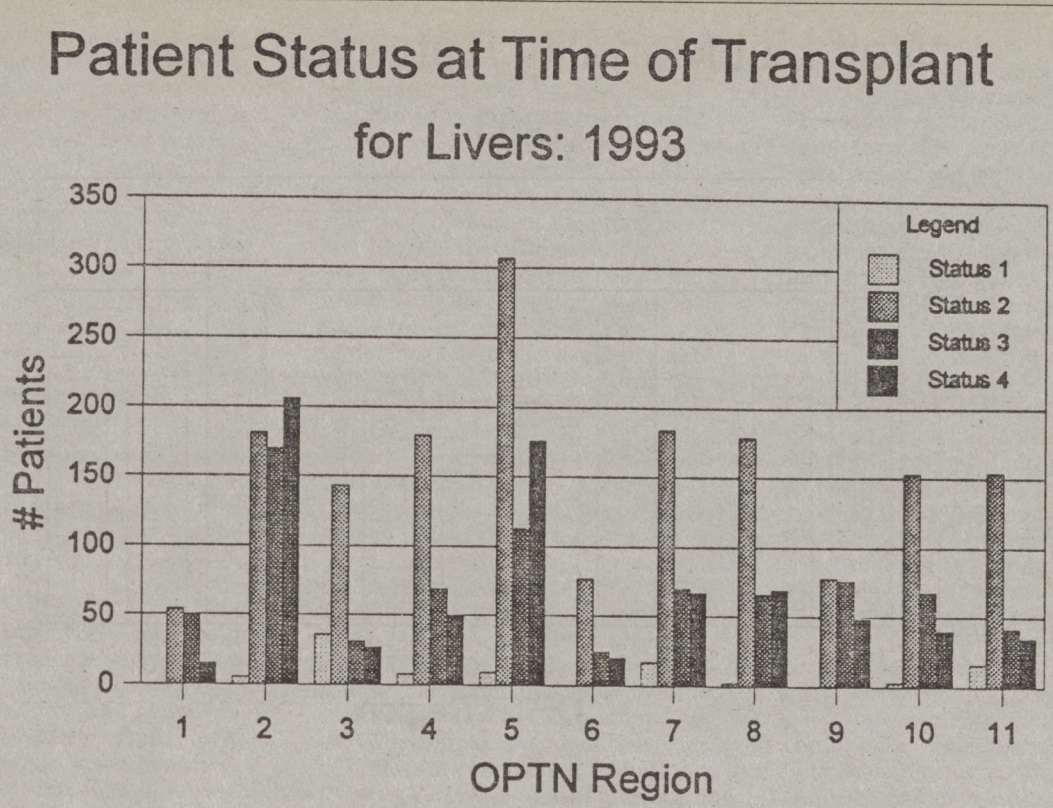
1992

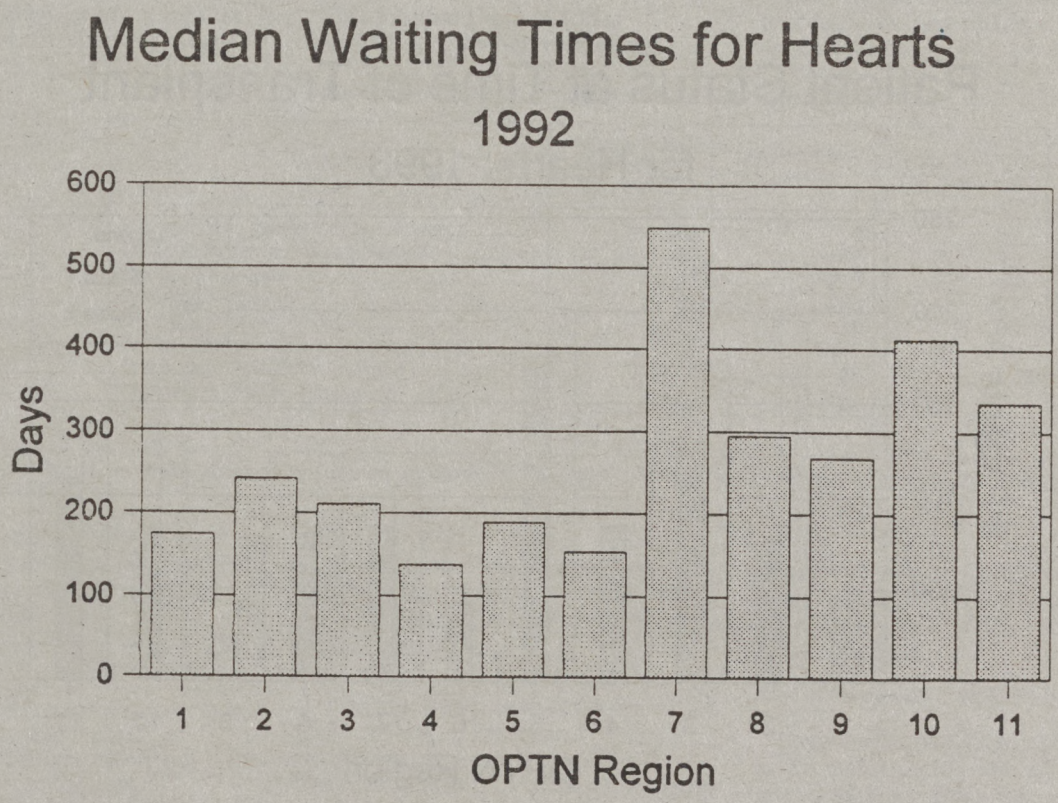


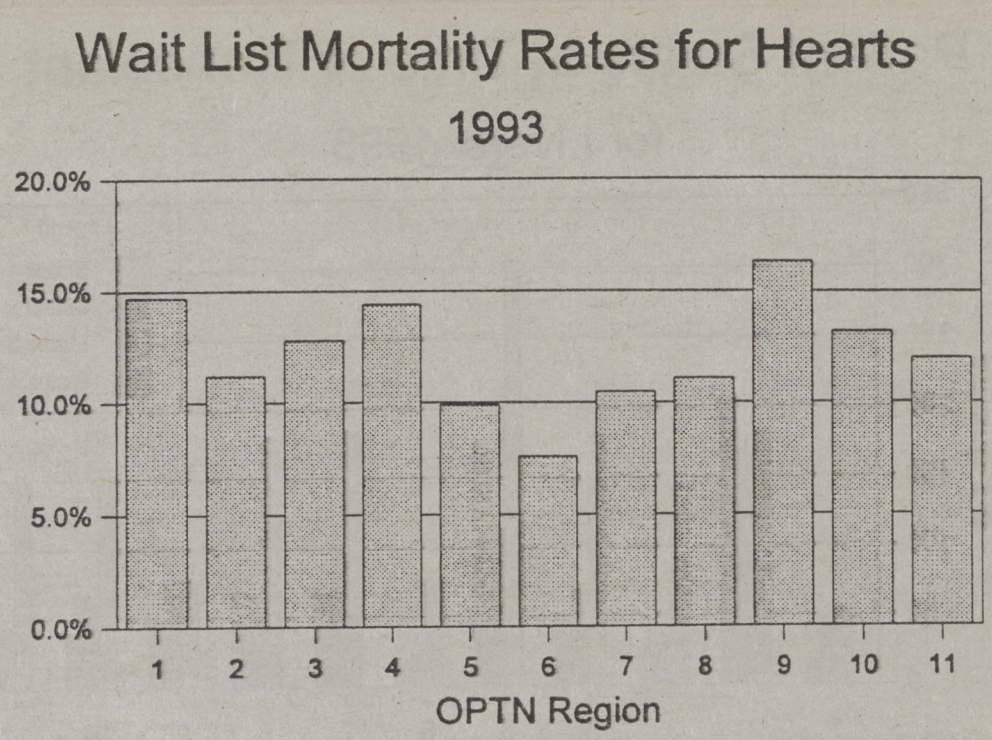
Wait List Mortality Rates for Livers

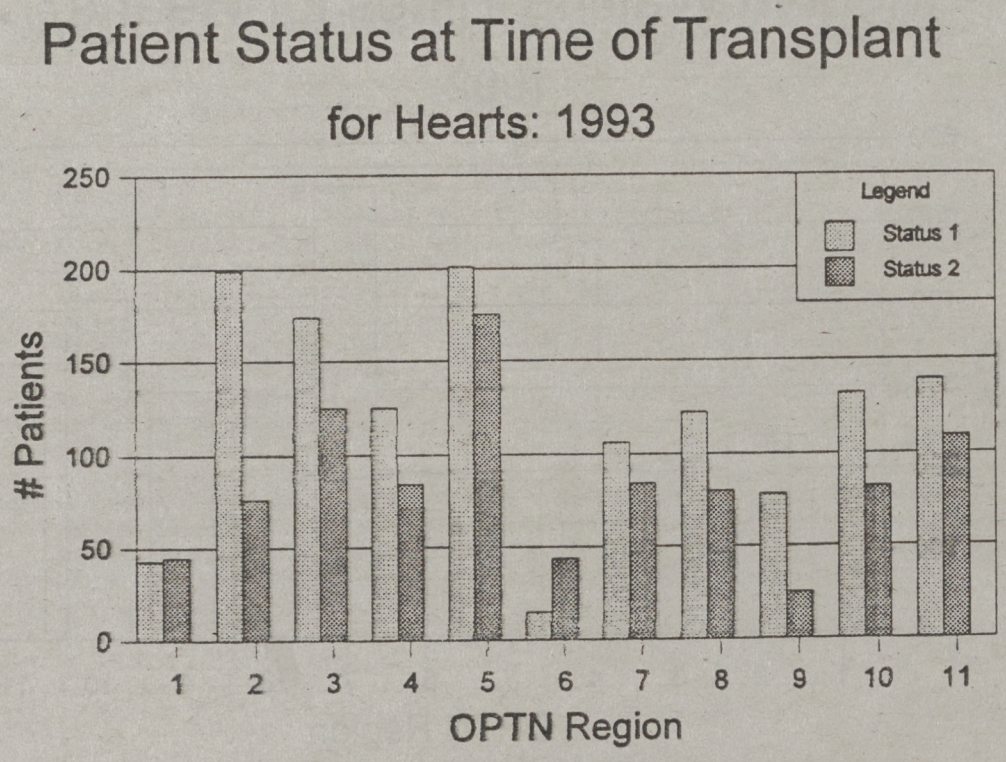
1993




Patient Status at Time of Transplant
for Livers: 1993
Patients
350
300
250
200
150
100
50
0
Legend
Status 1
Status 2
Status 3
Status 4
1
2
3
4
5
6
7
8
9
10
11
OPTN Region


Median Waiting Times for Hearts
1992
Days
600
500
400
300
200
100
0
1
2
3
4
5
6
7
8
9
10
11
OPTN Region





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The above charts show the variation in median waiting times, wait list mortality, and patient status at time of transplant for various organs within OPTN regions. (There is no patient status data at time of transplant for kidney transplant patients).

In preparing their responses, commenters may wish to refer to the following:

"The 1991 Report of Center-Specific Graft and Patient Survival Rates," and "The 1993 Annual Report of the U.S. Scientific Registry of Transplant Recipients and the Organ Procurement and Transplantation Network."

Both of these documents are available from the United Network for Organ Sharing, 1100 Boulders Parkway, suite 500, Post Office Box 13770, Richmond, VA 23225–8770.

V. Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Regulatory Flexibility Act requires that we analyze regulatory proposals to determine whether they create a significant impact on a substantial number of small entities (for purposes of the Act, all hospitals and all OPOs are categorized by HHS as small entities).

In part, because of the procedural emphasis of this proposal, it is premature to analyze the costs and health benefits of regulatory alternatives as is ordinarily required by Executive Order No. 12866. For example, per-patient data currently available show that the government's annual cost for renal dialysis is $40,000. The cost for a kidney transplant is $87,000. Because of post-transplant costs, it is not until the third year after dialysis that a successful kidney transplant becomes more cost effective than dialysis. This analysis is limited to costs and does not include consideration of nonmonetary benefits to the patient or society as a whole.

To aid the policy discussion that will follow this Notice the Department will, to the maximum extent possible, provide comparative analyses on a range of options it considered, including the existing OPTN policies. These options will be based on comments received.

VI. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Proposed § 121.11(a)(2) requires OPOs and transplant hospitals which are members of the OPTN to maintain records on organ donors and transplant patients, and proposed § 121.11(b)(2) requires them to report to the OPTN information based on those records. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Organ Procurement and Transplantation Network.

Description: Information will be collected from transplant hospitals and organ procurement organizations for the purpose of matching donor organs with potential recipients, monitoring compliance of member organizations with system rules, conducting statistical analyses, and developing policies relating to organ procurement and transplantation.

Description of Respondents: Non-profit institutions and small organizations.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Activity	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
121.6(e)	Transplant to prevent organ wastage	268	4	0.1	107
121.11(b)(2)	Transplant candidate registration [1]	67	597	0.1	4,000
121.11(b)(2)	Donor registration [1]	67	248	0.2	3,320
121.11(b)(2)	Potential recipient [1]	67	266	0.1	1,780
121.11(b)(2)	Donor histocompatibility [1]	49	145	0.1	710
121.11(b)(2)	Transplant recipient histocompatibility [1]	49	347	0.1	1,700
121.11(b)(2)	Transplant recipient registration [1]	605	28	0.25	4,280
121.11(b)(2)	Transplant recipient follow-up [1]	605	228	0.14	19,280
Total					35,177

[1] The data collection forms for these activities have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB No. 0915–0157).

The proposed rules also require OPOs and transplant hospitals to maintain records, as follows:

Section	Requirement
121.6(b)(3)	Documentation of reason for refusal.
121.6(c)(2)	Documentation of suitability tests.
121.11(a)(2)	Maintain records on organ donors and recipients.

According to staff of OPOs and transplant hospitals, such recordkeeping is integral to the operation of these facilities. Therefore, these recordkeeping requirements impose no additional burden.

The Department has submitted a copy of this proposed rule to OMB for its review of the reporting and recordkeeping requirements. Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the agency official whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, (room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 121

Organs—human, Organ procurement and transplantation network, Organ transplantation, Hospitals.

Dated: October 15, 1993.

Philip R. Lee,

Assistant Secretary for Health.

Approved: May 16, 1994.

Donna E. Shalala,

Secretary.

Accordingly, the Department of Health and Human Services proposes to add 42 CFR Part 121 to subchapter K to read as follows:

PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

Sec.

121.1 Applicability.
121.2 Definitions.
121.3 Composition.
121.4 Listing requirements.
121.5 Organ procurement.
121.6 Identification of organ recipient.
121.7 Allocation of organs.
121.8 Designated transplant program requirements.
121.9 Review and evaluation.
121.10 Appeals of OPTN policies and procedures.
121.11 Record maintenance and reporting requirements.

Authority: Sections 215 and 372 of the Public Health Service Act (42 U.S.C. 216 and 274); section 1138 of the Social Security Act (42 U.S.C. 1320b–8).

§ 121.1 Applicability.

(a) The provisions of this part apply to the operation of the Organ Procurement and Transplantation Network (OPTN).

(b) In accordance with section 1138 of the Social Security Act, hospitals in which organ transplants are performed and which participate in the programs under titles XVIII or XIX of that Act, and organ procurement organizations designated under section 1138(b)(1)(F) of the Social Security Act are subject to the requirements of this part.

§ 121.2 Definitions.

As used in this part—

Act means the Public Health Service Act, as amended.

Designated transplant program means a transplant program that meets the requirements of § 121.8.

National list means the OPTN computer-based list of transplant candidates nationwide.

OPTN computer match program means a computer-based program to ensure the matching of donated organs with the best medically-suited transplant candidates.

Organ means a human kidney, liver, heart, lung, or pancreas.

Organ procurement organization or *OPO* means an entity so designated by the Secretary under section 1138(b) of the Social Security Act.

Organ procurement and transplantation network or *OPTN* means the network established pursuant to section 372 of the Act.

Potential transplant recipient or *potential recipient* means a transplant candidate who has been identified as medically qualified to receive a transplant of a specific donated organ.

Scientific registry means the registry of information on transplant recipients established pursuant to section 373 of the Act.

Secretary means Secretary of Health and Human Services and any official of the Department of Health and Human Services to whom the authority involved has been delegated.

Transplant candidate means an individual who has been identified as medically qualified to benefit from an organ transplant.

Transplant hospital means a hospital in which organ transplants are performed.

Transplant program means a program within a transplant hospital for transplantation of a particular type of organ.

Transplant recipient means a person who has received an organ transplant.

§ 121.3 Composition.

The OPTN shall be comprised of organizations, institutions, and individuals.

(a) *Board of Directors.* The OPTN shall establish a Board of Directors to be comprised of not less than 14 or more than 35 members as follows:

(1) *Composition.* The Board of Directors shall include:

(i) two members each from, and elected by, the association representing transplant coordinators, the association representing organ procurement organizations, and the association representing histocompatibility experts;

(ii) individual elected by a majority vote of the voting OPTN membership, including at least two representatives each from the following categories:

(A) transplant surgeons;

(B) transplant physicians;

(C) transplant hospitals;

(D) voluntary health associations;

(E) patient advocacy groups; and

(F) the general public including, but not limited to, patients, donor families, and individuals from the fields of law, theology, hospital administration, ethics, health care financing, computer science, economics, sociology, and behavioral sciences; and

(iii) one representative elected by the membership in each of the regions, if any, established by the OPTN.

(2) *Diversity.* The Board of Directors shall include:

(i) individuals representing the diversity of the population of organ donors and recipients served by the OPTN, including minority and gender representation reflecting that diversity; and

(ii) not more than 50 percent surgeons and physicians directly involved in organ procurement and transplantation.

(3) *Term.* Individuals on the Board shall serve a two-year term.

(4) *Executive committee.* The Board of Directors shall every two years elect an Executive Committee from the membership of the Board to ensure continuity of leadership. The Executive Committee shall include not more than 50 percent surgeons and physicians directly involved in organ procurement and transplantation.

(5) *Executive director.* The Board of Directors shall appoint an Executive Director of the OPTN whose term shall not exceed four years. The Executive Director may be reappointed to successive terms upon the Board's determination that she/he has successfully carried out her/his responsibilities.

(6) *Duties.*

(i) The OPTN Board of Directors shall be responsible for developing, with the advice of the OPTN membership and other interested parties:

(A) general policies, procedures, and other issuances within the mission of the OPTN as set forth in section 372 of the Act and the Secretary's contract for the operation of the OPTN:

(B) medical criteria and related policies for the fair and equitable allocation of human donor organs;

(C) policies, consistent with recommendations of the Centers for Disease Control and Prevention, for the testing of organ donors and follow-up of transplant recipients to prevent the spread of infectious diseases; and

(D) standards for the training and experience of transplant surgeons and transplant physicians required by § 121.8(a)(2)(ii) and (iii). The OPTN shall develop these standards in accordance with the public participation process set forth in § 121.7(b).

(ii) The OPTN Board of Directors shall provide to the Secretary copies of the policies, procedures, and issuances as they are adopted, and make them available to the public upon request. The Secretary will periodically publish lists of these documents in the **Federal Register.**

(b) *Committees.* Committees established by the Board of Directors shall include, to the extent practicable, minority and gender representation reflecting the diversity of the population

of organ donors and recipients served by the OPTN.

(c) *OPTN membership.* The OPTN shall admit and retain as members the following:

(1) All organ procurement organizations designated by HHS under section 1138(b) of the Social Security Act;

(2) All hospitals participating in the Medicare or Medicaid programs which perform transplants; and

(3) Organizations (other than OPOs described in paragraph (c)(1) of this section and transplant hospitals described in paragraph (c)(2) of this section), institutions, or individuals that have an ongoing interest in the field of organ transplantation.

(d) *Review of applications and documentation.*

(1) To apply for membership in the OPTN:

(i) OPOs shall provide to the OPTN the name and address of the OPO, and the latest year of designation under section 1138(b) of the Social Security Act;

(ii) hospitals shall provide to the OPTN in writing the name and address of the hospital, a list of its transplant programs, if any, by type of organ; and

(iii) organizations, institutions, and individuals eligible under paragraph (c)(3) of this section shall provide to the OPTN documentation which demonstrates their interest in the field of organ transplantation.

(2) The OPTN shall accept as members entities described in paragraphs (c) (1) and (2) of this section and shall accept or reject applications from entities described in paragraph (c)(3) of this section.

(3) Applicants rejected for membership in the OPTN may appeal to the Secretary. Appeals shall be submitted in writing within 30 days of rejection of the application. The Secretary may:

(i) deny the appeal; or

(ii) direct the OPTN to take action consistent with the Secretary's response to the appeal.

§ 121.4 Listing requirements.

(a) *Transplant candidate listing.*

(1) An OPTN member may list transplant candidates only for a designated transplant program.

(2) Transplant hospitals shall assure that all transplant candidates are placed on the national list as soon as they are determined to be candidates for transplantation. The OPTN shall from time to time advise members of the information needed for such listing.

(3) An OPTN member shall pay a registration fee to the OPTN for each transplant candidate it places on the national list. The amount of such fee shall be determined by the OPTN with the approval of the Secretary.

(b) *Donor listing.* OPTN members that procure organs shall submit to the OPTN such data as the OPTN shall prescribe on each organ procured, within the time prescribed by the OPTN.

§ 121.5 Organ procurement.

The suitability of organs donated for transplantation shall be determined as follows:

(a) *Tests.* An OPTN member procuring an organ shall assure that laboratory tests and clinical examinations of potential organ donors are performed to determine any contraindications for donor acceptance, in accordance with policies established by the OPTN.

(b) *HIV.* Organs from potential donors known to be infected with Human Immunodeficiency Virus shall not be procured for transplantation.

(c) *Acceptance criteria.* Transplant programs may establish criteria for organ acceptance, and shall provide such criteria to their OPOs and to the OPTN.

§ 121.6 Identification of organ recipient.

(a) *List of potential transplant recipients.*

(1) An OPTN member procuring an organ shall operate the OPTN computer match program within such time as the OPTN may prescribe to identify and rank potential recipients for each cadaveric organ procured.

(2) The rank order shall be determined for each cadaveric organ using the organ specific allocation criteria established in accordance with § 121.7.

(3) Where a donor organ does not meet a transplant program's donor acceptance criteria, as established under § 121.5(c), transplant candidates of that hospital shall not be ranked among potential recipients of that organ and shall not appear on a roster of potential recipients of that organ.

(b) *Offer of organ to potential recipients.*

(1) Organs shall be offered to potential recipients in rank order, in accordance with policies adopted under § 121.7.

(2) Organs may be offered only to potential recipients listed with transplant hospitals having designated transplant programs of the same type as the organ procured.

(3) An organ offer is made by the OPTN member which procured the organ when all information necessary to determine whether to transplant the organ into the potential recipient has been given to the transplant hospital.

(4) A transplant hospital shall either accept or refuse the offered organ within such time as the OPTN may prescribe. A transplant hospital shall document the reasons for refusal.

(c) *Transportation of organ to potential recipient.*

(1) *Transportation.* The OPTN member that procures a donated organ shall arrange for transportation of the organ to the transplantation site.

(2) *Documentation.* The OPTN member that is transporting an organ shall assure that it is accompanied by written documentation of activities conducted to determine the suitability of the organ donor.

(3) *Packaging.* The OPTN member that is transporting an organ shall assure that it is packaged to assure viability upon receipt.

(d) *Receipt of an organ.* Upon receipt of an organ, the transplant hospital responsible for the potential recipient's care shall determine whether to proceed with the transplant. In the event that an organ is not transplanted into the potential recipient, the transplant hospital must offer the organ to another potential recipient in accordance with paragraph (b) of this section.

(e) *Wastage.* Nothing in this section shall prohibit any OPTN member from transplanting an organ into any medically suitable candidate if to do otherwise would result in the organ not being used for transplantation. The member shall notify the OPTN of the circumstances justifying each such action within such time as the OPTN may prescribe.

§ 121.7 Allocation of organs.

(a) *Policy development.* The Board of Directors established under § 121.3(a) shall develop policies for the fair and equitable allocation of human cadaveric organs among potential recipients. Such policies shall be patent-based and take into account significant factors affecting quality of care and patient and organ graft survival including:

(1) established medical criteria for transplantation of organs;

(2) the length of time potential recipients have been on the national list;

(3) potential recipients whose immune system makes it difficult for them to receive organs; and

(4) minimizing wastage of the scarce supply of human organs for transplantation.

(b) *Public participation.*

(1) The OPTN shall provide opportunity for the OPTN membership and other interested parties to comment on proposed policies and, at the same time, provide the proposed policies to the Secretary for publication in the

Federal Register to obtain comments from the public.

(2) The Board of Directors shall take into account the comments received in developing and adopting final policies for implementation by the OPTN.

(3) The OPTN shall provide the proposed final policies to the Secretary, who shall have 30 days in which to provide comments and/or objections. The OPTN shall take into account any comments the Secretary may provide. If the Secretary objects to a policy, the OPTN may be directed to revise the policy consistent with the Secretary's direction.

(4) OPTN members, individuals, or entities objecting to final policies may submit appeals to the Secretary in writing within 30 days of adoption of the final policies by the OPTN. The final policy remains in effect during this period. The Secretary may:

(i) deny the appeal; or

(ii) direct the OPTN to revise the policies consistent with the Secretary's response to the appeal.

(c) *Policy implementation.*

(1) The OPTN shall implement allocation policies adopted and approved by the Secretary, and provide information to OPTN members about these policies and the rationale for them.

(2) The Board of Directors shall update policies developed in accordance with this section to keep them current with scientific and technological advances.

(d) *Directed donation.* Nothing in this section shall prohibit the allocation of an organ to a recipient named by those authorized to make the donation.

§ 121.8 Designated transplant program requirements.

(a) To receive organs for transplantation, transplant programs shall abide by these rules and OPTN policies, procedures, and issuances, and shall:

(1) be an organ transplant program approved by HHS under applicable regulations for reimbursement under Medicare and Medicaid; or

(2) be an organ transplant program which:

(i) has letters of agreement or contracts with an OPO;

(ii) has on site a transplant surgeon qualified in accordance with standards developed under § 121.3(a)(6)(i)(D);

(iii) has on site a transplant physician qualified in accordance with standards developed under § 121.3(a)(6)(i)(D);

(iv) has available operating and recovery room resources, intensive care resources and surgical beds and transplant program personnel;

(v) shows evidence of collaborative involvement with experts in the fields of radiology, infectious disease, pathology, immunology, anesthesiology, physical therapy and rehabilitation medicine and, as appropriate, hepatology, pediatrics, nephrology with dialysis capability, and pulmonary medicine with respiratory therapy support;

(vi) has immediate access to microbiology, clinical chemistry, tissue typing, radiology and blood banking services, as well as the facilities required for monitoring immunosuppressive drugs; and

(vii) makes available psychiatric and social support services for transplant recipients and their families; or

(3) be a transplant program in a Veterans Administration hospital which is a Dean's Committee hospital which shares a common university-based transplant team of a transplant program which meets the requirements of § 121.8(a) (1) or (2).

(b) To apply to be a designated transplant program, transplant programs shall provide to the OPTN such documents as the OPTN may require which show that they meet the requirements of § 121.8(a) (1), (2), or (3).

(c) The OPTN shall accept or reject applications to be a designated transplant program.

(d) Applicants rejected for designation may appeal to the Secretary. Appeals shall be submitted in writing within 30 days of rejection of the application. The Secretary may:

(1) deny the appeal; or

(2) direct the OPTN to take action consistent with the Secretary's response to the appeal.

§ 121.9 Review and evaluation.

(a) *Review and evaluation by the Secretary.* The Secretary or her/his designee may perform any reviews and evaluations of member OPOs and transplant hospitals which the Secretary deems necessary to carry out her/his responsibilities under the Public Health Service Act and the Social Security Act.

(b) *Review and evaluation by the OPTN—*

(1) The OPTN shall design appropriate plans and procedures, including survey instruments and data systems, for purposes of:

(i) reviewing applications submitted under § 121.3(d)(1) for membership in the OPTN;

(ii) reviewing applications submitted under § 121.8(b) to be a designated transplant program; and

(iii) conducting ongoing and periodic reviews and evaluations of each member OPO and transplant hospital for compliance with these regulations.

(2) Upon the approval of the Secretary, the OPTN shall furnish review plans and procedures, including survey instruments and a description of data systems, to each member OPO and transplant hospital. The OPTN shall furnish any revisions of these documents to member OPOs and hospitals, after approval by the Secretary, prior to their implementation.

(c) *Enforcement of OPTN rules.*

(1) *OPTN recommendations.* The Board of Directors shall advise the Secretary of the results of any reviews and evaluations conducted under paragraph (b)(1)(iii) of this section which, in the opinion of the Board, indicate noncompliance with this part, and provide any recommendations for appropriate action by the Secretary.

(2) *Secretary's action on recommendations.* Upon the Secretary's review of the Board of Directors' recommendations, the Secretary may:

(i) request further information from the Board of Directors or the alleged violator, or both;

(ii) decline to accept the recommendation;

(iii) accept the recommendation, and notify the alleged violator of the Secretary's decision; or

(iv) take such other action as the Secretary deems necessary.

§ 121.10 Appeals of OPTN policies and procedures.

(a) Any individual or entity may appeal to the Secretary any policy, procedure, or issuance of the OPTN. Any such appeal shall include a statement of the basis for the appeal. The Secretary will seek the comments of the OPTN on the issues raised in the appeal. The Secretary may deny the appeal or direct the OPTN to revise the policy, procedure, or issuance consistent with the Secretary's response to the appeal.

(b) The Secretary may object to any policy, procedure, or issuance of the OPTN, and the OPTN may be directed to revise the policy, procedure, or issuance in accordance with the Secretary's direction.

§ 121.11 Record maintenance and reporting requirements.

(a) *Record maintenance.* Records shall be maintained and made available subject to applicable limitations based on personal privacy as follows:

(1) *OPTN*—(i) The OPTN shall maintain and operate in accordance with § 121.4 an automated system for managing information about organ transplant candidates, recipients, and donors, including a computerized national list of individuals waiting for transplants.

(ii) The OPTN shall maintain records of all transplant candidates, all organ donors and all transplant recipients.

(2) *Organ procurement organizations and transplant hospitals*—(i) *Maintenance of records.* All OPOs and transplant hospitals shall maintain such records pertaining to each potential donor identified, each organ retrieved and each recipient transplanted as the Secretary deems necessary to carry out her/his responsibilities under the Act.

(ii) *Access to facilities and records.* OPOs and transplant hospitals shall permit the Secretary and the Comptroller General, or their designees, to inspect facilities and records pertaining to any aspect of services performed related to organ donation and/or transplantation.

(b) *Reporting requirements.*

(1) The OPTN shall:

(i) in addition to special reports which the Secretary may require, submit to the Secretary a report once every fiscal year on a schedule prescribed by the Secretary. The report shall include the following information in a form prescribed by the Secretary:

(A) Information that the Secretary prescribes as necessary to assess the effectiveness of the Nation's organ donation, procurement and transplantation system.

(B) Any other information that the Secretary prescribes.

(ii) provide to the Scientific Registry data on transplant candidates and recipients, and other information that the Secretary deems appropriate. The information shall be provided in a form and on a schedule prescribed by the Secretary.

(2) An organ procurement organization or transplant hospital shall, as specified from time to time by the Secretary, submit to the OPTN information regarding transplantation candidates, recipients and donors of organs. Such information shall be in the form required and shall be submitted in accordance with the schedule prescribed.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 482, and 485

[BPD–646–IFC]

RIN 0938–AE48

Medicare and Medicaid Programs; Conditions of Coverage for Organ Procurement Organizations

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

ACTION: Interim final rule with comment.

SUMMARY: This interim final rule with comment sets forth changes to the conditions of coverage for organ procurement organizations (OPOs). It redefines an OPO service area, revises the qualifications for the Board of Directors, specifies the assistance to be provided by an OPO to hospitals in establishing and implementing protocols governing organ procurement activity, requires an OPO to establish criteria for allocating organs, and requires an OPO to ensure that tests are performed on prospective organ donors to prevent the acquisition of organs that are infected with the etiologic agent for Acquired Immune Deficiency Syndrome. These changes are required by the Health Omnibus Programs Extension Act of 1988 (Public Law 100–607) and the Transplant Amendments Act of 1990 (Public Law 101–616).

We also clarify the distinction between certification and designation and amend the criteria with respect to compliance with performance standards, change of ownership, and termination procedures.

DATES: Effective date: This final rule is effective October 11, 1994.

Comment date: Written comments submitted in response to this final rule will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 7, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–646–IFC, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–646–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Claude Mone, (410) 966–5666.

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Amendments of 1972 (Public Law 92–603) extended Medicare coverage to individuals with end stage renal disease who require dialysis or kidney transplantation. Section 1881 of the Social Security Act (the Act) provides for Medicare payment for kidney transplantation. Medicare also covers certain other organ transplants that HCFA has determined are "reasonable and necessary", under section 1862 of the Act, and pays for those transplants and related organ procurement services.

Section 1138(b) of the Act, as added by section 9318 of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509), sets forth the statutory qualifications and requirements an organ procurement organization (OPO) must meet in order for the costs of its services in procuring organs for hospitals and transplant centers to be payable under the Medicare and Medicaid programs. The corresponding regulations are found at 42 CFR part 485 ("Conditions of Participation and Conditions for Coverage: Specialized Providers") under subpart D ("Conditions of Coverage: Organ Procurement Organizations").

These regulations were published in the **Federal Register** on March 1, 1988 (53 FR 6550). In general, § 485.303(a) states that payment may be made under the Medicare and Medicaid programs for organ procurement costs attributable to payments to an OPO only if the organization has been designated by the Secretary as meeting the conditions for coverage as an OPO. OPOs are not generally paid directly for organ procurement costs; rather, the transplanting hospital pays those costs to the OPO and claims them on its cost report. However, the OPO does have to file a cost report with us at the end of its fiscal year, at which time we settle with it any overpayment or underpayment it has made *vis-a-vis* hospitals during the cost year. To be designated as an OPO, § 485.303(b) requires that an organization—

- Apply to HCFA in writing using the application form prescribed by HCFA;
- Meet the qualifications listed at § 485.304 ("Condition: Qualifications required of an organization for it to be a designated organ procurement organization"); and
- As specified in § 485.305, be a member of, have executed a written agreement with, and abide by the regulations of the Organ Procurement and Transplantation Network (OPTN) established in accordance with section 372 (42 U.S.C. 274) of the Public Health Service Act.

The Health Omnibus Programs Extension Act of 1988 (Public Law 100–607) was enacted on November 4, 1988. The Transplant Amendments Act of 1988, Title IV of Public Law 100–607, amends section 371 of the Public Health Service Act (42 U.S.C. 273), which defines OPOs.

Specifically, section 402(c)(1)(A) of Public Law 100–607 amended section 371(b)(1)(E) of the Public Health Service Act (42 U.S.C. 273(b)(1)(E)). It revised the definition of the "service area" that must be encompassed by an entity in order for the entity to be recognized by us as an OPO. Before enactment of Public Law 100–607, the law provided that, unless the service area comprised an entire State, it had to be of sufficient size to include "at least 50 potential organ donors" each year. Section 402 of Public Law 100–607 revised section 371 of the Public Health Service Act (42 U.S.C. 273) to require the service area to be large enough that the OPO "can reasonably expect to procure organs from not less than 50 donors each year". Under section 371, we would determine whether the OPO can "reasonably expect" to procure organs from not less than 50 donors.

We have determined that this change would have resulted in a substantial number of existing OPOs failing to qualify for redesignation, because we interpret the requirement that the OPO "can reasonably expect to procure organs from not less than 50 donors" to be more stringent than the requirement that the service area include "at least 50 potential organ donors." According to a Departmental study cited in the Report of the Committee on Energy and Commerce on a precursor to the 1988 Public Health Service Act legislation, the Transplant Amendments Act of 1987 (H.R. Rep. No. 383, 100th Cong.,

1st Sess. 5–6 (1987)), the average OPO was, at the time of the report, procuring organs from only 44 donors per year. (Because more than one organ may be obtained from a donor, the average number of organs obtained per OPO per year is about 110.)

Most of the currently designated OPOs were scheduled for redesignation beginning in March 1990 and would have been required to meet the new requirement imposed by Public Law 100–607. Contacts with many of the designated OPOs and with representatives of the Association of Organ Procurement Organizations (AOPO) revealed that almost one-half of the OPOs would not have been able to meet the new requirement. It was also the opinion of some organ procurement and transplantation experts that many of the OPOs that would not have a realistic expectation of procuring organs from at least 50 donors were nonetheless effective and efficient entities. The Department and other interested parties sought statutory relief to avoid disruption to the nation's organ procurement system. On April 23, 1990, Public Law 101–274 was passed. It postponed to January 1, 1992, the effective date of section 402(c)(1)(A) of Public Law 100–607, which changed the definition of "service area." Therefore, the "at least 50 potential donors" requirement would have remained in full force and effect until that date. But, the Transplant Amendments Act of 1990 (Public Law 101–616) was enacted on November 16, 1990. It further amended section 371(b)(1)(E) of the Public Health Service Act (42 U.S.C. 273(b)(1)(E)) to require an OPO to have a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area or does not include any part of the area. Section 201(d)(2) of Public Law 101–616 required the Secretary to publish a proposed definition of "service area" by February 14, 1991, and final regulations defining "service area" by November 16, 1991.

Section 201(d)(1) of Public Law 101–616 redesignated section 371(b)(2) of the Public Health Service Act as section 371(b)(3). That section sets forth the functions an OPO must carry out. However, the Congress did not amend two textual references in section 371(b)(1) to the OPO functions formerly specified in paragraph (2). Since that was clearly an oversight and failure to read the section 371(b)(1) text as if those "paragraph (2)" references had been changed to "paragraph (3)" would make part of the statute meaningless, we are using the corrected references in this document.

II. Provisions of the Proposed Regulations

On June 21, 1991, we published a Notice of Proposed Rulemaking in the **Federal Register** (56 FR 28513). In it, we proposed implementing section 402 of Public Law 100–607 and section 201 of Public Law 101–616 by amending certain sections of part 482, which sets forth the Medicare conditions of participation for hospitals, and subpart D of part 485, which sets forth the Medicare and Medicaid conditions of coverage for OPOs, to conform them to the statute.

In addition to the provisions that are necessary to implement these statutes, we proposed some other amendments to current regulations that are derived from our experience in administering the OPO program and that are not related to either piece of legislation. The most noteworthy of these latter provisions deals with change of ownership and termination. To clarify our operational policies with regard to change of ownership and terminations, we proposed to add two new provisions to the current regulations. Specific provisions of these new sections and of related sections are discussed in more detail below.

We proposed revising paragraph (c)(5)(ii) of § 482.12 ("Condition of participation: Governing body.") to state that no hospital will be considered to be out of compliance with section 1138(a)(1)(B) of the Act or with the requirements at § 482.12(c)(5)(ii), unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the hospital from the OPTN and has so notified the hospital in writing.

We proposed amending § 485.301, which sets forth the basis and scope of part 485, subpart D, by deleting the unnecessary reference to section 9318 of Public Law 99–509. In § 485.302 ("Definitions."), we proposed to change the definition of "service area" by including new statutory language for the initial designation and redesignation of OPOs. We proposed using the phrase "is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs" as opposed to the current phrase "at least 50 potential organ donors." We proposed several criteria for evaluating the sufficiency of an OPO's size. We discuss those factors below. We proposed expanding § 485.302 to include definitions for "certification" or "recertification", "designation" or "redesignation", and "open area."

Section 485.303 sets forth general qualifications for OPOs. We proposed that paragraph (c) of § 485.303 be amended and a new § 485.303(d) added to clarify the requirement for compliance with performance standards at § 485.306(a)(1) and (a)(2). Paragraph (e) of § 485.303 would state that an OPO must obtain our approval before entering into any change of ownership, merger, consolidation, or change in its service area. Failure to do so could result in termination. We proposed that a new paragraph (f) set forth the specific terms of the agreement each OPO must have with us.

We proposed that paragraph (d) of § 485.304 ("Condition: Qualifications required of an organization for it to be a designated organ procurement organization.") be amended to change the requirement for an OPO in a service area of less than 2.5 million in population to show that its area yields 50 or more potential donors per year to show that the area "is of sufficient size to ensure maximum effectiveness in the procurement and equitable distribution of organs * * *." The "less than 2.5 million in population" stipulation would be deleted. We also proposed that § 485.304(f)(3) be amended to allow either a physician or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility to serve on an OPO's board of directors or on an advisory board. The current § 485.304(f)(3) requires that the individual be a physician.

We proposed that § 485.304(i) be revised to require an OPO to have a system to allocate donated organs equitably among transplant patients according to established medical criteria. Additionally, we proposed to add provisions to § 485.304 that would require OPOs to assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors and ensure that donors are tested for human immunodeficiency virus (HIV) reactivity, consistent with OPTN rules and Center for Disease Control and Prevention (CDC) guidelines for solid organ donations.

We proposed that § 485.305 ("Condition: Organ Procurement and Transplantation Network participation.") be amended to: (1) Define "rules and requirements of the OPTN," and (2) include the requirement that OPTN rules be approved by the Secretary in order for them to be binding on OPOs participating in Medicare or Medicaid.

We proposed that paragraph (a) of § 485.306 ("Condition: Performance standards for organ procurement organizations.") be revised to state that we will not "redesignate" (it currently reads "recertify") any OPO that fails to meet the performance standards contained in the section. Paragraph (b) would be expanded to set forth language that makes a distinction between an OPO designated for the first time and a redesignated OPO with respect to the exemption from meeting the performance standards in § 485.306(a) for the first two years.

We proposed that § 485.307 ("Failure to meet requirements.") be revised and restructured. It would continue to state that a newly designated OPO is exempt from meeting the performance standards at § 485.306(a)(1) and (a)(2) for 2 years. We proposed deleting the statement in the current § 485.307 that an OPO whose payment is suspended or whose agreement is terminated may appeal the action. The appeal right for termination actions would be included in the new § 485.311(c).

We proposed that the section heading of § 485.308 ("Designation of one OPO for each service area.") be revised to read "OPO service area requirements", and that paragraph (a) be amended to provide that an entity may apply for designated status only when the service area is open, as described in § 485.302.

We proposed a new § 485.309 ("Changes in ownership or service area.") to clarify the term "change of ownership" in terms of changes in partnership, transfer of an unincorporated proprietorship, merger, and consolidation. Paragraph (b) of § 485.309 would state that if our approval of a change in ownership is not obtained, the OPO agreement may be terminated and could result in our declaring that service area to be an open area. If a change of ownership results in the creation of a new entity, the 2-year exception provision at § 485.303(c) is applicable. However, if a change in ownership does not create a new entity, but consists of the absorption of one OPO by another, the 2-year exception does not apply. When two or more OPOs request our approval to merge or consolidate, we are under no obligation to declare an open area. Paragraph (c) of § 485.309 would state that if our approval of an expansion of the service area is not obtained, we may declare only the unauthorized expanded area to be an open area.

We proposed a new § 485.311 ("Terminations.") to set forth conditions for both voluntary and involuntary termination, describe the effects of termination on payment and service area, set forth procedures for giving public notice of termination, and set forth procedures concerning reinstatement. Section 485.311 would also state that the OPO may appeal its termination in accordance with the provisions set forth in part 498 ("Appeals Procedures for Determinations that Affect Participation in the Medicare Program").

III. Discussion of Public Comments

We received 38 timely items of correspondence in response to the June 21, 1991, proposed rule. Twenty-one were from OPOs, seven from national associations, three from private individuals, one from a transplant physician, one from a member of the Congress, and five from hospitals. The comments and our responses to these comments follow:

General Comments

Comment: Several commenters noted that the proposed rule lists many options for consideration. They requested that we publish a new proposed rule once we narrow the criteria to those we actually intend to utilize. One national organization suggested that we convene a 2-day meeting of the leadership of the transplant community to discuss the available options and to reach consensus.

Response: The proposed rule did include a broad range of proposed qualifying and performance criteria. Nonetheless, it presented the options we have selected in this interim final rule. While the suggested 2-day meeting of the leadership of the transplant community may be helpful, we believe that we already have been able to elicit a wide range of interested public comment through the rulemaking process. Among those commenters that supported a system of challenging performance standards in order to promote effectiveness of organ procurement and distribution, there was considerable agreement. Thus, we believe we have obtained sufficient hard data and opinions to formulate this rule. The comment has merit, however, in that the proposal set forth varied options for setting qualifying and performance standards. Therefore, we are affording another opportunity for the public to comment on this interim final rule. In doing so, we would emphasize that comments will be most useful if they are specific and provide substantiating data.

Comment: Two commenters noted the value that emergency medical services (EMS) staff can play in procuring organ donations. They suggested several criteria they believe would be effective in increasing organ donors.

Response: We believe that Federally-required use of EMS staff in the organ donation process is neither desirable nor necessary at this time. Section 1138(a)(1)(A) of the Act requires all Medicare and Medicaid participating hospitals to develop protocols for encouraging organ donation. Under section 1138(a)(1)(A)(i), these protocols must encompass means for making families of potential organ donors aware of the option of organ or tissue donation and of their right to decline. Under section 1138(a)(1)(A)(ii), the protocols must "encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of such families". We think that the encouragement and facilitation of organ procurement (which the Federal Government has strongly supported for many years) can be approached in varying ways and that individuals and institutions (such as hospitals and OPOs) directly engaged in this activity, as well as States, are generally best able to construct and implement appropriate and effective means for achieving these goals in their particular circumstances. Further, OPOs are free to establish educational contacts with EMS personnel in the community, and we encourage them to do so.

Section 482.12 ("Condition of Participation: Governing Body.")

Comment: One commenter suggested we clarify the language at § 482.12(c)(5)(ii), which sets forth participation in the OPTN as one of the Medicare conditions of participation for hospitals, to be consistent with language in § 485.305, which sets forth participation in the OPTN as one of the Medicare and Medicaid conditions for coverage for OPOs. While both sections require compliance with the rules of the OPTN, only § 485.305 defines the term "rules of the OPTN" as those rules provided for in regulations issued by the Secretary.

Response: We agree, and we have made this clarification.

Section 485.302 ("Definitions.")

Comment: Several commenters objected to the "open area" concept. They believed that once an area has been designated to an OPO, there should be no recompetition for it unless the designated OPO's agreement is terminated.

Response: We do not agree. Lack of competition would create a "closed shop" atmosphere, and new organizations would not have an opportunity to thrive. We believe that

we have an obligation to provide an opportunity for new organizations to apply, instead of automatically redesignating the existing OPOs. We have found that competition is generally healthy and often results in improvements. Thus, we are retaining this provision in this interim final rule with comment.

Comment: One commenter did not appear to understand the distinction between certification and designation, since he believed that HCFA would not designate an uncertified OPO or certify an OPO and then fail to designate it. He suggested that a single word be used to limit confusion.

Response: "Certification" signifies that a HCFA regional office has found that an entity meets the standards for a "qualified OPO" under section 371(b) of the Public Health Service Act (42 U.S.C. 273(b)) and § 485.303 of these regulations. Section 1138(b)(1)(A) of the Act establishes "certification" or "recertification" as one of several prerequisites for "designation" under section 1138(b)(1)(F). Thus, a "certified OPO" is eligible for "designation." After completing its survey, the regional office may find that more than one entity in a given service area meets the standards for OPO "certification." The regional office recommends to HCFA's central office which entity should be "designated." "Designation" represents our approval of an OPO under section 1138(b)(1)(F) for Medicare and Medicaid payment purposes. Entities may be designated only if they meet all requirements of section 1138(b)(1)(A) through (E). Even if more than one OPO has been certified in a given service area, section 1138(b)(2) of the Act permits us to designate only one OPO per service area.

Comment: Several commenters expressed concern with the requirement that recertification be completed every 2 years. Many of these commenters recommended that minimum recertification take place every 3 years.

Response: Section 1138(b)(1)(A) of the Act requires that recertification be completed at least every 2 years. Thus, while we have the authority to provide for more frequent recertification, we may not legally provide for a recertification period that is less frequent than once every 2 years.

Section 485.303 ("Condition: Organ Procurement Organization Designations—General.")

As discussed in sections that follow, comments on our proposed rule suggested various standards for evaluating whether an entity should become, and remain, a designated OPO. After thorough consideration, we have concluded that we could improve our standards for determining which entities should be designated as OPOs and for measuring OPO effectiveness in organ procurement. The new qualification standards applicable for designations beginning in 1996 would require OPOs to procure organs from an average of at least 24 donors per calendar year in the 2 years preceding designation or have a service area that encompasses an entire State. Separate rules would apply to noncontiguous States and other jurisdictions, and to entities not previously designated as an OPO. We have established three performance standards for these entities. The primary performance standard would require that OPOs achieve at least 75 percent of the national mean for four of the five following categories: 1) Actual donors per million population, 2) number of kidneys recovered per million population, 3) extrarenal organs recovered per million population, 4) number of kidneys transplanted per million population, and 5) actual number of extrarenal organs transplanted per million population.

Additional performance standards would require OPOs to procure organs from an average of at least 24 donors per calendar year in the 2 preceding calendar years and to maintain an average procurement ratio of 3 organs per donor. Simply stated, these criteria compare each entity with other OPOs by setting a minimum level of organ procurement. They consider an entity's history for the past 2 years. These measures will be applied beginning with designations made in calendar year 1996.

We have determined that, in the meantime, the most effective means for determining service areas and whether entities qualify and are performing as designated OPOs are essentially the same criteria currently published in 42 CFR part 485, subpart D. We have modified those criteria to delete the requirement that a service area comprise at least 2.5 million population. We discuss later in this preamble (in our discussion of § 485.304) our reasons for believing that a minimum population base is no longer necessary. Generally stated, until 1996, an entity may qualify as an OPO if it can demonstrate that its service area can produce a potential 50 donors per year or that it comprises an entire State. Application of those rules until the 1996 designation cycle will allow a smooth transition, giving OPOs ample time to meet the new criteria. At the same time, we will not run the risk of disrupting the effectiveness of current OPO operations.

In the Transplant Amendments Act of 1990, the Congress recognized the difficult task of adequately defining what constitutes an effective OPO and gives the Secretary broad authority to define the OPO service area under section 371(b)(1)(E) of the Public Health Service Act. It was motivated by a concern to challenge entities to do more and better while at the same time not abruptly change course and, thereby, possibly derail effective entities. We believe the rules we have adopted in this interim final rule serve both those purposes. We continue, however, to solicit comments on: (1) The appropriateness of these performance standards, in particular the primary standard, (2) the future impact of the primary and other standards on the transplant industry and patient care, and (3) what constitutes a desirable level of OPO terminations and consolidations (taking into account the benefits of a competitive OPO marketplace) and the cost-effectiveness objectives of the statute.

Comment: Several commenters expressed concern with the proposed and existing requirement that, in order to be redesignated, an OPO must comply with the performance standards for OPOs. They believed that an OPO should be provided an opportunity to improve its performance before losing its designation. They proposed providing an opportunity to submit a corrective action plan and providing an opportunity to demonstrate that the OPO can indeed improve to meet the performance standards.

Response: We agree that there may be extenuating circumstances that could prevent an otherwise efficient and effective OPO from meeting all of the performance standards at the time of redesignation. As we state elsewhere in this preamble, we recognize the concern that some OPOs may not be able to meet our standards. In doing so, we have allowed OPOs to submit corrective action plans for the standards listed in § 485.306 (a), (b)(2), or (b)(3), explaining why the standard or standards were not met and setting forth actions they will take to ensure that they meet those standards in the future. We are permitting this because we believe the standards at § 485.306 (a)(1), (a)(2), (b)(2), and (b)(3) are static numbers and would not necessarily recognize dynamic conditions that may be happening in the organ transplant field. Therefore, we believe that it is acceptable to permit an OPO to submit an explanation for not meeting the standards during a designation period and to submit a corrective action plan.

We believe, however, that it is reasonable to expect an efficient and effective OPO to be able to meet the primary performance standard set forth in § 485.306(b)(1) in order to be redesignated. That paragraph requires OPOs to procure organs at the rate of 75 percent of the national average for four of the five criteria listed above. It is modeled after the AOPO standard. (We refer the reader elsewhere in the preamble to the comments and responses dealing with the section on performance standards for an indepth discussion of all of the standards in that section, the rationale for their use, effective dates, exceptions, and corrective action plan options.) The level of performance set by this standard will enable us to evaluate an OPO relative to its peers. Instead of evaluating OPOs solely on the basis of an absolute criterion, OPOs will be measured against a realistic and attainable standard. Therefore, at § 485.303(d) in this interim final rule with comment period, we are requiring that OPOs meet the HCFA performance standards at § 485.306.

Comment: One commenter suggested that the proposed language in § 485.303(f)(5) may be unclear, in that it was not limited to acquisition fees. The proposed § 485.303(f)(5) stated that an OPO, in order to enter into an agreement with us, must agree to "Pay to HCFA amounts that have been paid by HCFA to transplant hospitals and that are determined to be in excess of the reasonable cost of the services provided by the OPO." The commenter recommended adding the statement "as Medicare reimbursement for organ recovery fees" as a modifier of payment to transplant hospitals.

Response: We agree. Our intent was to recover only acquisition fees. We have made appropriate changes to the regulation.

Comment: The proposed regulation would require OPOs to maintain data in a format that can be readily assumed by a successor OPO and to turn over to us copies of all records and data necessary to ensure uninterrupted service by a successor OPO that is newly designated. One commenter noted that software licensure and other proprietary interests may make such a requirement difficult.

Response: It is incumbent upon the OPO to maintain data that can be readily assumed by a successor OPO and turned over to us. Therefore, OPOs must not maintain their data in a format that would interfere with meeting this requirement. If an OPO chooses to use software that has licensure requirements that prohibit data transfer, it must ensure that the data can be transferred readily to an alternative generally available format.

Section 485.304 ("Condition: Qualifications Required of an Organization for It To Be a Designated Organ Procurement Organization.")

Comment: One commenter noted that redistricting of service areas to meet qualification standards would eliminate productive relationships that have been established. The commenter recommended retaining current service area assignments.

Response: We have no intention of changing OPO service areas unnecessarily. However, the statute requires that the Secretary ensure that OPO designations maximize effectiveness in the procurement and distribution of organs. If an OPO has established an effective relationship in its service area, there is no reason to believe that these regulations in themselves would disrupt that effective relationship. On the other hand, if an OPO is not operating effectively in an area, the area may be awarded to a different OPO during an open area competition.

Comment: Several commenters expressed concern that, in cases where Metropolitan Statistical Areas (MSAs) cross State lines, an OPO will not receive a Statewide service area designation if part of an MSA in the State is in another OPO's service area.

Response: We continue to believe that Statewide service area designations are appropriate. They have been recognized in the OPO program by the Congress, which has not indicated dissatisfaction with the use of such an area. Under prior statutory authority, such a service area was required to include an entire State. Generally, the term "State" is construed to include all the State's political subdivisions. Indeed, under the prior law (section 371(b)(1)(E) of the Public Health Service Act), the Congress did not allow us to break up an MSA to achieve a Statewide service area.

We believe that a Statewide service area should continue to be a qualifying criterion and represents vital political, historical, and cultural identities that can potentially serve to encourage organ donation and procurement. Thus, in places where an OPO serves the population of an entire State, we believe that the service area would meet the statutory requirement of promoting maximum effectiveness in the procurement and equitable distribution of organs. Consequently, we are retaining this as one of the qualifying criteria. However, an OPO servicing a State where a portion is located in another OPO's service area due to MSA boundaries cannot qualify under the "entire State" criterion, but may still qualify as an OPO by meeting other qualification criteria in § 485.304(d).

We note that an OPO, in reporting the population of its service area, must use the most recent available census data. In reporting population, an OPO must report its population within the service area designated by us. If an OPO believes that use of such population numbers results in its failure to comply with one or more of the performance standards, it is permitted to demonstrate or document to us why some other population number would be more appropriate.

Comment: Some commenters expressed concern that, if a hospital located within an OPO's designated service area enters into an agreement with some other OPO, it would affect the first OPO's ability to meet one or more performance standards.

Response: We recognize the potential impact on an OPO's performance if a hospital in its service area affiliates with another OPO. An OPO faced with this situation may provide documentation to us that may justify use of an adjustment to compensate for the lower population base. We request comments on whether the "lost" population should be attributed to another OPO.

Comment: Many commenters expressed concern with the proposal to base qualification on a minimum population base. Some noted that there is no correlation between population size and OPO effectiveness. Other commenters noted that there is no evidence that "bigger is better," and some provided data supporting the effectiveness of OPOs with a relatively sparse population service area.

Response: After reviewing the data presented by these commenters, we are persuaded that across-the-board qualifying criteria based on population of the service area may not be the best alternative and that there are some OPOs that can be very effective in the procurement of organs serving a smaller population area. Therefore, we will not use population base as a condition for qualification.

Comment: Some commenters said that we should not use 50 actual donors per year as a qualification criterion because it would be extremely disruptive to OPOs, would force inappropriate mergers, and is not supported by data as a measure of effectiveness.

Response: We agree that a 50 actual donors per year criterion would be, in all likelihood, severely disruptive to OPOs. Indeed, it was congressional concern about such a result that led to the 1990 amendments. The commenters'

concern for use of the 50 actual donors per year criterion focuses on severely disadvantaging existing OPOs. For designations made in 1996 and thereafter, in the continental United States, we have defined an efficient and effective service area as one that includes an entire State or is of sufficient size to produce an average of at least 24 donors per year over a 2-year period and that meets other performance standards. We have provided alternative criteria for OPOs operating in a noncontiguous U.S. State, territory, or commonwealth that allows the OPO to qualify if it procures organs at the rate of 50 percent of the national average of all OPOs for kidney procurement per million population and for kidney transplant per million population. We note, however, that these criteria would preclude entities that are not existing OPOs from qualifying as Medicare-participating OPOs. Therefore, we are providing that the service areas of entities that have not previously been designated must have the potential to produce 50 donors per calendar year. The applying entity must demonstrate this potential. This is the minimum requirement for entry into the OPO field formerly established by the Congress for all OPOs, and under which virtually all existing OPOs have entered and continued in the program. We believe the standard by which experienced designated OPOs should be measured should be increased and, therefore, have strengthened the standard that will be applied to designations occurring in 1996 or later. Nonetheless, we believe the 50-potential donor criterion remains a reasonable and flexible measure by which to determine whether new entities are initially qualified to serve as designated OPOs and to determine whether currently designated OPOs continue to qualify until the 1996 designation cycle. Newly designated OPOs will be subject to the routine performance standards beginning 2 years after the OPO has been first designated.

Comment: Although many commenters supported no qualifying criteria for service area designations, most commenters noted that, if qualifying criteria were required, the proposal of specifying a minimum number of donors per year is the preferable option. Of the total 38 comments, 14 specifically commented on this issue. Of the 14, 10 of the commenters believed that 24 donors per year was a reasonable indicator that a service area could potentially result in effective OPO designation. This indicator would not preclude OPOs with relatively small population areas from continuing involvement with Medicare and Medicaid, if they were effective in securing adequate donors from that small population. Others supported a lower threshold, such as 20. They stated that a number of the current OPOs maintain a small service area but are very effective in procuring organs within that area.

Response: Section 371(b)(1)(E) of the Public Health Service Act requires that an OPO have a "defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs". The Congress intended the Secretary to further define "service area" in regulations under section 201(d)(2) of Public Law 101–616. We believe the Congress expected the new regulations to set forth a measure of effectiveness that could be monitored to ensure that effectiveness is being maintained. To that end, we believe that establishing qualifying criteria for service area designations meets the intent of the Congress.

We have discussed elsewhere in this preamble the commenters' reactions to various proposals suggested in the June 21, 1991, proposed rule. While numerous comments offered valuable suggestions, we have concluded that it is essential to have a reasonably objective measurement for this standard. We believe a numerical standard, representing the number of organs actually procured by existing OPOs, best satisfies these objectives for existing entities.

The nature of organ procurement at this time has made it difficult to determine precisely what such a minimum number should be. In determining that, we consulted data submitted by AOPO for calendar years 1991 and 1992. The report covered the substantial majority of OPOs designated during that period. In fact, 98 percent reported. That data showed that the overwhelming majority of existing OPOs reporting had procured organs from more than 24 donors a year. Of those reporting, only 8 had procured organs from fewer than 24, and those OPOs were generally close to the 24-mark (5 of the 8 had 22 or 23).

Several commenters suggested that 24 donors-per-year should constitute a minimum. Some believed that should be an absolute minimum; others believed that it should be a generally applicable minimum, but that exceptions should be allowed or that it should be considered along with other factors.

Our long-standing concern and efforts, in response to congressional enactments and continuing strong interest in the organ procurement program, has been to increase and maximize the level of organ procurement. Nonetheless, in this still young field, determining a single correct way to do this has been difficult. We must take competing legitimate concerns into account. First, we must encourage all OPOs to make greater efforts to increase the level of organ procurement and distribution and to do so efficiently and equitably. At the same time, we want to avoid discouraging or impeding OPOs that are making an important contribution to organ procurement and distribution and are working to improve their level of performance but that, for various legitimate reasons, have not been able to achieve a particular prescribed numerical standard to this point.

Based on these factors, we have determined that, beginning with designations occurring in 1996, an entity that has had the experience of operating as a designated OPO must show that it has procured organs from at least 24 donors per year during the 2 calendar years immediately preceding a new designation (for example, 1994 and 1995 for a 1996 designation). Because circumstances can vary somewhat from year to year, we will allow the OPO to average the number of donors over the 2-year period. We will apply this standard for designations made in 1996 and later years. This will allow all designated OPOs 2 full calendar years, 1994 and 1995, to achieve this standard. In the meantime, OPOs seeking designation will have to demonstrate that they meet the requirements of § 485.304(d)(1)(i) for a service area. We emphasize that the 24 donors per year is a minimum standard. We will, from time to time, make available the relevant national procurement statistics so that existing and prospective OPOs will be aware of the qualifying and performance requirements they must meet.

Comment: One commenter suggested the regulation specify whether the "year" that is used to derive the numbers of procurements is a calendar year, fiscal year, or any 12-month period.

Response: We agree that the regulations should be as unambiguous as possible. Most of our relevant OPO data is collected on a calendar year basis. For this reason, we are specifying that the calendar year be used for qualifying criteria and performance standards.

Comment: Some commenters noted that a well-functioning and productive OPO could have a year when, through no fault of its own, it could not meet the 24-donor qualifying standard. They

suggested that the criteria be evaluated over a 2-year period.

Response: We agree that unforeseen circumstances could result in an OPO missing the threshold qualification criteria in any given year. However, we believe that it is important that a numerical criterion be employed in establishing OPO service area qualifications. We believe that the qualification criteria should consist of a service area that historically has averaged at least 24 donors per year. This is a reasonable number because, as we stated previously, most OPO areas currently meet this criterion. Beginning January 1, 1996, all entities must procure organs from an average of at least 24 donors per calendar year in the 2 years prior to the year of designation. In 1996, the number of donors from whom organs are procured will be based upon 1994 and 1995 data. If an OPO is involved in a merger during this 2-year period, the criterion will be applied by combining the data from the entities involved in the merger.

In summary, based on the foregoing comments, we have decided that the minimum service area designations will be based on areas that include at least an entire State, or areas which have historically averaged donations of organs from at least 24 donors per year.

Statewide service areas must include the entire State. Because section 371(b)(1)(E) of the Public Health Service Act prohibits the Secretary from breaking up an MSA if the MSA crosses State lines, the entire MSA must be included in one OPO's service area. An OPO cannot be considered to include an entire State if an MSA containing selected counties in that State has been designated to another OPO in a bordering State.

Comment: Several commenters wrote in support of the proposed change regarding histocompatibility, which would permit the board of directors or advisory board composition requirement to be met by either a physician or by an individual with a doctorate degree in a biological science. One commenter suggested, however, that the regulations be further modified to ensure that the knowledge and experience in histocompatibility be current. Another expressed concern that it is equally important to recognize that other health professionals (such as registered nurses and social workers) also have much to share in terms of setting local organ donation policy. Another commenter requested that the regulations be further modified to ensure that the individual meeting the histocompatibility requirement serve on the OPO board which is responsible for making policy decisions.

Response: We would expect that OPOs would generally meet the histocompatibility requirement through an individual with current experience in the field. We believe that the most important point is that the skills of someone trained in histocompatibility are used. Therefore, we do not believe it is necessary to modify the regulations in this regard. We also think it is important to provide some flexibility to an OPO in the staffing requirements in order that it may respond to local situations.

We believe that a multidisciplinary board approach helps to ensure equitable access to donated organs. In fact, the regulations specify that the board of directors or advisory board of an OPO must include members who represent hospital administrators, tissue banks, voluntary health associations in its service area, and either intensive care or emergency room personnel. In response to concerns about use of other health professionals, certainly registered nurses and social workers could be represented in one or more of these groups. Consequently, we are not adopting suggestions to further change the requirement.

With respect to the concern that the regulation requires that an individual with histocompatibility experience serve on the board that sets OPO policy, we believe that the intent of the regulations is met regardless of which board the OPO chooses to use in meeting the histocompatibility requirement. In an effort to be responsive to these comments, we have reviewed carefully the statutory provision regarding the board issue. While we do not have specific public comments regarding this particular issue, we realize there is concern by some OPOs about whether an OPO can satisfy the statutory board composition requirements by combining the membership of two boards—a board of directors *and* an advisory board. We recognize that many OPOs presently combine the membership of two such boards to achieve the diversity of composition which section 371(b)(1)(G)(i) of the Public Health Service Act mandates (42 CFR 485.304(f)). Also, we had assumed that this practice met statutory requirements.

In reviewing this issue again, as part of the concerns raised during the public comment period, we believe a different conclusion must be drawn. We believe the statute dictates that the prescribed representation must be achieved on a single board. The statute speaks in the singular of a board which "is composed" of the designated representatives (the OPO "has a board of directors or an advisory board which—(i) is composed of (I) members who represent * * *"). Moreover, the Committee Conference Report (H.R. Cong. Rep. No. 1127, 98th Cong., 2d Sess., 15–16 (1984)) (1984 U.S. Code Cong. & Admin. News 3991–3992), in part, states the following:

> The conference agreement eliminates the requirement in the House amendment that OPOs eligible to receive grant support have a board of directors whose participants are specified in statute. The conferees believe that public and professional confidence in the OPO system will be an essential factor if improvements in organ procurement are to be made. Accordingly, each OPO should solicit the active involvement of the community in which it operates in developing operating policies. The conference agreement requires that each OPO establish either an advisory board or board of directors composed of hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area; members of the public; physicians with knowledge in the fields of histocompatibility and neurology; and a transplant surgeon from each transplant center affiliated with the OPO. * * * OPOs should, subject to review by the advisory committee, adopt standards of quality for the acquisition of organs which will give transplant surgeons confidence that the organs they receive are suitable for transplantation. The conferees recognize that as nonprofit entities, OPOs will have a board of directors to establish organizational policy. If an OPO's board of directors meets the criteria required, the conferees do not intend that OPOs establish a separate and redundant advisory entity.

To the extent that any OPO does not now possess a single board meeting the conditions of section 371(b)(1)(G), we would permit the OPO that has been using two boards to submit a corrective action plan and would provide a sufficient amount of time in which the OPO can come into compliance with the statute. We should add that this does not preclude an OPO from having additional advisory boards or governing boards, as long as all the provisions at § 485.304(f) are achieved by a single board.

Comment: One commenter noted that decisions regarding acceptance of an organ for transplant are routinely made by the transplant center. Therefore, the commenter believed that equitable allocation is a shared responsibility between the OPO and the transplant center.

Response: We acknowledge that transplant centers share a role in the equitable distribution of organs under section 1138(a)(1)(A) and (B) of the Act. Nonetheless, the OPO has a specific statutory responsibility to allocate

organs equitably under section 371(b)(3)(E) of the Public Health Service Act. In addition, the OPTN has a significant statutory role in equitable distribution under section 372(b)(2)(D) of the Public Health Service Act to "assist [OPOs] in the nationwide distribution of organs equitably among transplant patients".

Comment: One commenter noted that the proposed regulations did not define "equitable distribution" of organs. The commenter recommended that we adopt the following definition of equitable distribution: "the most medically suited and logistically feasible organ candidate within the OPO geographic OPTN region shall have preference to a donated organ before any local or non-regional candidates are considered."

Response: There has been considerable debate regarding the priority of local, regional, and national distribution of organs by some OPOs and by the OPTN. To the extent a definition in regulations would be appropriate, that question will be addressed in the forthcoming proposed rule on the OPTN regulations.

Comment: Two commenters expressed concern with the language in proposed § 485.304(r) (designated as § 485.304(s) in this interim final rule) regarding testing to prevent the acquisition of organs infected with the etiologic agent for AIDS. One commenter noted that the CDC establishes guidelines for a wide variety of entities and suggested we reference the CDC specific guidelines for "solid organ donations."

Response: We are limiting the reference to CDC guidelines to those specific to solid organ donations.

Comment: One commenter believed that, because of the incubation period before a donor would test HIV positive and other factors inherent in the disease, it is not possible to prevent the transmission of AIDS with 100 percent assurance. Because of this concern, the commenter suggested that we use language similar to that in paragraph (d) of § 493.1265 ("Condition: Histocompatibility."), which states that, for laboratories performing tests for organ transplantation to be approved for Medicare and Medicaid coverage, the laboratory must ensure that the donor is tested for HIV reactivity unless the recipient waives the tests because of medical circumstances. This language is thought to be more technically correct.

Response: At the time this comment was made, the commenter was correct. However, regulations published on February 28, 1992 (57 FR 7002) implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA) addresses the commenters concern. We are revising proposed § 485.304(r) (now designated as § 485.304(s)) to refer specifically to the CDC guidelines on solid organ donations. We have also revised it to use some of the same terminology as used in paragraph (d) of § 493.1265. We believe that neither revision changes the intent or substance of the proposed requirement; the revisions simply clarify it. Paragraph (s) of § 485.304 now reads that an OPO must: "Ensure donors are tested for human immunodeficiency virus reactivity consistent with OPTN rules and CDC guidelines for solid organ donation." It should be noted that the governing provision, section 371(b)(3)(C) of the Public Health Service Act, says that OPOs must test for the virus "to prevent the acquisition of organs that are infected." We are not accepting the recommended language that would permit a waiver of the tests by the recipient, because we believe the statutory requirement does not provide for such a waiver nor do the regulations implementing CLIA.

Comment: One commenter recommended that we require that organ recipients be periodically tested to determine whether they are HIV positive. Another commenter, who also supported HIV testing, said that obtaining an accurate medical and social patient history is equally important in preventing the transmission of communicable disease and suggested that we make this a requirement too.

Response: We agree that an accurate medical and social patient history is an important measure to discourage the transmission of infected organs, and that organ recipients be periodically tested to determine whether they are HIV positive.

Although there are existing recommendations for the prevention of HIV transmission through transplantation, involving donors and recipients, in 1991, the U.S. Public Health Service formed a workgroup to address the need for additional federal oversight of organ and tissue transplantation. The workgroup concluded that further recommendations should be made. As of this writing, those revised guidelines are expected to be published by the CDC in 1994. Both of the above issues suggested by the commenters are addressed in these guidelines. We would expect both hospitals and OPOs to follow the recommendations. We are not, however, including these requirements in the regulations.

Section 485.305 ("Condition: Organ Procurement and Transplantation Network Participation.")

Comment: One commenter expressed strong support for the proposed requirement that the "rules and requirements of the OPTN" means those rules and requirements that have been approved and issued by the Secretary.

Response: The Secretary is developing proposed rules to implement section 372 of the Public Health Service Act, which provides for the operation of the OPTN. Those regulations will establish a framework for Departmental oversight of the OPTN and its rules and requirements. Of course, public comments will be invited on the proposed framework. (Note that, in order to be more specific and to be consistent with terminology used by the Public Health Service (PHS), we have revised proposed § 485.305. In this interim final rule, we specify that "rules of the OPTN" means "those rules provided for in regulations issued by the Secretary in accordance with section 372 of the PHS Act."

Section 485.306 ("Condition: Performance Standards for Organ Procurement Organizations.")

Comment: Some commenters expressed concern with the formula-based approach to performance monitoring. Some said the current system is working well. Others said the proposed formula was very complex and not likely to be understood by many. They also expressed concern that the formula failed to consider some important factors in organ procurement, such as HIV infection rate and trauma rate for the area. In addition, they expressed concern that the weighting of individual factors appears to be arbitrary.

Response: Although we continue to believe there is merit in a formula-based approach to performance monitoring, we have decided not to go forward with one at this time. There are significant advantages to the formula. The factors in the formula significantly influence expected donation rates. They are relatively stable for a given area over time, published by reputable sources, and readily available. Nevertheless, the commenters suggested valid problems with using them. We believe, in principle, it would be reasonable to add the cited factors to the formula. It would, however, be extremely difficult in most cases to do so because the factors suggested by the commenters are subject to continuous change and are not indisputably available from a single source on a timely basis. Further,

adding additional factors to the formula would complicate it.

Comment: Several commenters expressed concern over current performance standards that require a minimum ratio of 23 cadaveric kidneys procured per million population and transplantation of 19 cadaveric kidneys per million population. They recommended that we not adopt these standards because these are static measures in an industry where national norms are increasingly dynamic. The commenters suggested we adopt the AOPO performance standard, which is based on population and potential activity benchmarks.

Response: We agree that the AOPO standard, which is tied to national norms and represents dynamic numbers, is an important one. We also believe that the use of multiple performance standards can be most beneficial. We believe that standards that represent more static numbers can assist in measuring the effectiveness of an OPO if combined with multiple standards based on national norms. This is especially true since we have the flexibility to revise any static numerical criteria, should state-of-the-art organ procurement practices make them no longer appropriate. Therefore, we have accepted the commenters' suggestion that we adopt the AOPO performance standard. An indepth discussion of that standard is provided in response to other comments in this section of the preamble.

Comment: Some commenters noted that the current performance criteria for kidneys were too low to be an adequate measure of effectiveness for OPOs, because nearly all OPOs currently exceed this threshold. One commenter presented data supporting increasing the threshold criteria to 28 cadaveric kidneys procured per million population of service area and 25 kidneys transplanted.

Response: We agree with the commenters that the current performance criteria for kidneys (23 cadaveric kidneys procured per million population and 19 cadaveric kidneys transplanted per million population) are too low to adequately measure effectiveness in other than extremely poorly performing OPOs. Based on our data, we estimate that the national average of kidneys recovered by designated OPOs per million population has exceeded 28 since 1986. Nonetheless, we believe these criteria are sufficient to be retained until the 1996 designation cycle in order to maintain some performance criteria while transition to the new standards. As stated elsewhere in this preamble, we have decided to use criteria based on 75 percent of the national average. The national average for kidneys recovered per million for combined years 1991 and 1992 was 35.5. Seventy-five percent of that figure yields an average of 26.6. Therefore, we believe we have responded to the commenters' concerns in adopting these new standards.

Comment: Several commenters expressed concern with the proposal to establish specific performance criteria for hearts and livers. They noted that data are not available at this time to permit calculation of specific extrarenal organ criteria. Further, they said that such criteria would not credit OPOs for efforts to procure other extrarenal organs, such as lungs, heart-lung, and pancreas. If extrarenal criteria are necessary, most commenters recommended that the criteria not be specific to organ type.

Response: We acknowledge the concern of these commenters; relying on specific heart and liver performance criteria alone would not evaluate appropriately an OPO's full extrarenal experience in that some extrarenal organs would not be recognized. In addition, we believe that current data is insufficient to establish numerical thresholds for heart and liver procurement. Consequently, we are not proceeding with the proposal to establish specific heart and liver performance criteria at this time.

Nonetheless, we continue to believe that some performance criteria should be established to evaluate an OPO's extrarenal activities. Some commenters proposed an alternative to our proposal. Several commenters suggested evaluating the number of organs procured per donor; three organs per donor was a recommended number. They noted that this measure would provide an OPO with flexibility to focus procurement efforts at harvesting multiple organs without being penalized for donors with unusable hearts or livers.

We believe the alternative proposed by the commenters of establishing performance criteria based on average number of organs procured per donor is adequate to meet our intent. This is especially true given the fact that data available for 1992 indicate that the national average is 3.3 organs per donor. Therefore, beginning in 1996, we are requiring that OPOs meet performance criteria of procuring an average of 3 viable (with the intent to transplant) solid organs per cadaveric donor. Tissue harvesting, such as eyes or bone, is not included for purposes of this standard because they are not included in the definition of an organ at § 485.302 ("Definitions."). In calculating the organ per donor average, kidneys, as well as extrarenal organs will be counted. However, in the rare case when organs are removed en bloc and transplanted en bloc, such as a pair of kidneys or lungs, the pair will be counted as only a single organ. This method of counting organs is standard procedure for OPOs. We do invite public comment on this criterion. We are particularly interested in comments with respect to whether variance in age plays a significant role in determining the number of organs procured from a single donor and its impact on OPO's meeting the criterion of three donors per organ.

Comment: Several commenters expressed concern with the proposal to develop a cost per organ performance standard. They had numerous concerns with this alternative, including wide variation in costs among OPOs, lack of standardization in cost reporting, and differences between hospital-based and independent OPOs.

Response: We are convinced that additional research is necessary before we proceed with development of a cost effectiveness performance standard.

Comment: Some commenters supported a cost effectiveness standard, expressing concern with the widely varying cost of organ acquisition and noting that in some cases it appears to be excessive. One commenter recommended standardization of acquisition fees and, ultimately, payment based on diagnosis related group (DRG). Another commenter recommended that payment be made directly to the OPO for kidney acquisition.

Response: We agree that there is wide variation in organ acquisition costs for a number of reasons, including geographical differences, different accounting systems, and varying degrees of efficiency. We do not believe, however, there is sufficient information available at this time to establish a cost effectiveness standard for OPOs. Payment for organ procurement costs, such as inclusion in the DRG, is not germane to this proposed regulation. We will, however, take the suggestion under consideration.

Comment: Generally, the commenters favored the performance criteria proposal set forth by AOPO, as mentioned in the discussion of a previous comment. To reiterate this proposal, for redesignations made in 1996 and thereafter, an OPO would be required to demonstrate that it achieved at least 75 percent of the national mean for per capita organ recovery in four of the following performance categories averaged over the 2-calendar-year

period preceding the year of designation:

- Actual donors per million population.
- Number of kidneys recovered per million population.
- Number of kidneys transplanted per million population.
- Extrarenal organs recovered per million population.
- Actual number of extrarenal organs transplanted per million population.

Some commenters noted that this proposal would keep pace with changes in the industry in future years, as it is based on national averages. Thus, as the national average procurement rate increases, the standards would rise accordingly and would be equally rigorous for the OPOs. It is generally accepted in the industry that organs recovered for research purposes should not be counted when compiling these data.

Response: We are adopting the AOPO proposal in this interim final rule as the "primary performance standard" which must be met by OPOs. We believe that a threshold set at 75 percent of the mean provides ample opportunity for variation in OPO performance and recognizes individual structural and size differences while ensuring that some objective measure of effectiveness is met.

For combined calendar years 1991 and 1992, we have national data, which are provided below, for the five categories of the primary performance standard:

Standard	Average	75% of average
Actual donors per million	19.1	14.3
Kidneys recovered per million	35.5	26.6
Kidneys transplanted per million	32.5	24.4
Extrarenal organs recovered per million	27.6	20.7
Extrarenal organs transplanted per million	25.9	19.4

These data are provided as an illustration of how the primary performance standard is applied. These particular figures are not necessarily used to measure OPO performance.

As we explained in detail in our earlier response dealing with setting reasonable objective measurements, our long-standing concern has been to increase and maximize the level of organ procurement. At the same time, we reiterate the competing concern to avoid discouraging or impeding OPOs that are making an important contribution to organ procurement. Therefore, the primary performance standard requires that each OPO achieve at least 75 percent of the national mean for four of the five performance categories averaged over the 2 full calendar years preceding the year of designation.

The Congress recognized that some OPOs were not operating in an efficient and effective manner. It expressed an intent that we establish challenging, definite standards to ensure that designated OPOs would be capable of helping to invigorate organ procurement and distribution in this country. (See Sen. Rep. No. 530, 101st Cong., 2nd Sess. 19–22 (1990).) It charged the Department with the difficult task of articulating standards that would produce such results, while, at the same time, taking into account diverse, sometimes competing, factors. We believe that the threshold of 75 percent of the national mean provides a reasonably liberal criterion that reflects the state-of-the-art on an ongoing basis, is based on the experience of peers for a comparable population base, and best implements the statute.

We are especially concerned about the few OPOs that operate in a United States (U.S.) commonwealth or U.S. territory or in a State that is not part of the contiguous continental U.S. For example, most OPOs arrange for the transplant surgeons or members of the transplant team to retrieve an organ that is to be used in a transplant they will perform. Generally, air transportation among the continental States is adequate for organ retrieval and transportation to a viable recipient. But, in a noncontiguous State, territory, or commonwealth, this can present a preservation problem. Notifying and assembling a team to fly long distances to the site, retrieve the organ or organs and return to the transplant center is very time consuming and, especially in the case of hearts and livers, may not be practical. We believe the criteria to be met in the primary performance standard could create a potential hardship for these noncontiguous, geographically limited areas because organ preservation technology currently is not adequate to maintain organ viability for the time required to transport the organ to a recipient. Therefore, we have established a different performance standard for these areas, which is discussed later in this preamble. At the present time, we are aware that Hawaii and Puerto Rico, for example, would meet this exception.

In summary, any OPO (except one located in a noncontiguous U.S. State, a U.S. territory, or the Commonwealth of Puerto Rico) that does not meet the primary performance standard will lose its designation without an opportunity to submit a corrective action plan. We will, however, notify the OPO of its failure to meet the primary performance standard and provide a 30-day period for the OPO to correct any erroneous information that it may have submitted that is relevant to the determination. If loss of designation were to occur, however, an OPO can appeal the decision under the appeal provision at paragraph (c) of § 485.311 ("Terminations."). We will advise all OPOs of the performance numbers applicable to 1994 and succeeding years as soon as the data are available. Also, we will reevaluate this rule within 2 years after it becomes effective to determine whether the standard should be adjusted.

Comment: One commenter stated that we should use two standard deviations from the mean as the statistical basis for adopting the AOPO performance threshold instead of 75 percent of the national mean for per capita organ recovery in four of the five AOPO performance categories. He suggested that his alternative is a better approach to accounting for variation.

Response: We believe that the proposal to set the threshold at 75 percent of the mean is superior to the two standard deviations alternative. We note that statistically, thresholds set at two standard deviations would capture 95 percent of a normal distribution. Thus, setting the performance standard at this level would result in 95 percent of the OPOs making the criteria and 5 percent not making the criteria regardless of how poorly or how well these OPOs were performing. In other words, the lowest producing OPO would be automatically subject to termination each rating period, even if it were operating productively and effectively.

By setting the performance threshold at 75 percent of the mean, we will identify all those OPOs that are performing significantly below the national average. It may be that all OPOs will perform at or above the standard in any given period. On the other hand, if any OPOs are not performing at least the 75 percent level, these will be identified and we can try to determine whether the standard needs revision or the OPOs' operations need scrutiny.

Comment: One commenter recommended adding a sixth standard to the AOPO list. The additional standard suggested is the mean number of organs per donor.

Response: We recognize that the mean number of organs per donor is a valuable performance standard, and we

have established a measurement of organs per donor as a separate standard as discussed above.

Comment: Several commenters noted that, in theory, there may be some merit to the proposal of basing performance criteria on the ratio of hospital deaths, as proposed. However, most noted that additional study is necessary before implementing such a standard.

Response: We agree that additional study is necessary before proceeding with this idea. We do not have sufficient data to determine appropriate ratios. Moreover, none of the commenters offered information that would identify the current ratio. Consequently, we are not proceeding with this proposal at this time.

Comment: Two commenters recommended that we develop a performance criterion based on the volume of referrals brought to fruition. They believe this would be a true measure of an OPO's effectiveness without depending on measures such as service area size and population served.

Response: There are currently no data from which to determine the appropriate threshold for such a criterion. Therefore, we have not adopted this suggestion.

Comment: Some commenters noted that a hospital is not required to enter into an agreement with the OPO designated for its area. They said that failure of hospitals to participate with the OPOs designated for their respective areas creates difficulties for OPOs in meeting performance criteria, especially those proposals based on population serviced. The commenters suggested that each hospital be required to participate with the OPO designated for its area. Alternatively, they suggested that performance criteria be adjusted to consider only the hospitals and the population actually being serviced by the OPO rather than the entire service area.

Response: The purpose of the proposed rule was to seek public comment on the Department's proposals to implement various legislative amendments concerning OPO issues, primarily those regarding the definition of "service area." We did not intend to open for comment areas of longstanding policy, such as the policy that permits a hospital to have an agreement with any designated OPO, not just the one designated for its area.

We received several comments on this issue, however, in which commenters expressed strong sentiment that a hospital be required to have an agreement only with the designated OPO in its particular service area. Similarly, we received letters expressing strong support for the current policy. Possible policies with regard to hospital affiliation with a designated OPO include the following:

- A hospital must affiliate with the OPO in its service area.
- A hospital must affiliate with some OPO.
- A hospital may affiliate only with the OPO in its service area, but is not required to affiliate.
- A hospital may affiliate with any OPO, but is not required to affiliate.

In a system in which success is based largely on goodwill between hospital and OPO personnel, the most flexible policy is likely to produce the most donors. Therefore, it seems, the Federal policy should be the one which allows hospitals to affiliate with the OPOs of their choice without requiring affiliation. That policy is currently in effect. Commenters are requested to provide any evidence that shows that the continuation of this policy would have a detrimental effect on organ donation.

As noted above, an OPO may provide documentation to us that may justify use of an adjustment to compensate for a lower population base caused by hospital affiliation with another OPO for purposes of determining its compliance with the performance standards.

Comment: One commenter expressed concern that performance criteria could result in potential donor families being subject to undue pressure to donate merely for the OPO to make the grade, resulting in a negative impact on organ procurement nationally.

Response: We do not believe that the families of potential donors should be subject to undue pressure from OPOs. We believe that OPO staff are sensitive to the seriousness of the donor question in their behavior with potential donors. Therefore, we do not expect to find that OPOs will respond inappropriately to the performance standards. Should we encounter such a problem, we will take necessary action to correct the situation, such as the development of additional standards that measure the appropriateness of an OPO's practices in initiating a request for organ donation.

Comment: Two commenters noted that, because of the special transportation circumstances inherent in their isolation from the mainland U.S., population limitations, and the availability of special surgical skills, an OPO in Hawaii would not be able to meet the qualification or performance requirements. They requested that an exception to the criteria be granted for the OPO in Hawaii.

Response: We acknowledge that special circumstances prevent OPOs such as those in Hawaii and Puerto Rico from meeting many of the proposed qualification and performance criteria. As mentioned earlier, most transplant teams send in their own surgeons to retrieve organs. Therefore, we have established an exception to the standards for OPOs operating in certain geographically limited areas to take into account their unique circumstances. The service area and performance standards that those OPOs that are not part of the contiguous U.S., such as Hawaii and Puerto Rico, must meet to be designated are as follows:

- They must enter into a working relationship with any hospital or transplant center in their respective service areas that requests a working relationship.
- Beginning January 1, 1996, they must meet a standard of 50 percent of the national average of all OPOs for kidney procurement per million population and for kidney transplantation per million population. (NOTE: They must meet all statutory requirements for OPOs except that we may give them a different service area and performance standard.)

In developing this standard, we believe there is no reason to exempt these OPOs from requirements related to operating an efficient and effective OPO. It should be noted, however, that while this standard was selected arbitrarily, we believe it to be reasonable for these OPOs to perform at least half as well as the national mean in recovering and transplanting kidneys. There may be other areas besides Hawaii and Puerto Rico with similar limitations. Public comments are invited on whether other areas should be exempted or provided lower numerical standards as well.

Comment: One commenter, an OPO that was formed through the consolidation of six former hospital-based OPOs, said that established and new OPOs should be subject to the same performance criteria.

Response: In part, we agree with this commenter. If an OPO is the result of a merger of two or more previously designated OPOs, the performance standards in § 485.306 will be applied, but the entity can satisfy it by combining the figures for the merged entities. We will not, however, apply such performance standards to a totally new organization that has no previous record until its first redesignation cycle, since it will have developed no track record and will have had no start-up period. Rather, we will apply the qualifying criteria in § 485.304 to the organization.

Comment: Some commenters expressed concern with the effective

date of the performance standards. They said that application of these rules at the next redesignation period would constitute "retrospective rulemaking," since OPOs would not have had an opportunity to alter their practices to meet the standards. Some commenters recommended delaying application for at least 12 months after publication; others believed OPOs should not be held accountable for the revised standards until at least 2 years after publication, that is, until their second redesignation period.

Response: In discussing the qualifying and performance standards at various points elsewhere in the preamble, we have set forth the criteria and rationale for establishing such policies. In doing so, we are cognizant of the concerns expressed by the commenters regarding having an adequate opportunity to become compliant with the new rules. To that end, in both the qualifying criteria and performance standards, we have established implementation dates to remove concerns about "retrospective rulemaking." That is, the new standards will not apply until the 1996 redesignation cycle. We believe this addresses adequately the commenters' concerns about an OPO's ability to be in compliance with the new standards at the time of redesignation.

Section 485.307 ("Failure To Meet Requirements.")

Comment: One commenter said that we should not terminate an OPO regardless of performance standards. The commenter believed that this would leave an area without a functioning OPO and that an inefficient OPO is better than no OPO at all.

Response: We believe that an OPO that does not meet the primary performance standard should not be redesignated. This action would not result in no OPO service in the area; rather, we think that it is likely that at least one qualified entity would file for the area during an open area announcement. Even if no competing qualified OPO applies for the area, hospitals could receive OPO services by entering into an agreement with any designated OPO.

Comment: Several commenters expressed concern with the proposed changes that would delete the current provision that provides for a reasonable opportunity for an OPO that does not meet the requirements to correct the deficiency. The commenters stated that they believe that an opportunity for correction and/or explanation of the variation rather than not redesignating an OPO would result in more efficient operation.

Response: The regulations (§ 485.307) state that, if the OPO does not meet the requirements in §§ 485.304 and 485.305 and the primary performance standard at the time of recertification, we may terminate the OPO. We are not required to terminate the agreement of an OPO not meeting the standards. As we stated above, we intend to consider only our primary performance standard and the statutory criteria as a mandatory prerequisite for designation or redesignation. An OPO not meeting other performance standards will be given an opportunity to present an explanation for the situation and to submit a corrective action plan for meeting the standards in the future. In addition, OPOs not meeting the primary performance standard will have 30 days in which to correct any information that may be erroneous.

Open area notification would be made at each OPO's recertification time. We envision that, in those cases where an OPO has not met the standards, its explanation and corrective action plan would be considered along with the qualifications of any other OPO interested in the open area. Failure to redesignate the current OPO would result in those cases in which we determine that the current OPO does not meet the applicable requirements.

Section 485.309 ("Changes in Ownership or Service Area.")

Comment: One commenter did not understand the addition of § 485.309, because he was under the impression that, by law, an OPO must be a nonprofit organization, and we mentioned partnerships and sole proprietorships.

Response: Section 371(b)(1)(A) of the Public Health Service Act requires an OPO to be a "nonprofit entity." Current regulations at § 485.304(a) define that to mean "a nonprofit entity that is exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1986". Section 501(a) of the tax law addresses primarily corporations, although other forms of organizations are included. Since the problems intended to be addressed by proposed § 485.309(a) have resulted principally from corporate mergers and consolidations, we believe the language in the proposed rule on proprietorships and partnerships is unnecessary. Therefore, this interim final rule addresses only mergers and consolidations.

Comment: One commenter felt that mergers should be given priority over other proposals for a service area.

Response: We do not believe we should categorically prefer one type of application over another, depending upon whether the applicant has merged or consolidated. The determination as to which OPO is designated depends upon a demonstration that the OPO meets the applicable requirements set forth in regulations. At § 485.308 ("Designation of one OPO for each service area."), we have described the criteria we will use when more than one OPO applies for a service area.

Section 485.311 ("Terminations.")

Comment: We specifically invited comment on the proposal to designate an OPO whose agreement was terminated if we find that the cause for the termination has been removed, if we are satisfied that it is not likely to recur, and if no other OPO has been designated for the service area. One commenter said that we should avoid termination, but that, if it is necessary, "reinstatement" should not be an option. The commenter believes that the area should revert to "open area" status.

Response: When an OPO's agreement with us is terminated, the service area does revert to an "open area." If the area is an open area (that is, no other qualified OPO has been designated for it), the terminated OPO can present evidence that the cause for the termination has been removed, and if the OPO meets all requirements for designation, we believe that the OPO could be designated.

Comment: One commenter said that in the case of termination, public notice should not be made until the OPO has been through the appeal process and the determination to terminate has been upheld.

Response: As we pointed out above, we intend to apply the existing appeal process at part 498 to termination of the OPO's agreement with us. It is our policy that a termination is treated as final despite any appeal filing. Therefore, we will issue notice of the termination effective with the date of the termination.

Appeal proceedings can take several years to complete. We believe that it is necessary to expeditiously issue a notice of open area and begin the process of securing a qualified OPO for the service area as soon as possible.

Comment: Several commenters objected to the deletion of the current § 485.307(b), which provides for an appeal under part 498 ("Appeals Procedures for Determinations that Affect Participation in the Medicare Program") of this chapter when an OPO's agreement with us is terminated. They believe that an appeal proceeding must be included not only for termination based on failure to meet

requirements, but also on service area determinations.

Response: Although we proposed deleting the appeal language at § 485.307(b), we also proposed placing identical language at § 485.311(c) on termination. These appeal proceedings are similar for all disputes involving entities participating in Medicare and Medicaid, not just OPOs. Generally, they provide for an independent determination based on a written and oral presentation of evidence. Appeals on service area determinations will be included in such appeal proceedings.

Comment: One commenter suggested that the period in which to appeal a determination should be 90 days.

Response: As noted above, we believe that the existing procedures for termination of participation in Medicare and Medicaid should be applicable to OPOs as well. These procedures provide for 60 days in which to file an appeal.

IV. Provisions of this Interim Final Rule with Comment

We are adopting as final the proposed regulations which we published on June 21, 1991, in the **Federal Register** (56 FR 28513), with the following changes.

• We clarify the language at § 482.12(c)(5)(ii), which sets forth participation in the OPTN as one of the Medicare conditions of participation for hospitals, to be consistent with the language at § 485.305, which sets forth participation in the OPTN as one of the Medicare conditions for coverage of OPOs.

• In § 485.302, we have shortened the definitions of *certification or recertification* and *open area*. We have moved some of the provisions that had appeared in these definitions in the proposed rule to other appropriate sections of the subpart. We shortened the definition of *interim designation period* and moved it to § 485.303(e)(3)(ii) of the interim final rule. We also have clarified the definition of *designation or redesignation* by citing the statutory basis for payment of organ procurement costs under Medicare and Medicaid. We clarify the use of these terms, by adding that designation and redesignation are used interchangeably except when otherwise specifically indicated.

• We have revised § 485.303 to add clarity, improve its readability, and to specify that, to be initially designated as an OPO, an organization must be certified as a qualified OPO. This addition reflects section 1138(b)(1)(A) of the Act, which establishes certification or recertification as one of several prerequisites for designation. In addition, we have included in § 485.303 provisions that had been included under § 485.302 ("Definitions") in the proposed rule. That is, we specify that redesignation must occur at least every 2 years and be completed before the end of an existing designation period. With regard to interim designations, we specify that the interim period does not exceed 60 days after the normal designation period has expired. We have also made the following changes:

—Proposed paragraph (e) of § 485.303 specified that an OPO must obtain HCFA approval before entering into any change of ownership, assignment, merger, consolidation, or change in its service area. In this interim final rule, we have removed the reference to assignment because we believe assignment does not occur in the OPO context.

—We have added the clarifying phrase "for organ procurement services attributable to that OPO" in the sentence at proposed § 485.303(f) in which we state that, if an OPO's agreement is terminated, payment will not be made for services furnished on or after the effective date of termination. (In this interim final rule that provision is designated as § 485.303(c).)

—We have clarified proposed § 485.303(f)(5) (§ 485.303(c)(5) in the interim final rule) by adding the phrase "as Medicare payment for organ recovery fees". Section 485.303(c)(5) requires OPOs to agree to pay to us amounts that have been paid by us to transplant hospitals as Medicare payment for organ recovery fees and that are determined to be in excess of the reasonable cost of the services provided by the OPO.

• We have made the following changes to § 485.304:

—We have revised proposed § 485.304(d) to improve its readability and to provide that, for designations in 1996 and thereafter, an OPO's service area must include an entire State or the OPO must procure organs from an average of at least 24 donors per calendar year in the 2 years before the year of designation. We provide for the phasing in of this requirement and specify that before January 1, 1996, an entity must demonstrate that the service area has the potential to produce 50 donors per calendar year. We provide an OPO operating in a noncontiguous U.S. State, a U.S. territory, or a U.S. commonwealth, such as Hawaii or Puerto Rico, with a specified alternative standard beginning January 1, 1996. We also provide that if an entity has not previously operated as a Medicare-certified OPO, it must demonstrate that it can procure organs from at least 50 potential donors per calendar year. These changes have been discussed in section III of this preamble.

—In § 485.304(i), we changed the requirement that OPOs have a system "to allocate organs equitably among transplant centers and patients" by eliminating the words "centers and". This is consistent with section 371(b)(3)(E) of the Public Health Service Act.

—In the proposed rule, § 485.304(r) reads that an OPO must: "Assure appropriate tests consistent with OPTN standards and CDC guidelines are performed to prevent the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome." We have revised it (and designated it as § 485.304(s)) to refer specifically to OPTN rules and to the CDC guidelines on solid organ donations. This amendment to the proposed rule does not change its substance.

—In order to enable us to verify an OPO's compliance with the performance standards, we have added paragraph (t) to § 485.304. It requires OPOs to submit accurate data to us within 15 days following the end of a calendar year (unless otherwise notified), giving information on the—

+Population of designated service areas based on the most recent U.S. Bureau of the Census data;
+ Number of actual organ donors;
+ Number of kidneys procured;
+ Number of kidneys transplanted;
+ Number of extrarenal organs by type procured; and
+ Number of extrarenal organs transplanted.

• We are making the following changes to proposed § 485.305:

—As discussed in section III of this preamble, we are defining "rules of the OPTN" rather than "rules and requirements of the OPTN."

—We are removing the sentence that reads "In order to be binding on hospitals participating in Medicare or Medicaid, the Secretary must have given formal approval to the rule or requirement." That statement is unnecessary, given our definition of "rules of the OPTN."

• As discussed in section III of this preamble, we are revising proposed § 485.306 to do the following:

—Specify the performance standards that OPOs must meet before January 1, 1996. The standards are those currently set forth at § 485.306 (a)(1) and (a)(2).

—Set forth performance standards (described in section III of this preamble) that OPOs must meet beginning January 1, 1996.
—Add that, for the purpose of measuring adherence to the performance standards, organs removed en bloc and transplanted en bloc, are counted as a single organ.
—Permit submission by the OPO of documentation to justify the use of an adjustment to compensate for a reduced population base.
—Grant an exception from some of the performance standards to OPOs operating outside the contiguous U.S.

Section 485.306 continues to require that each OPO enter into a working relationship with any hospital or transplant center in the OPO's service area that requests a working relationship.

• At § 485.308(a), we are inserting, with a minor revision, the language that, in the proposed rule, appeared in the definition for "open area" at § 485.302. In the third sentence, we replaced "terminate an OPO immediately" with "terminate an OPO's agreement with HCFA immediately". This reflects that it is the *agreement* that is terminated.

• We are restructuring § 485.309 for ease of reference.

• In addition to the above changes, minor editorial changes (that do not change the substance) have been made for clarification.

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis, unless the Secretary certifies that an interim final rule with comment will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all organ procurement organizations are considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if an interim final rule with comment may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This interim final rule with comment sets forth changes required by Public Law 100–607 and Public Law 101–616. Originally, section 402 of Public Law 101–607 revised section 371 of the Public Health Service Act (42 U.S.C. 273) to require the service area encompassed by an entity to be large enough that the OPO could reasonably expect to procure organs from not less than 50 donors each year. This change would have resulted in a substantial number of existing OPOs failing to meet this requirement. Public Law 101–616 amended the Public Health Service Act to require an OPO to have a defined service area that is of sufficient size to ensure maximum effectiveness in the procurement and equitable distribution of organs.

We expect that the implementation of the other provisions of this interim final rule with comment may cause some OPOs to accrue some additional costs. For example, new § 485.304(r) of the regulation will require an OPO to ensure that tests are performed on sera from prospective organ donors to prevent the acquisition of organs that are infected with the etiologic agent for AIDS. We believe, however, that any additional costs are minimal compared to the improvement these provisions will have on the quality of health care for organ recipients.

We have determined, and the Secretary certifies, that this interim final rule with comment will not have a significant effect on a substantial number of small entities. Also, OPOs (independent and hospital-based) are not considered small rural hospitals since OPOs generally service large geographical areas. Therefore, a regulatory flexibility analysis under the RFA and a rural impact analysis under section 1102(b) of the Act are not required.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VI. Information Collection Requirements

Regulations at §§ 485.303 (c)(2), (c)(4), (c)(7), and (c)(8), at §§ 485.304 (d), (o), (p), and (t), at §§ 485.305, 485.306, 485.309(a), and at §§ 485.311 (a)(1) and (e) contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements concern quantifiable data for submission to us that document an OPO's statement that its service area is of sufficient size to ensure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area or does not include any part of such an area. Public reporting burden for this collection of information is estimated to be 4,206 hours per submission. A notice will be published in the **Federal Register** after approval is obtained.

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on a rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

A. Part 405, subpart U, is amended as set forth below:

1. The authority citation for subpart U, part 405 is revised to read as follows:

Authority: Secs. 1102, 1138, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1320b–8, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. In § 405.2163, the introductory text is republished and paragraph (f) is revised to read as follows:

§ 405.2163 Condition: Minimal service requirements for a renal dialysis facility or renal dialysis center.

The facility must provide dialysis services, as well as adequate laboratory,

social, and dietetic services to meet the needs of the ESRD patient.

* * * * *

(f) *Standard: Participation in recipient registry.* The dialysis facility or center participates in a patient registry program with an OPO designated or redesignated under part 485, subpart D of this chapter, for patients who are awaiting cadaveric donor transplantation.

* * * * *

3. In § 405.2170 introductory text, "Renal Transplantation Center" is revised to "renal transplantation center".

4. In § 405.2171, the following changes are made:

a. In paragraphs (a) and (d)(1), "Renal Transplantation Center" is revised to "renal transplantation center".

b. The section heading, the introductory text, and paragraph (e) are revised to read as follows:

§ 405.2171 Condition: Minimal service requirements for a renal transplantation center.

Kidney transplantation is furnished directly by a hospital that is participating as a provider of services in the Medicare program and is approved by HCFA as a renal transplantation center. The renal transplantation center is under the overall direction of a hospital administrator and medical staff; if operated by an organizational subsidiary, it is under the direction of an administrator and medical staff member (or committee) who are directly responsible to the hospital administrator and medical staff, respectively. Patients are accepted for transplantation only on the order of a physician and their care continues under the supervision of a physician.

* * * * *

(e) *Standard: Organ procurement.* A renal transplantation center using the services of an organ procurement organization designated or redesignated under part 485, subpart D of this chapter to obtain donor organs has a written agreement covering these services. The renal transplantation center agrees to notify HCFA in writing within 30 days of the termination of the agreement.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

B. Part 482 is amended as set forth below:

1. The authority citation for part 482 is revised to read as follows:

Authority: Secs. 1102, 1138, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1320b–8, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396(a)).

2. In § 482.12, the introductory text for the section is revised; paragraph (c) introductory text is republished; and paragraph (c)(5)(ii) is revised, to read as follows:

§ 482.12 Condition of participation: Governing body.

The hospital must have an effective governing body legally responsible for the conduct of the hospital as an institution. If a hospital does not have an organized governing body, the persons legally responsible for the conduct of the hospital must carry out the functions specified in this part that pertain to the governing body.

* * * * *

(c) *Standard: Care of patients.* In accordance with hospital policy, the governing body must ensure that the following requirements are met:

* * * * *

(5) * * *

(ii) In the case of a hospital in which organ transplants are performed, the hospital must be a member of the Organ Procurement and Transplantation Network (OPTN) established and operated in accordance with section 372 of the Public Health Service (PHS) Act (42 U.S.C. 274) and abide by its rules. The term "rules of the OPTN" means those rules provided for in regulations issued by the Secretary in accordance with section 372 of the PHS Act. No hospital is considered to be out of compliance with section 1138(a)(1)(B) of the Act or with the requirements in this paragraph, unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the hospital from the OPTN and has notified the hospital in writing.

* * * * *

PART 485—CONDITIONS OF PARTICIPATION AND CONDITIONS FOR COVERAGE: SPECIALIZED PROVIDERS AND SUPPLIERS

C. Part 485 is amended as set forth below.

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102, 1138, 1861 (aa), and (cc) and 1871 of the Social Security Act (42 U.S.C. 1302, 1320b–8, 1395x (aa) and (cc), and 1395hh).

2. The heading of part 485 is revised to read as above.

3. Section 485.301 is revised to read as follows:

§ 485.301 Basis and scope.

This subpart sets forth the qualifications and requirements an organ procurement organization (OPO) must meet in order for the costs of its services in procuring organs for hospitals to be payable under Medicare and Medicaid. Its statutory basis is section 1138(b) of the Act.

4. In § 485.302, the introductory text for this section is republished, the definition of *service area* is revised, and three new definitions are added in alphabetical order as follows:

§ 485.302 Definitions.

As used in this subpart, the following definitions apply:

Certification or *recertification* means a HCFA determination that an entity meets the standards for a *qualified OPO* at § 485.303 of this subpart and is eligible for designation if it meets the additional conditions for designation at §§ 485.304 and 485.305. No payment ensues from certification alone.

Designation or *redesignation* means HCFA approval of an OPO for Medicare and Medicaid payment purposes under section 1138(b)(1)(F) of the Act. The terms are used interchangeably except when otherwise specifically indicated.

* * * * *

Open area means a service area for which HCFA has notified the public that it is accepting applications for designation.

* * * * *

Service area means a geographical area of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs and that either includes an entire standard metropolitan statistical area or does not include any part of such an area and that meets the standards of this subpart.

* * * * *

5. In § 485.303, a heading is added to paragraph (a), paragraphs (b) and (c) are revised, and new paragraphs (d) and (e) are added, to read as follows:

§ 485.303 Condition: Organ procurement organization designations—general.

(a) *Designation—a condition for payment.* * * *

(b) *Requirements for designated status.* To be the designated OPO for a service area, an entity must do the following:

(1) Submit to HCFA a written application for designation, using the application form prescribed by HCFA.

(2) Be certified as a qualified OPO.

(3) Participate in the Organ Procurement and Transplantation Network as specified in § 485.305.

(4) Enter into an agreement with HCFA that meets the requirements set forth in paragraph (c) of this section.

(5) Upon its initial designation, meet the requirements at § 485.306(a)(3) or § 485.306(b)(4), as appropriate, concerning working relationships with hospitals or transplant centers. During the initial designation period, the OPO is not required to demonstrate compliance with §§ 485.306(a)(1) and (a)(2) or § 485.306(b)(1), which set forth performance standards for OPOs.

(6) To be redesignated after an initial designation period, comply with all the requirements of this subpart, including those at § 485.306, which set forth performance standards for OPOs.

(7) Obtain HCFA approval before entering into any change of ownership, merger, consolidation, or change in its service area (see § 485.309, which sets forth requirements concerning approval for changes in ownership and service area). Failure to do so could result in termination.

(c) *Agreement with HCFA.* An OPO must enter into an agreement with HCFA. The agreement is effective upon submission by the OPO and acceptance by HCFA, but may be terminated by either party. If an OPO agreement is terminated, payment for organ procurement services attributable to that OPO will not be made for services furnished on or after the effective date of termination. In the agreement, the OPO must agree to do the following:

(1) Maintain compliance with the requirements of titles XVIII and XIX of the Act, section 1138 of the Act, and applicable regulations, including the conditions set forth in subpart D, part 485, and the regulations of the OPTN approved and issued by the Secretary, and to report promptly to the Secretary any failure to do so.

(2) File a cost report in accordance with § 413.24(f) of this chapter within 3 months after the end of each fiscal year.

(3) Permit HCFA to designate an intermediary to determine the interim payment rate payable to the transplant hospitals for services provided by the OPO and to make a determination of reasonable cost based on the cost report it files.

(4) Provide budget or cost projection information as may be required to establish an initial interim payment rate.

(5) Pay to HCFA amounts that have been paid by HCFA to transplant hospitals as Medicare payment for organ recovery fees and that are determined to be in excess of the reasonable cost of the services provided by the OPO.

(6) Not charge an individual for items or services for which that individual is entitled to have payment made under the Medicare program.

(7) Maintain and make available to HCFA, the Comptroller General, or their designees data that show the number of organs procured and transplanted.

(8) Maintain data in a format that can be readily continued by a successor OPO and turn over to HCFA copies of all records, data, and software necessary to ensure uninterrupted service by a successor OPO that may be designated for all or part of its service area. Records and data subject to this requirement include records on individual donors (including identifying data and data on organs retrieved), records on transplant candidates (including identifying data and data on immune system and other medical indications), and procedural manuals and other materials used in conducting OPO operations. Donor records must include at least information identifying the donor (for example, name, address, date of birth, social security number), the organs and tissues (when applicable) retrieved, date of the organ retrieval, and test results.

(d) *When OPOs may apply for designation.* Entities may apply for designation whenever a service area becomes an open area.

(e) *Designation periods*—(1) *General.* An OPO is normally designated for 2 years. A designation period may not exceed 2 years but may be shorter.

(2) *Redesignation.* Redesignation must occur at least every 2 years and be completed before the end of an existing designation period.

(3) *Interim designation.* HCFA may designate an organization for an interim designation period if the period is needed in order for HCFA to make a final designation determination.

(i) The interim designee may be either the OPO previously designated for the service area or another organization.

(ii) The interim designation period does not exceed 60 days after the normal designation period has expired.

(iii) The interim designee must meet all requirements of section 371(b) of the Public Health Service Act (42 U.S.C. 273(b)) regarding qualified OPOs and must not be out of compliance with the requirements of section 1138(b)(1) (B) through (E) of the Act regarding requirements for payment of organ procurement costs under title XVIII or title XIX of the Act.

6. In § 485.304, the following changes are made:

a. The semicolon at the end of the following paragraphs is removed and a period added in its place: paragraphs (a) through (c), (d)(1), (d)(2), (d)(4), (e), (f)(1) through (f)(3), (f)(5), (g)(2), (h), (j) through (n).

The semicolon and the word "and" at the end of the following paragraphs are removed and a period added in their place: paragraphs (d)(3), (f)(4), and (o).

b. The introductory text of the section and paragraph (d) introductory text are revised; paragraphs (d)(1) through (d)(4) are redesignated as paragraphs (d)(3)(i) through (d)(3)(iv), respectively; new paragraphs (d)(1), (d)(2), and (d)(3) introductory text are added; paragraph (f) introductory text and paragraphs (f)(3) and (i) are revised; and new paragraphs (r) through (t) are added, to read as follows:

§ 485.304 Condition: Qualifications required of an organization for it to be a designated organ procurement organization.

To be designated as the OPO for a service area, an organization must, at the time of application and throughout the period of its designation, meet the following requirements:

* * * * *

(d) Make available to HCFA documentation of its service area, as specified in paragraph (d)(3) of this section, that shows it meets the requirements of paragraphs (d)(1) and (d)(2) of this section.

(1) The area is of sufficient size to ensure maximum effectiveness in the procurement and equitable distribution of organs.

(i) Before January 1, 1996, an entity must demonstrate that it can procure organs from at least 50 potential donors per calendar year or that its service area comprises an entire State.

(ii) Beginning January 1, 1996, an OPO must meet at least one of the following requirements:

(A) Its service area must include an entire State.

(B) It must procure organs from an average of at least 24 donors per calendar year in the 2 years before the year of designation.

(C) In the case of an OPO operating in a noncontiguous U.S. State, a U.S. territory, or a U.S. commonwealth, such as Hawaii and Puerto Rico, it must procure organs at the rate of 50 percent of the national average of all OPOs for kidney procurement per million population and for kidney transplantation per million population.

(D) If it is an entity that has not been previously designated as an OPO, it must demonstrate that it can procure organs from at least 50 potential donors per calendar year.

(2) The area either includes an entire metropolitan statistical area or does not include any part of such an area.

(3) Documentation that precisely defines the proposed service area includes the following:

* * * * *

(f) Have a board of directors or an advisory board that has the authority to recommend policies relating to the donation, procurement, and distribution of organs. While an OPO may have more than one board, the members specified in paragraphs (f)(1) through (f)(5) of this section must be members of a single board. The board of directors or advisory board must include the following:

* * * * *

(3) A physician with knowledge, experience, or skill in the field of human histocompatibility, or an individual with a doctorate degree in a biological science and with knowledge, experience, or skills in the field of human histocompatibility.

* * * * *

(i) Have a system to equitably allocate donated organs among transplant patients that is consistent with Centers for Disease Control and Prevention (CDC) standards and with OPTN rules.

* * * * *

(r) Assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.

(s) Ensure donors are tested for human immunodeficiency virus reactivity consistent with OPTN rules and CDC guidelines for solid organ donation.

(t) Submit accurate data to HCFA within 15 days following the end of a calendar year (unless otherwise notified) giving information on the following:

(1) Population of designated service area based on the most recent U.S. Bureau of the Census data.

(2) Number of actual donors.

(3) Number of kidneys procured.

(4) Number of kidneys transplanted.

(5) Number of extrarenal organs by type procured.

(6) Number of extrarenal organs by type transplanted.

7. Section 485.305 is revised to read as follows:

§ 485.305 Condition: Organ Procurement and Transplantation Network participation.

In order to be designated as the OPO for its service area, and to continue to be the designated OPO once designated, an OPO must be a member of, have a written agreement with, and abide by the rules of the OPTN established and operated in accordance with section 372 of the Public Health Service (PHS) Act (42 U.S.C. 274). The term "rules of the OPTN" means those rules provided for in regulations issued by the Secretary in accordance with section 372 of the PHS Act. No OPO is considered to be out of compliance with section 1138(b)(1)(D) of the Act or this section unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the entity from the OPTN and also has notified the entity in writing.

8. Section 485.306 is revised to read as follows:

§ 485.306 Condition: Performance standards for organ procurement organizations.

For the purpose of measuring OPOs' adherence to the performance standards in this section, organs removed en bloc and transplanted en bloc, such as a pair of kidneys or lungs, are counted as a single organ.

(a) Before January 1, 1996, OPOs must meet the following performance standards:

(1) Each OPO must procure within its service area a minimum ratio of 23 cadaveric kidneys per million population of its service area for each 12-month period surveyed.

(2) Each OPO must provide a minimum ratio of cadaveric kidneys procured in its service area and transplanted (either locally or exported and transplanted) of 19 cadaveric kidneys per million population of its service area for each 12-month period surveyed.

(3) Each OPO must enter into a working relationship with any hospital or transplant center in the OPO's service area that requests a working relationship.

(b) Beginning January 1, 1996, OPOs must meet the following performance standards:

(1) Each OPO must achieve at least 75 percent of the national mean for four of the five performance categories specified in paragraphs (b)(1)(i) through (b)(1)(v) of this section averaged over 2 calendar years before the year of redesignation. The performance categories follow:

(i) Actual donors per million population.

(ii) Number of kidneys recovered per million population.

(iii) Extrarenal organs recovered per million population.

(iv) Number of kidneys transplanted per million population.

(v) Number of extrarenal organs transplanted per million population.

(2) Each OPO must procure organs from an average of at least 24 donors per calendar year in the 2 calendar years before the year of redesignation.

(3) Each OPO must maintain an average procurement ratio of three organs per donor.

(4) Each OPO must enter into a working relationship with any hospital or transplant center in the OPO's service area that requests a working relationship.

(c)(1) If, after designation, an OPO does not meet the performance standards listed in paragraph (a), paragraph (b)(2), or paragraph (b)(3) of this section, it may submit a corrective action plan explaining why the standard or standards were not met and setting forth actions it will take to ensure it meets those standards in the future. Corrective action plans must be submitted to the appropriate HCFA regional office. A corrective action plan will not be accepted for failure to meet the primary performance standard, that is, the standard set forth at § 485.306(b)(1).

(2) An OPO may submit corrected information, within 30 days from the date it was notified that it failed to meet the performance standards (such as an adjustment to its population base to account for hospitals that may affiliate with an OPO outside the service area).

(3) If an OPO does not meet the performance standards listed in paragraph (a), paragraph (b)(2), or paragraph (b)(3) of this section, or, if it believes its population base has been affected by another OPO's having an agreement with one or more hospitals in its service area, the OPO may provide documentation to HCFA that may justify use of an adjustment to compensate for the reduced population base.

(d) OPOs operating in a noncontiguous U.S. State, a U.S. territory, or a U.S. commonwealth, such as Hawaii and Puerto Rico, may be granted an exception from the performance standards listed in paragraphs (a)(1), (a)(2), and (b)(1) through (b)(3) of this section because of special geographically-related characteristics, such as difficulty in transporting organs to the mainland, that impede satisfaction of the national rate of organ procurement. Nonetheless, they must meet the performance standard in paragraph (a)(3) or paragraph (b)(4) of this section. Beginning January 1, 1996, they must meet a standard of 50 percent of the national average of all OPOs for kidneys recovered and transplanted per million population.

(e) An OPO that has not previously been designated by HCFA for a particular service area is exempt from meeting the performance standards in paragraphs (b)(1) and (b)(2) of this section for its first 2 years of designation

as the OPO for that area. The performance standards are used to measure the OPO's qualifications to be designated or redesignated beginning 2 years after the OPO has been first designated for any portion of a service area.

9. Section 485.307 is revised to read as follows:

§ 485.307 Failure to meet requirements.

Failure to continue to meet any of the requirements in §§ 485.304 and 485.305 or to meet the performance standards in § 485.306(a) and (b) may result in termination of the OPO's agreement with HCFA.

10. In § 485.308, paragraph (a) introductory text is revised to read as follows:

§ 485.308 Designation of one OPO for each service area.

(a) HCFA designates only one OPO per service area. Applications for designation are accepted only during a period when the service area is an open area. A service area is open for competition once the existing designation period has expired, when the existing designated status of the OPO for that service area has been terminated, or when no OPO has been designated for the area. HCFA may also declare the service area open in the event an OPO ceases to operate or HCFA has reasonable ground for anticipating it will cease to operate. In cases of urgent need (such as evidence of medically or ethically unsound practices), HCFA may terminate its agreement with an OPO immediately. The service area remains open until an OPO is designated for it. If more than one organization applies and substantially meets the requirements of § 485.304 in a given service area, HCFA considers other factors in reaching a decision concerning which organization to designate. These factors follow:

* * * * *

11. A new § 485.309 is added to read as follows:

§ 485.309 Changes in ownership or service area.

(a) *OPO requirements.* (1) A designated OPO considering a change in ownership or in its service area must notify HCFA before putting it into effect. This notification is required to ensure that the entity, as changed, will continue to satisfy Medicare and Medicaid requirements. A change in ownership takes place if there is the merger of one entity into another or the consolidation of one entity with another.

(2) A designated OPO considering a change in its service area must obtain prior HCFA approval. In the case of a service area change that results from a change of ownership due to merger or consolidation, the entities must submit anew the information required in an application for designation, or other written documentation HCFA determines to be necessary for designation.

(b) *HCFA requirements.* (1) If HCFA finds that the entity has changed to such an extent that it no longer satisfies the prerequisites for OPO designation, HCFA may terminate the OPO's agreement and declare the OPO's service area to be an open area.

(2) If HCFA finds that the changed entity continues to satisfy the prerequisites for OPO designation, the period of designation of the changed entity is the remaining designation term of the OPO that was reorganized. If more than one designated OPO is involved in the reorganization, the remaining designation term is ordinarily the longest of the remaining periods. HCFA may determine, however, that a shorter period applies if it decides that a shorter period is in the best interest of the Medicare and Medicaid programs. The performance standards of § 485.306 apply at the end of this remaining period.

12. A new § 485.311 is added to read as follows:

§ 485.311 Terminations.

(a) *Types*—(1) *Voluntary termination.* If an OPO wishes to terminate its agreement, it must send written notice of its intention with the proposed effective date to HCFA. HCFA may approve the proposed date, set a different date no later than 6 months after the proposed effective date, or set a date less than 6 months after the proposed date if it determines that it would not disrupt services to the service area or otherwise interfere with the effective and efficient administration of the Medicare and Medicaid programs. If HCFA determines that a designated OPO has ceased to furnish organ procurement services to its service area, the cessation of services is deemed to constitute a voluntary termination by the OPO, effective on a date determined by HCFA.

(2) *Involuntary termination.* HCFA may terminate an agreement if it finds that an OPO no longer meets the conditions for coverage in this subpart, or is not in substantial compliance with any other applicable Federal regulations or provisions of titles XI, XVIII, or title XIX of the Act. HCFA may also terminate an agreement immediately in cases of urgent need, such as the discovery of unsound medical practices.

(b) *Notice to OPO.* HCFA gives notice of termination to an OPO at least 15 days before the effective date stated in the notice.

(c) *Appeal right.* The OPO may appeal the termination in accordance with the provisions set forth in part 498, which sets forth appeals procedures for determinations that affect participation in the Medicare and Medicaid programs.

(d) *Effects of termination.* When an OPO agreement is terminated—

(1) Medicare and Medicaid payments may not be made for organ procurement services the OPO furnishes on or after the effective date of termination; and

(2) HCFA will accept applications from any entity to be the designated OPO for that area.

(e) *Public notice.* In the case of voluntary termination, the OPO must give prompt public notice of the date of termination, and such information regarding the effect of that termination as HCFA may require, through publication in local newspapers in the service area. In the case of involuntary termination, HCFA gives notice of the date of termination.

(f) *Reinstatement.* HCFA may, at its discretion, designate an OPO whose agreement was previously terminated if HCFA finds that the cause for termination has been removed, is satisfied that it is not likely to recur, has not designated another OPO for the service area, and finds that the OPO meets all the necessary requirements for designation.

(Catalog of Federal Domestic Assistance Programs No 93.774, Medicare Supplementary Medical Insurance, and No. 13.714, Medical Assistance Program)

Dated: November 2, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 16, 1994

Donna E. Shalala,

Secretary.

[FR Doc. 94–21993 Filed 9–7–94; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Thursday
September 8, 1994

Part III

Department of the Interior

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal Consultation Meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning potential issues in Indian education programs. The potential issues which will be set forth in a tribal consultation booklet to be issued prior to the meetings are as follows:

1. Indian School Equalization Program (ISEP)
2. Johnson O'Malley—Tribal Priority Allocation
3. Open Discussion
4. Memorandum of Agreement Between Departments of Interior and Education (As required by H.R. 6)
5. 46 BIAM—Facilities Management

DATES: October 13, 17, 19, 21, 24, 26, and 28, 1994 for all locations listed. Several dates and locations were scheduled to coincide with meetings of various Indian education organizations. All meetings will begin at 9:00 A.M. and continue until 3:00 P.M. (local time). Written comments concerning the consultation items must be received no later than November 18, 1994.

ADDRESSES:

Location	Local contact	Telephone
	October 13, 1994	
South Dakota, Aberdeen	Neva Sherwood	(605) 856–4478
	October 17, 1994	
Minnesota, St. Paul	Mary Hilfiker	(612) 373–1090
	October 19, 1994	
Montana, Billings	Larry Parker	(406) 657–6375
Oklahoma, Tulsa	Jim Baker	(405) 945–6051
	October 21, 1994	
Georgia, Atlanta	Kimberly Marciano	(703) 235–3233
	October 24, 1994	
Alaska, Anchorage	Robert Pringle	(907) 271–4115
Arizona, Phoenix	John Wahnee	(602) 738–2262
	October 26, 1994	
Washington, Seattle	Van Peters	(503) 230–5682
New Mexico, Gallup	Lester Hudson	(505) 368–4427
	October 28, 1994	
California, Sacramento	Fayetta Babby	(916) 978–4680
New Mexico, Albuquerque	Juanita Cata	(505) 753–1465

Written comments should be mailed, to be received, on or before November 30, 1994, to the Bureau of Indian Affairs, Office of Indian Education Programs, MS–3512–MIB, OIE–32, 1849 C Street, NW, Washington, D.C. 20240, Attn: Dr. John Tippeconnic; OR, may be hand delivered to Room 3512 at the same address. Comments may also be telefaxed to (202) 219–0221.

FOR FURTHER INFORMATION CONTACT: John Tippeconnic or Jim Martin at the above address or call (202) 208–6123 or 208–3550.

SUPPLEMENTARY INFORMATION: The meetings are a follow-up to similar meetings conducted by the BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education programs. A consultation booklet for the October meetings is being distributed to Federally recognized Indian Tribes, Bureau Area and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons and at each meeting.

Dated: August 25, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–22052 Filed 9–7–94; 8:45 am]

BILLING CODE 4310–02–P

Federal Register

Thursday
September 8, 1994

Part IV

Department of Energy

10 CFR Part 1008

Privacy Act of 1974; Implementation and System or Records; Proposed Rule and Notice

DEPARTMENT OF ENERGY

10 CFR Part 1008

Records Maintained on Individuals (Privacy Act)

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its Privacy Act regulations by adding two systems of records to the list of systems exempted from certain subsections of the Act. Exemption from certain subsections is needed to enable the Office of Counterintelligence to perform its duties and responsibilities. These include detering and neutralizing foreign industrial and intelligence activities in the United States that are directed at or involving the DOE, conducting administrative counterintelligence investigations, participating in law enforcement counterintelligence investigations with the Federal Bureau of Investigation (FBI) and other Federal agencies, performing analyses and producing intelligence on counterintelligence matters, and briefing and debriefing individuals regarding DOE foreign contacts and travel. These duties and responsibilities are carried out pursuant to Executive Order 12333, *the Department of Energy Procedures for Intelligence Activities,* and DOE Order 5670.3, "Counterintelligence Program."

DATES: Written comments should be made on or before October 11, 1994.

ADDRESSES: Written comments should be directed to: Denise B. Diggin, Chief, Freedom of Information and Privacy Acts Branch, U.S. Department of Energy, HR–831, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Department of Energy, Denise B. Diggin (Privacy Act Officer), (202) 586–6020, Charles Washington (Program Officer), (202) 586–5333, or Abel Lopez (Principal Attorney-Advisor), (202) 586–8618.

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. National Environmental Policy Act
IV. Public Comments

I. Background

Pursuant to the Privacy Act of 1974 (as amended) (5 U.S.C. 552a (j) and (k)), the Secretary of Energy is authorized to promulgate rules to exempt any system of records within the agency from certain subsections of the Act. Accordingly, two new systems of records are added to the list of systems exempted from certain subsections of the Act.

The purpose of these rules is to amend the DOE's Privacy Act regulations to enable the Office of Counterintelligence to carry out its administrative, analytical, and law enforcement duties and responsibilities.

II. Analysis

DOE proposes to exempt two systems of records from certain subsections of the Privacy Act (5 U.S.C. 552a). The first system of records, Counterintelligence Administrative and Analytical Records and Reports (DOE–81), will be exempt from certain Privacy Act provisions pursuant to subsections (k) (1), (2), and (5). The second system of records, Counterintelligence Investigative Records (DOE–84), shall be exempt from certain provisions pursuant to subsections (j)(2), (k) (1), (2), and (5), to the extent that information within the systems meets the requirements of those subsections of the Act.

DOE–81 will be exempted from subsections (c) (3) and (4), (d), (e)(1), (e)(4) (G) and (H), and (f) of 5 U.S.C. 552a, to the extent the information in this system of records is exempt pursuant to 5 U.S.C. 552a(k) (1), (2), or (5).

DOE–84 will be exempted from subsections (c) (3) and (4), (d), (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(8), (f) and (g) of 5 U.S.C. 552a. To the extent the information in DOE–84 is exempt pursuant to 5 U.S.C. 552a(k) (1), (2), and (5), this system has been further exempted from subsections (c) (3) and (4), (d), (e)(1), (e)(4)(G) and (H), and (f) of 5 U.S.C. 552a.

Administrative and Analytical Records and Reports (DOE–81) Exemptions

Subsection (k)(1) Exemption

Under subsection (k)(1) of the Privacy Act, records may be exempted which are "specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order," 5 U.S.C. 552(b)(1)(A). To the extent that records in this system are classified pursuant to the Executive Order, they may not be disclosed. Therefore, this exemption will apply to all such information.

Subsection (k)(2) Exemption

Subsection (k)(2) permits the exemption of investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* that if any individual is denied any right, privilege, or benefit to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to Septemeber 27, 1975, under an implied promise that the identity of the source would be held in confidence.

Subsections Exempt Pursuant to (k)(2)

(1) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an administrative inquiry or investigation to the existence of the investigation or that such persons are subjects of that investigation. Since release of such information to subjects of an inquiry or investigation would provide the subjects with significant information concerning the nature of the inquiry or investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise an investigation.

(2) 5 U.S.C. 552a(d), (e)(4) (G) and (H), and (f) relate to the following: An individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and agency procedures relating to access to records and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could (1) Interfere with, undermine, and jeopardize administrative inquiries or investigations by revealing such

sensitive activities, alerting the subject(s) of such inquiries or investigations, and result in the concealment or destruction of documentary evidence; (2) reveal the identity of sources who furnished information to the Government under an express promise that the identity of the source would be held in confidence; and (3) result in adverse conditions for, or harm to, individuals involved in such activities.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by a statute or Executive Order. An exemption from the foregoing is needed when:

a. It is not always possible to detect relevance or necessity of specific information in the early stages of an administrative inquiry or investigation involving national security matters.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any administrative inquiry or investigation information may be obtained concerning violations of laws other than those within the scope of the ongoing inquiry or investigation. In the interest of effective law enforcement, such information should be retained for dissemination to appropriate law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons or obtaining information from other sources during an administrative inquiry or investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the inquiry or investigation but which also relates to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Subsection (k)(5) Exemption

The (k)(5) exemption is for investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. In general, information subject to this system of records would meet this exemption where it is compiled for the purpose of determining or limiting an individual's access to sensitive and/or classified information. In other cases it may appropriately be compiled for the other enumerated purposes.

The (k)(5) exemption applies only to the extent that disclosure would reveal the identity of a source who furnished information under an express promise of confidentiality. Where this is the case, the (k)(5) exemption is applicable as follows:

Subsections Exempt Pursuant to (k)(5)

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. Release of such information to subjects of an administrative inquiry or investigation could provide the subjects with significant information concerning the nature of the investigation, including the identity of sources expressly promised confidentiality. To the extent that such an accounting would lead directly or indirectly to the disclosure of the identity of a source as described above, the (k)(5) exemption is applicable.

(2) 5 U.S.C. 552(d),(e)(4) (G) and (H), and (f) relate to the following: An individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the content of information contained in such records. To the extent that application of these provisions would result in the disclosure of the identity of a source expressly promised confidentiality, this system is exempt from the foregoing provisions. To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could disclose the identity of confidential sources and could reveal confidential information supplied by those sources.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. Information may be compiled at different stages of an administrative inquiry or investigation for different purposes. Information may be compiled during the course of an inquiry or investigation that has a bearing upon one or more of the categories specified in 5 U.S.C. 552a(k)(5). Any information compiled solely for one of those purposes—e.g., determining access to sensitive and/or classified information—is properly subject to the (k)(5) exemption when it reveals confidential sources and/or confidential information. Moreover, an exemption from 5 U.S.C. 552a(e)(1) is appropriate to the extent (k)(5) is applicable because:

a. It is not always possible to detect relevance or necessity of specific information in the early stages of an inquiry or investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any administrative inquiry or investigation information may be obtained concerning violations of laws other than those within the scope of the inquiry or investigation. This information should be retained for dissemination to appropriate law enforcement agencies.

d. In interviewing persons, or obtaining other information during an inquiry or investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation, but which may also relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Law Enforcement Investigative Records (DOE–84) Exemptions

The detailed reasons for DOE 84 exemptions under 5 U.S.C. 552a (j)(2), (k) (1), (2) and (5) are as follows:

General Exemption, Subsection (j)(2)

This system covers records developed by the Office of Counterintelligence (OCI) or received by the OCI from other law enforcement agencies in the course of an investigation in conjunction with the FBI or other authorized law enforcement agency. The exemptions are applicable to the extent the information in the records is subject to the (j)(2) exemption of the Privacy Act, 5 U.S.C. 552a(j)(2).

Subsections Exempt Pursuant to (j)(2)

(1) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each

disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation or that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the alteration or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(c)(4), (d), e(4) (G) and (H), (f) and (g) relate to the following: An individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; agency procedures relating to access to records and the content of information contained in such records; and that such persons are subjects of that investigation. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could (1) Interfere with, undermine, and jeopardize administrative inquiries or investigations by revealing such sensitive activities, alerting the subject(s) of such inquiries or investigations, and result in the concealment or destruction of documentary evidence; (2) reveal the identity of sources who furnished information to the Government under an express promise that the identity of the source would be held in confidence; and (3) result in adverse conditions for, or harm to, individuals involved in such activities.

(3) 5 U.S.C. 552a(d), (e)(4) (G) and (H), and (f) relate to the following: An individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and agency procedures relating to access to records and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could (1) Interfere with, undermine, and jeopardize administrative inquiries or investigations by revealing such sensitive activities, alerting the subject(s) of such inquiries or investigations, and result in the concealment or destruction of documentary evidence; (2) reveal the identity of sources who furnished information to the Government under an express promise that the identity of the source would be held in confidence; and (3) result in adverse conditions for, or harm to, individuals involved in such activities through retribution.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed because:

a. It is not possible to detect relevance or necessity of specific information in the early stages of an investigation involving national security matters.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Office of Counterintelligence may obtain information concerning violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Office of Counterintelligence should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which also relates to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) 5 U.S.C. 552a(e)(2) requires that agencies collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The subsection (j)(2) general exemption for criminal law enforcement information permits further exemption from this requirement precisely because it is an inappropriate requirement for criminal investigations. Clearly, to limit the source of information in a criminal investigation to the subject of the investigation would hamper and compromise the investigation.

(6) 5 U.S.C. 552a(e)(3) requires that the collecting agency advise each individual from whom it collects information of the authority for collecting the information, the principal purpose for the solicitation, the routine uses and the effect on the individual of not providing the information. Again, as the subsection (j)(2) general exemption recognizes, this requirement is not appropriate in a criminal investigation. The disclosure of such information in an investigation could often compromise the investigation; exemption from this requirement is therefore appropriate.

(7) 5 U.S.C. 552a(e)(8) requires that the agency serve notice on the individual when any record on such individual is made available under compulsory legal process when such process becomes a matter of public record. In an ongoing criminal investigation it may be necessary to withhold such notice to the subject individual in order to avoid compromising the investigation. This further exemption is therefore appropriate under the subsection (j)(2) general exemption.

(8) 5 U.S.C. 552a(g) provides for civil remedies when an agency fails to comply with subsection (d), 5 U.S.C. 552a(d). Inasmuch as this system is exempt from subsection (d), exemption from this civil remedies subsection is also appropriate.

Specific Exemptions, Subsections (k) (1), (2) and (5)

Subsection (k)(1), 5 U.S.C. 552a(k)(1), permits an agency head to exempt those systems of records which are "specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order." See 5 U.S.C. 552(b)(1)(A). Subsection (k)(2), 5 U.S.C. 552a(k)(2), allows the exemption of records compiled in the course of an investigation of an alleged or suspected violation of laws and regulations. Subsection (k)(5), 5 U.S.C. 552a(k)(5), allows the exemption of "investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the

source would be held in confidence, or, prior to the effective date of [the section], under an implied promise that the identity of the source would be held in confidence."

The detailed reasons for the exemptions under 5 U.S.C. 552a(k) (1), (2) and (5) are as follows:

Subsection Exemption (k)(1)

Under subsection (k)(1) of the Privacy Act, records may be exempted which are "specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order." 5 U.S.C. 552(b)(1)(A). To the extent that records in this system are so classified, they may not be disclosed. Therefore, this exemption will apply to all such information.

Subsection Exemption (k)(2)

Subsection (k)(2) permits the exemption of investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* that if any individual is denied any right, privilege, or benefit to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

Subsections Exempt Pursuant to (k)(2)

(1) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation or that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(d), (e)(4) (G) and (H), and (f) relate to the following: An individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and agency procedures relating to access to records and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could (1) Interfere with, undermine, and jeopardize administrative inquiries or investigations by revealing such sensitive activities, alerting the subject(s) of such inquiries or investigations, and result in the concealment or destruction of documentary evidence; (2) reveal the identity of sources who furnished information to the Government under an express promise that the identity of the source would be held in confidence; and (3) result in adverse conditions for, or harm to, individuals involved in such activities.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by a statute or Executive Order. An exemption from the foregoing is needed because:

a. It is not always possible to detect relevance or necessity of specific information in the early stages of an investigation involving national security matters.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In an investigation information may be obtained concerning violations of laws other than those within the scope of the ongoing investigation. In the interest of effective law enforcement, such information should be retained for dissemination to appropriate law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons or obtaining information from other sources during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which also relates to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Subsection Exemption (k)(5)

The (k)(5) exemption is for investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. In general, information subject to this system of records would meet this exemption where it is compiled for the purpose of determining or limiting an individual's access to classified information. In other cases it may appropriately be compiled for the other enumerated purposes. The (k)(5) exemption applies only to the extent that disclosure would reveal the identity of a source who furnished information under an express promise of confidentiality. Where this is the case, the (k)(5) exemption is applicable as follows:

Subsections Exempt Pursuant to (k)(5)

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. Release of such information to subjects of an investigation could provide the subjects with significant information concerning the nature of the investigation, including the identity of sources expressly promised confidentiality To the extent that such an accounting would lead directly or indirectly to the disclosure of the identity of a source as described above, the (k)(5) exemption is applicable.

(2) 5 U.S.C. 552a (c)(4), (d), e(4) (G) and (H), (f) and (g) relate to the following: An individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; agency procedures relating to access to records and the content of information contained in such records; and that such persons are subjects of that investigation. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such

individual or to grant access to an investigative file could (1) Interfere with, undermine, and jeopardize administrative inquiries or investigations by revealing such sensitive activities, alerting the subject(s) of such inquiries or investigations, and result in the concealment or destruction of documentary evidence; (2) reveal the identity of sources who furnished information to the Government under an express promise that the identity of the source would be held in confidence; and (3) result in adverse conditions for, or harm to, individuals involved in such activities.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. Information may be compiled at different stages of an investigation for different purposes. Information may be compiled during the course of an investigation that has a bearing upon one or more of the categories specified in 5 U.S.C. 552a(k)(5). Any information compiled solely for one of those purposes—e.g., determining access to sensitive and/or classified information—is properly subject to the (k)(5) exemption when it reveals confidential sources and/or confidential information. Moreover, an exemption from 5 U.S.C. 552a(e)(1) is appropriate to the extent (k)(5) is applicable because:

a. It is not always possible to detect relevance or necessity of specific information in the early stages of an investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In an investigation information may be obtained concerning violations of laws other than those within the scope of the investigation. This information should be retained for dissemination to appropriate law enforcement agencies.

d. In interviewing persons, or obtaining other information during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation, but which may also relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

See the DOE's Privacy Act Regulations at 10 CFR 1008.12(b). Section 1008.12(b) applies to information in the system that meets the criteria of the (j)(2), (k) (2), (3), and (5) exemptions.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and 2(b), including eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The DOE certifies that today's proposed rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any proposed rule which is likely to have a significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. The DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule will not affect States, or the relationship between the Federal Government and the States, in any direct way.

F. National Environmental Policy Act

The DOE has concluded that this proposed rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) (1976) or the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and, therefore, does not require an environmental assessment pursuant to NEPA.

IV. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed amendments to the DOE Privacy Act regulations as set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Freedom of Information Public Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the **DATES** section of this notice will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to

determine the confidential status of the information and to treat it according to that determination.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or business. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedures Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Part 1008

Privacy.

For the reasons set forth in the preamble, part 1008 of title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on August 31, 1994.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

1. The authority citation continues to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, Executive Order 12091, 42 FR 46267, Privacy Act of 1974, Pub. L. 93–579 (5 U.S.C. 552a).

2. Section 1008.12 is amended by adding paragraphs (a)(2)(ii); (b)(1)(ii) (I) and (J); (b)(2)(ii) (K) and (L); and (b)(3)(ii) (M) and (N) to read as follows:

§ 1008.12 Exemptions.

(a) * * *

(2) * * *

(ii) *Law Enforcement Investigative Records (DOE–84).* This system of records is being exempted pursuant to subsection (j)(2) of the Act to enable the Office of Counterintelligence to carry out its duties and responsibilities as they pertain to its law enforcement function. The system is exempted from subsections provisions for the following reasons: notifying an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or granting access to an investigative file could interfere with investigative and enforcement proceedings and with co-defendants' right to a fair trial; disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(b) * * *

(1) * * *

(ii) * * *

(I) Administrative and Analytical Records and Reports (DOE–81).

(J) Law Enforcement Investigative Records (DOE–84).

(2) * * *

(ii) * * *

(K) Administrative and Analytical Records and Reports (DOE–81).

(L) Law Enforcement Investigative Records (DOE–84).

(3) * * *

(ii) * * *

(M) Administrative and Analytical Records and Reports (DOE–81).

(N) Law Enforcement Investigative Records (DOE–84).

* * * * *

[FR Doc. 94–22159 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974: Proposed Establishment of a New System of Records

AGENCY: Department of Energy (DOE).

ACTION: Notification of intent to create a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, DOE is required to publish a notice in the **Federal Register** of a proposed system of records. The Department of Energy proposes to establish a new system of records entitled, "Counterintelligence Administrative and Analytical Records and Reports" to maintain administrative records of DOE and contractor employees, consultants and certain other persons related to foreign travel, foreign contacts and administrative inquiries and investigations. The purpose of the system is to permit the Department of Energy to perform its duties as they pertain to counterintelligence, pursuant to Executive Order 12333, the *Department of Energy Procedures for Intelligence Activities,* and DOE Order 5670.3, "Counterintelligence Program." The records in this system will be used to analyze DOE counterintelligence activities, including administrative inquiries and investigations to identify and neutralize foreign intelligence threats to classified and sensitive DOE programs, information and activities, reports on foreign contacts, incidents and travel, and other related counterintelligence activities.

DOE also proposes to establish routine uses that will provide access to these records by DOE contractors, the Federal Bureau of Investigation (FBI), and other authorized Federal agencies. The description of individuals covered by this system is set forth in the proposed Notice.

System reports have been submitted to the Speaker of the House, the President of the Senate, and the Director of the Office of Management and Budget (OMB), in accordance with subsection 552a(r) of the Privacy Act and paragraph 4b(2) of Appendix I to OMB Circular No. A–130. The OMB requires that a system report be distributed no later than 60 days prior to the implementation of the announcement of a new system of records.

DATES: The new system of records will become effective without further notice on October 18, 1994, unless comments are received on or before that date which would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Denise B. Diggin, Chief, Freedom of Information and Privacy Acts Branch, U.S. Department of Energy, HR–831, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Department of Energy, Denise B. Diggin, Chief, Freedom of Information and Privacy Acts Branch, HR–831, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–5955.

Department of Energy, Charles E. Washington, Office of Counterintelligence, NN–20, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–5333.

Department of Energy, Abel Lopez, Office of General Counsel, GC–80, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–8618.

SUPPLEMENTARY INFORMATION: DOE proposes to exempt this system from subsections (k) (1), (2) and (5) of the Privacy Act, 5 U.S.C. 552a, to the extent that information within the system meets the requirements of those subsections of the Act. The system will further be exempted from subsections (c) (3) and (4), (d), (e) (1), (e)(4) (G) and (H), and (f) of 5 U.S.C. 552a under the Privacy Act of 1974, to the extent the information in this system of records is exempt pursuant to 5 U.S.C. 552a(k) (1), (2) and (5). See DOE Privacy Act Regulations at 10 CFR Part 1008.12(b).

The text of the system notice is set forth below.

Issued in Washington, DC, on August 31, 1994.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE–81

SYSTEM NAME:

Counterintelligence Administrative and Analytical Records and Reports

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 8, 11, 12, 15, 16, and 17 in Appendix A, and the following additional locations:

—U.S. Department of Energy, Office of Counterintelligence, Headquarters, Forrestal Building, Washington, DC 20585

—U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544

—U.S. Department of Energy, Pinellas Area Office, P.O. Box 11500, St. Petersburg, FL 33733

—U.S. Department of Energy, Sandia Area Office, P.O. Box 5400, Albuquerque, NM 87115

—National Security Technology, Pacific Northwest Laboratory

—Nonproliferation, Arms Control, and International Security Directorate, Lawrence Livermore National Laboratory

—International Technology Division, Los Alamos National Laboratory

—Systems Research Center (5900), Sandia National Laboratory, Albuquerque

—International Technology Programs Division, Oak Ridge K–25 Site

—Special Programs Group (SRTC), Savannah River Laboratory

—Defense Programs Technology, Idaho National Engineering Laboratory

—Special Technologies Laboratory (STL), Santa Barbara

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE employees, contractor employees, and consultants; persons suspected of violating DOE regulations or laws; and, where there are indications of contact with a current or former DOE employee, contractor employee or consultant, persons who are:

a. Reasonably believed to be officers or employees of, or otherwise acting for or on behalf of, a foreign power;

b. Members of an organization reasonably believed to be owned or controlled directly or indirectly by, a foreign power;

c. Reasonably believed to be targets, hostages, or victims of international terrorist organizations; or

d. Reasonably believed to be engaged in or about to engage in clandestine intelligence activities, sabotage, assassinations, or international terrorist activities involving DOE programs, personnel, facilities, information or materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Analytical, training and investigative records, reports and files; travel reports; reports on foreign contacts; records, reports and files received from other DOE elements and other Federal agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Atomic Energy Act of 1954, as amended; Department of Energy Organization Act, including

authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12333; Federal Personnel Manual, Chapters 731 and 736.

PURPOSE(S):

Pursuant to E.O. 12333, the *Department of Energy Procedures for Intelligence Activities,* and DOE Order 5670.3, the records in this system are used in furtherance of the responsibilities of the Office of Counterintelligence (OCI), which include analysis of the foreign intelligence threat; conducting administrative inquiries and investigations to identify and neutralize the foreign intelligence threat to classified and sensitive DOE programs, personnel, information and activities; reporting on foreign contacts and travel, including briefings and debriefings; conducting counterintelligence investigations and producing intelligence on hostile and foreign intelligence entities; counterintelligence related training; and other activities relating to OCI's responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system will be used by the Office of Counterintelligence for administrative and analytical purposes. Information maintained in this system of records shall be disclosed to:

—The FBI when such records indicate a violation or probable violation of the law;

—Other counterintelligence agency components with whom the Office of Counterintelligence is preparing joint analysis of counterintelligence-related threats which may impact the Department of Energy;

—In the event that information within this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred to the appropriate Federal, State, local, or foreign agency, charged with the responsibility of investigating or prosecuting such violations or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto;

—A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit;

—A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of any employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter;

—A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings;

—Records maintained by this agency to carry out its functions which relate to civil and criminal procedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2;

—A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations;

—A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular;

—A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, provided the officers and employees have a need for the record in the performance of their duties; DOE contractor officers and employees are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and files, computer discs, data bases and printouts.

RETRIEVABILITY:

By name, social security number or other personal identifying data.

SAFEGUARDS:

Access is limited to DOE employees and contractor employees having a need to know as well as authorized Federal agencies or components thereof. Records are maintained in secured, locked and guarded buildings.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director, Analytical Division, Office of Counterintelligence, NN–30, U.S. Department of Energy, Forrestal Building, Room G–226, 1000 Independence Avenue SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Branch, U.S. Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified under "System Location" above or as items 1, 3, 8, 11, 12, 15, 16 or 17 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Completed Privacy Act Request Form, which includes full name, date of birth, geographic location(s) and organization(s) where requester believes such record may be located, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, present and former DOE employees and contractor employees; publicly available material;

other agencies within the Intelligence Community; other offices and elements within DOE; the FBI, and other federal, state and local law enforcement agencies; sources contacted during administrative inquiries and investigations; and official records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted under subsections (k) (1), (2) and (5) of the Privacy Act, 5 U.S.C. 552a, to the extent that information within the system meets the requirements of those subsections of the Act. The Secretary has further exempted this system from subsections (c) (3)and (4), (d), (e)(1), (e)(4) (G) and (H), and (f) of 5 U.S.C. 552a under the Privacy Act of 1974, to the extent the information in this system of records is exempt pursuant to 5 U.S.C. 552a(k) (1), (2) and (5). See DOE Privacy Act Regulations at 10 CFR part 1008.12(b).

Subsection (k)(1), 5 U.S.C. 552a(k)(1), permits an agency head to exempt those systems of records which are "specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order." See 5 U.S.C. 552(b)(1)(A). Subsection (k)(2), 5 U.S.C. 552a(k)(2), allows the exemption of records compiled in the course of an investigation of an alleged or suspected violation of laws and regulations.

Subsection (k)(5), 5 U.S.C. 552a(k)(5), allows the exemption of "investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence." See DOE's Privacy Act Regulations at 10 CFR Part 1008.12(b), 45 FR 61576, September 16, 1990, and refer to Proposed Amendment to the Department of Energy's Privacy Act Regulations published elsewhere in this issue.

[FR Doc. 94–22160 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974: Proposed Establishment of a New System of Records

AGENCY: Department of Energy.

ACTION: Notification of intent to create a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Energy (DOE) is required to publish a notice in the **Federal Register** when a system of records is established. The DOE proposes to establish a new system of records entitled "Counterintelligence Investigative Records" to maintain joint-law enforcement investigative records relating to counterintelligence matters. Records maintained in this system will be used to conduct joint law enforcement counterintelligence investigations between the DOE's Office of Counterintelligence (OCI) and the Federal Bureau of Investigations (FBI) or other Federal law enforcement agencies, or components thereof. These records may be provided to these agencies and components as needed, and may be used as a basis for legal actions and all matters pertaining thereto, including civil and criminal remedies. Persons covered under this system are DOE and DOE contractor employees, consultants, and other persons suspected of involvement in espionage, sabotage, or other hostile and foreign intelligence activities directed at or affecting DOE facilities, programs, information, personnel or other Department resources. The purpose of the system is to satisfy the requirements of Executive Order 12333, the *Department of Energy Procedures for Intelligence Activities*, DOE Order 5670.3, "Counterintelligence Program," and National Security Directive 47. Law enforcement activities include identifying illegal activities of individuals when they pertain to activities directed at, and threats posed to, DOE facilities, information, programs, personnel, materials, and all matters pertaining thereto. DOE proposes to establish routine uses for this system that allow records maintained in this system to be disclosed to the FBI and other authorized Federal law enforcement investigatory agencies or organizations conducting counterintelligence investigations or when a violation of the law is suspected or has occurred. System reports have been submitted to the Chairman of the Committee on Governmental Affairs of the U.S. Senate, the Chairman of the Committee on Government Operations of the U.S. House of Representatives, and the Director of the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) pursuant to subsection 552a(r) of the Privacy Act and paragraph 4b(2) of Appendix I to OMB Circular A–130. The OMB requires that a system report be distributed no later than 60 days prior to the implementation of the announcement of a new system of records.

DATES: The new system of records will become effective without further notice on October 18, 1994, unless comments are received on or before that date which would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Denise B. Diggin, Chief, Freedom of Information and Privacy Acts Branch, U.S. Department of Energy, HR–831, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Department of Energy, Denise B. Diggin, Chief, Freedom of Information and Privacy Acts Branch, HR–831, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5955.

Department of Energy, Charles Washington, Office of Counterintelligence, NN–30, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5333.

Department of Energy, Abel Lopez, Office of General Counsel, GC–80, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION: DOE proposes to exempt this system pursuant to subsections (j)(2) and (k) (1), (2) and (5) of the Privacy Act, 5 U.S.C. 552a, to the extent that information within the system meets the requirements of these subsections of the Act. The system will be exempted from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(8), (f) and (g) of 5 U.S.C. 552a, to the extent the information in this system of records is exempt pursuant to 5 U.S.C. 552a(j)(2). The system also will be exempted from subsections (c) (3) and (4), (d), (e)(1), (e)(4) (G) and (H), and (f) of 5 U.S.C. 552a, to the extent the information in this system of records is exempt pursuant to 5 U.S.C. 552a(k) (1), (2) or (5).

The text of the system Notice is set forth below.

Issued in Washington, DC on August 31, 1994.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE–84

SYSTEM NAME:

Counterintelligence Investigative Records.

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 8, 11, 12, 15, 16, and 17 in Appendix A, and the following additional locations:

—U.S. Department of Energy, Office of Counterintelligence, Headquarters, Forrestal Building, Washington, DC 20585
—U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544
—U.S. Department of Energy, Pinellas Area Office, P.O. Box 11500, St. Petersburg, FL 33733
—U.S. Department of Energy, Sandia Area Office, P.O. Box 5400, Albuquerque, NM 87115
—National Security Technology, Pacific Northwest Laboratory
—Nonproliferation, Arms Control, and International Security Directorate, Lawrence Livermore National Laboratory
—International Technology Division, Los Alamos National Laboratory
—Systems Research Center (5900), Sandia National Laboratory, Albuquerque
—International Technology Programs Division, Oak Ridge K–25 Site
—Special Programs Group (SRTC), Savannah River Laboratory
—Defense Programs Technology, Idaho National Engineering Laboratory
—Special Technologies Laboratory (STL), Santa Barbara

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE employees, contractor employees, and consultants; persons suspected of violating DOE regulations or criminal laws; and where there are indications of contact with a current or former DOE employee, contractor employee or consultant, by persons who are:

a. Reasonably believed to be officers or employees of, or otherwise acting for or on behalf of, a foreign power;

b. Members of an organization reasonably believed to be owned or controlled directly or indirectly by, a foreign power;

c. Reasonably believed to be targets, hostages, or victims of international terrorist organizations; or

d. Reasonably believed to be engaged or about to engage in clandestine intelligence activities, sabotage, assassinations, or international terrorist activities involving DOE programs, personnel, facilities, information, or materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Law enforcement records, reports and files; reports on foreign contacts; records, reports and files received from other DOE elements and other Federal agencies related to intelligence activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12333 and the Atomic Energy Act of 1954, as amended.

PURPOSE(S):

Pursuant to E.O. 12333 and DOE Order 5670.3, "Counterintelligence Programs," the records in this system are used by the OCI when participating in joint law enforcement counterintelligence-related investigations with the FBI or other Federal law enforcement agencies or components thereof in order to detect and prevent foreign intelligence threats directed at or involving DOE classified and sensitive information, programs, facilities, personnel, and other Department resources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information maintained in this system will be used by the OCI when participating in a counterintelligence-related joint law enforcement investigation. Information collected in such investigations may be used for prosecutive actions.

Information maintained in this system of records shall be disclosed to:

—The FBI when such records indicate a violation or probable violation of the law;
—Other law enforcement agencies or components thereof with whom the Office of Counterintelligence is participating in a joint counterintelligence law enforcement investigation;
—In the event that information within this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred to the appropriate Federal, State, local, or foreign agency, charged with the responsibility of investigating or prosecuting such violations or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto;
—A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit;
—A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of any employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter;
—A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings;
—Records maintained by this agency to carry out its functions which relate to civil and criminal procedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2;
—A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations;
—A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the

legislative coordination and clearance process as set forth in that Circular;

—A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, provided the officers and employees have a need for the record in the performance of their duties; DOE contractor officers and employees are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer discs, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked cabinets, computers restricted to coded entry, and computers secured for classified information. Access to computer records is by password only and may only be accessed by authorized staff in accordance with established procedures.

RETENTION AND DISPOSAL:

Records retention land disposal authorities are contained in DOE Order 1324.2 RECORDS DISPOSITION. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate. Automated files are erased through approved security procedures.

ADDRESS(ES):

Director, Analytical Division, Office of Counterintelligence NN–20, U.S. Department of Energy, Forrestal Building, Room G–226, 1000 Independence Avenue SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Branch, U.S. Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified under "System Location" above or as items 1, 3, 8, 11, 12, 15, 16 or 17 in Appendix A, in accordance with DOE's Privacy Act Regulations, 10 CFR part 1008, 45 FR 61576, September 16, 1980.

RECORD ACCESS PROCEDURES:

Required identifying information: Full name, date of birth, geographic location(s), and organization(s) where requester believes such record may be located, and time period. Preferred method for providing this information is to use DOE F 1800 "Privacy Act Information Requests" form. If the requester does not use this official form, the request should then bear at the top of the request the words "Privacy Act," "Privacy Act Access," or "Privacy Act Amendment," in accordance with DOE Order 1800.1A, II–1, "Action on Initial Requests."

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, present and former DOE employees and DOE contractor employees; publicly available material; other agencies within the Intelligence Community; other offices within the DOE; the FBI, and other federal, state and local law enforcement agencies; and sources contacted during investigations.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt pursuant to subsections (j)(2) and (k) (1), (2) and (5) of the Privacy Act, 5 U.S.C. 552a, to the extent that information within the system meets the requirements of those subsections of the Act. Under subsection (j)(2) of the Privacy Act, this system has been exempted from subsections (c) (3) and (4), (d), (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(8), (f) and (g) of 5 U.S.C. 552a. See DOE's Privacy Act Regulations at 10 CFR 1008.12(a), 45 FR 61576, 61582, September 16, 1980.

To the extent the information in this system of records is exempt pursuant to 5 U.S.C. 552a(k) (1), (2) and (5), the system has been further exempted from subsections (c)(3) and (4), (d), (e)(1), (e)(4) (G) and (H) and (f) of 5 U.S.C. 552a under the Privacy Act of 1974. See DOE's Privacy Act Regulations at 10 CFR 1008.12(b), 45 FR 61576, September 16, 1990, and refer to Proposed Amendment to the Department of Energy's Privacy Act Regulations published elsewhere in this issue.

[FR Doc. 94–22161 Filed 9–7–94; 8:45 am]

BILLING CODE 6450–01–P

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Thursday, September 8, 1994

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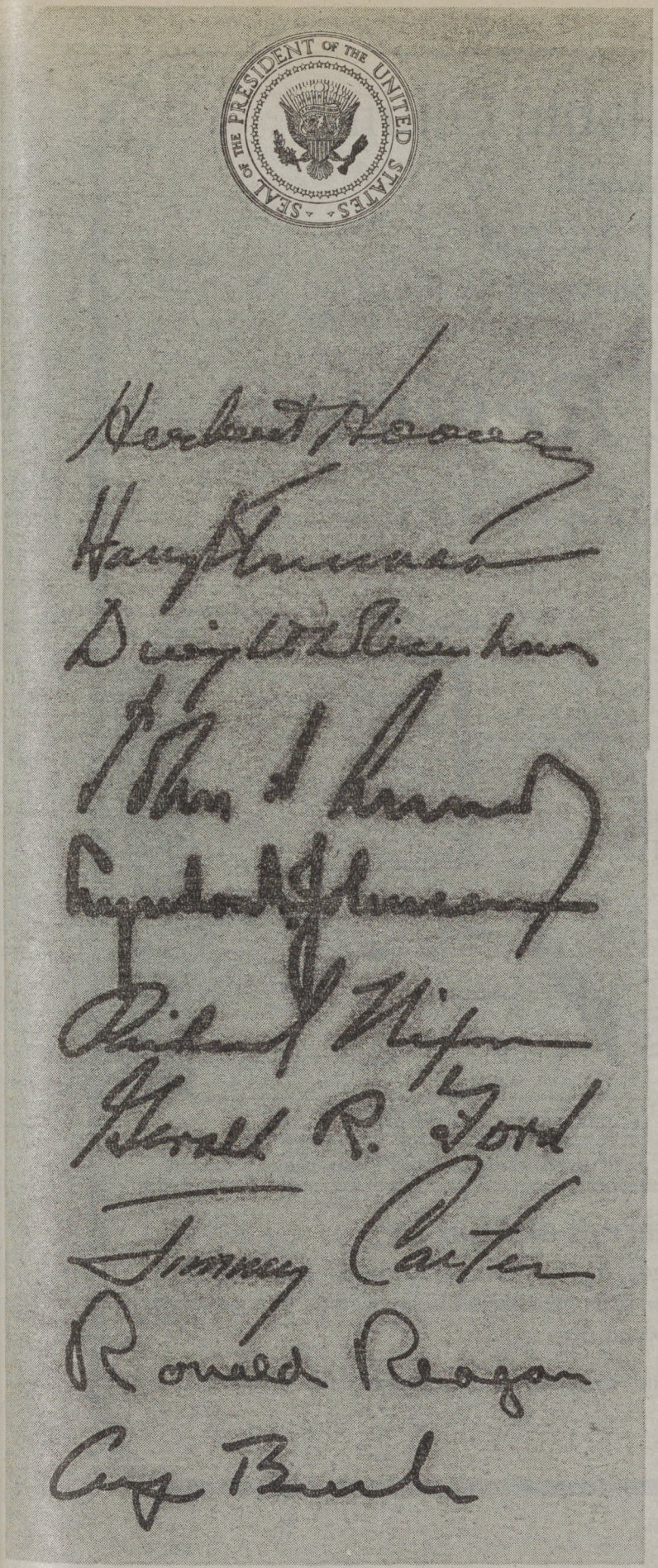

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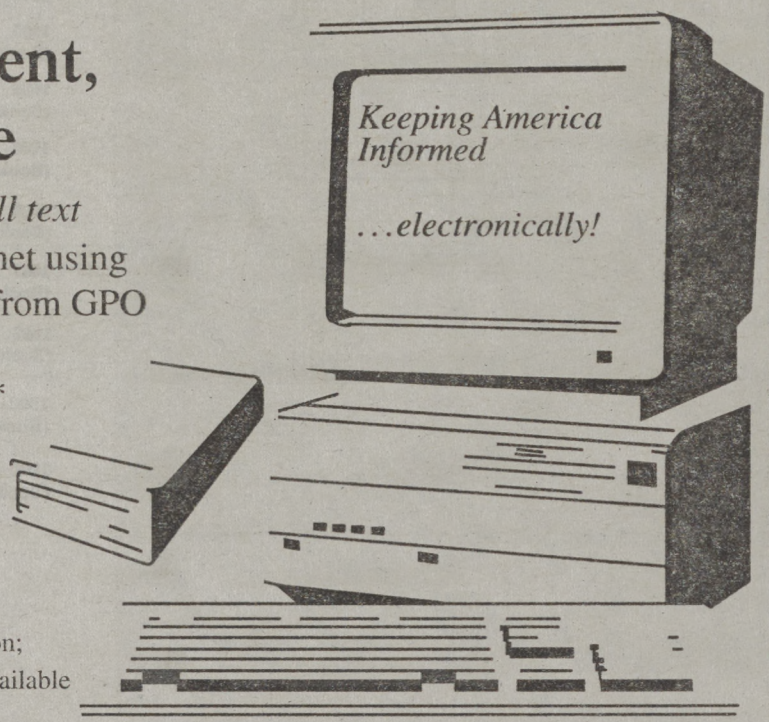

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